

FROM THE
NATIONAL
CRIMINAL
JUSTICE
ASSOCIATION



A Demonstration for State Assistance in the Conduct of Background Checks of Potential Representative Payees for Federal Entitlement Programs

Final Report

Prepared by the
National Criminal Justice Association
for the
Administration on Aging
U. S. Department of Health and Human Services

March 1994

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U.S. Department of Justice
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Gwen A. Holden, Project Director
Richard J. Rogers, Project Manager

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PREFACE

I am pleased to forward the final report of the U. S. Department of Health and Human Services, Administration on Aging-funded project to demonstrate the feasibility of state assistance in the conduct of background checks of potential representative payees for certain Social Security Administration (SSA) entitlement programs.

The demonstration initiative and supplemental research into states' background check-related laws, policies, and practices were carried out by the National Criminal Justice Association in cooperation with the SSA to explore the feasibility of forming intergovernmental partnerships between SSA field personnel and state law enforcement officials to establish criminal history screening procedures involving the fingerprinting of payee applications, and to help the SSA determine the usefulness of state criminal history records (CHR) as a source of information concerning payee candidates' character and trustworthiness.

The final report includes a detailed description of the development, outcomes, and findings of seven field-level demonstration projects in which SSA field personnel obtained state CHR information to screen persons applying to serve as representative payees. The report also contains an overview of CHR dissemination laws, policies, and procedures in a sample of 19 states and the District of Columbia, and a discussion of the findings of staff research into contemporary uses of background screening beyond the confines of the demonstration project.

The final report reflects the cooperative spirit in which this unusual and groundbreaking demonstration initiative was undertaken. The project itself benefited substantially from the skills, extensive experience, and commitment of officials from both the social services and criminal justice communities. We believe that we not only have responded to the specific questions that were at the center of this project, but that we have proven that through such cooperative efforts solutions can be found to many of this country's social order problems.

We hope that this work will prove useful to legislators, public policymakers, social services administrators, and criminal justice officials and will guide them in making informed decisions about social policy.

Gwen A. Holden
Executive Vice President
National Criminal Justice Association

ACKNOWLEDGEMENTS

This *Final Report* reflects the combined efforts of countless state, local, and federal personnel who worked to effectively bring about the interagency, intergovernmental, and interdisciplinary cooperation necessary for conduct of the project.

The project was developed in cooperation with the U. S. Department of Health and Human Services, Social Security Administration (SSA), Office of Retirement and Survivors' Insurance (ORSI). The NCJA acknowledges the following SSA officials for working to bring about the necessary collaboration between social service and law enforcement agencies: Gwendolyn S. King, former commissioner; Louis Enoff, former deputy commissioner; and Sandy Crank, associate commissioner. The NCJA also gratefully acknowledges the following members of the SSA Representative Payment Staff whose diligent efforts made possible the day-to-day management of the project: Reba Andrew, director; Fred Graf, deputy director; and social insurance specialists Kevin Brennan, Sandy Coffin, and Ed Fotheringill.

Project staff particularly is indebted to J. David Coldren, director of the Advanced Information Systems Project at the University of Chicago at Illinois, Office of International Criminal Justice. As former executive director of the Illinois Criminal Justice Information Authority and lead NCJA member on the demonstration project, Mr. Coldren gave generously of his time and expertise in helping project staff design and coordinate the project.

The project would not have been possible without the cooperation of state and local law enforcement agencies that contributed resources to accommodate the fingerprinting and criminal history screening of representative payees under the project. The NCJA especially acknowledges the following state officials who graciously gave their time and effort to assist in the coordination of the field demonstration projects: John DeCicco, senior deputy attorney general for the New Jersey Department of Law and Public Safety; Lonnie L. Gray, records section supervisor for the Idaho Department of Law Enforcement; Capt. Robert Howard, chief of the criminal records and identification division at the Missouri State Highway Patrol; Michael Lynch, EDP coordinator at the Missouri Department of Public Safety; Gary McAlvey, chief of the Illinois State Police Bureau of Identification; Mark Myrent, senior research analyst at the Illinois Criminal Justice Information Authority; Chief Robert Patterson of the Bakersfield, Calif., Police Department; Capt. James Petrecca, chief of the New Jersey State Police bureau of identification; and Marilyn Scheidegger of the Bureau of Criminal Identification at the California Department of Justice.

The NCJA would like to thank Identix, Inc. of Sunnyvale, Calif. for providing live-scan fingerprinting equipment free-of-charge for our experimental use at the greater Kansas City, Mo. demonstration site. We also thank Randall Hawks, executive vice president of Identix, and James Burkhalter, director of marketing operations at Identix, for giving their time to assist in arranging the use of their equipment.

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The NCJA acknowledges the efforts of Richard J. Rogers, NCJA senior staff associate, who throughout the duration of the project devoted many hours to all facets of project design and management. The NCJA also thanks Penny Wakefield, former NCJA associate general counsel, for her efforts in initial design of the project.

The following past and present NCJA legal researchers assisted in the collecting information about state laws and policies on criminal history record dissemination: Anne W. Creech, Nadine M. Rapacioli, and Andrew Waghorn. Wanda A. Meredith, NCJA secretary/receptionist, conducted day-to-day collection and entry of project data.

Finally, the NCJA acknowledges the following staff members who assisted with project research and production of the final report: Paul E. Lawrence, director of administration and information systems; Lisa Doyle Moran, assistant director for legal affairs; Robert A. Kapler, senior staff associate; Robert G. Landis, staff associate; and Carolyn J. Reid, administrative assistant.

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NATIONAL CRIMINAL JUSTICE ASSOCIATION
DEMONSTRATION PROJECT FOR STATE ASSISTANCE IN
THE CONDUCT OF BACKGROUND CHECKS OF POTENTIAL
REPRESENTATIVE PAYEES FOR FEDERAL ENTITLEMENT PROGRAMS
EXECUTIVE SUMMARY

Introduction

Over the past three years, the U. S. Department of Health and Human Services (DHHS), Social Security Administration (SSA) and the National Criminal Justice Association (NCJA) have conducted a national demonstration project on criminal history checks of potential representative payees under the SSA's Supplemental Security Income (SSI) and Retirement, Survivor, and Disability Insurance (RSDI) programs.¹

The demonstration initiative was carried out by the NCJA and the SSA under a grant from the DHHS' Administration on Aging. The project's purpose was twofold: to explore the feasibility of forming intergovernmental partnerships between SSA field personnel and state law enforcement officials to establish criminal history screening procedures involving fingerprinting of payee applicants, and to help the SSA determine the usefulness of state criminal history records (CHR) as a source of information concerning payee candidates' character and trustworthiness.

Through the demonstration project, the NCJA and the SSA found that it is feasible for the SSA to work with state and local criminal justice agencies to establish systems to obtain state CHR information regarding payee applicants based upon fingerprint identification of those applicants. Project experiences also indicated that a CHR screening requirement is not likely to adversely affect payee candidates' willingness to proceed with the application process.

The demonstration project also produced valuable information for the SSA's consideration in determining the practical value of CHR information in the payee appointment process. Five percent of applicants screened were found to have histories of felony convictions; of these, 46 percent were appointed to serve as payees in spite of their conviction histories. Thus, conviction information may not be an overriding factor in the context of all information that must be considered by SSA field personnel.

This study likewise produced information that will help the SSA in its examination of the potential usefulness of CHR information as a predictor of payee performance but did not produce a definitive answer on that matter. A separate but related study that the SSA has undertaken is expected to yield information on the payee performance of self-reported felons.²

To arrive at a final decision on the efficacy of payee CHR background checks, the SSA necessarily will weigh carefully cost management, accountability, and public safety considerations.

Background

Federal and state entitlement programs are a primary source of financial support for several million elderly and disabled Americans, as well as spouses and dependent survivors of deceased wage earners. Under many of these entitlement programs, beneficiaries who are unable to manage their own financial affairs due to illness, severe mental or physical disability, or chemical dependency rely on representative payees to receive and manage their benefits.

¹ Under §§ 205 and 1631 of the Social Security Act (42 U.S.C. 405 and 42 U.S.C. 1383), the SSA is authorized to appoint individuals or organizations to manage entitlement payments on behalf of beneficiaries who are unable to manage their own financial affairs. These individuals are called representative payees.

² The Congress, in § 5105 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), directed the SSA to explore the feasibility of obtaining ready access to records of federal criminal fraud convictions and determine the types of payee applicants most likely to have criminal histories. The Congress and SSA officials hoped to gain insights on the suitability of persons with felony convictions to serve as payees. To meet the latter requirement, the SSA has conducted the Representative Payee Felony Study. Under that study the SSA examined the performance of a sample of representative payees who voluntarily admitted to felony convictions on their payee applications. The findings of that work likewise would inform SSA officials' determination of the overall usefulness of felony conviction information in the payee appointment process. Work on that study recently was completed.

In a relatively small number of cases in which assistance agencies must certify payees, the payees willfully have misappropriated benefits for their own personal gain. In the few litigated cases, some payees who misappropriated benefits from SSA entitlement programs were found to have felony conviction records. These cases have drawn the attention of social services administrators and, notably, the U. S. Congress and have given rise to various SSA initiatives directed at improving the level and quality of available information on payee applicants.

Under a grant from the DHHS' Administration on Aging, the NCJA and the SSA, in cooperation with criminal justice agencies in six states, undertook the national demonstration project to assess the feasibility of using state CHR to screen representative payee candidates under the SSI and RSDI programs.

Study Methodology

The NCJA devoted the first nine months of the demonstration initiative to helping SSA officials understand states' existing CHR dissemination policies and protocols. The NCJA made several presentations to and participated in numerous meetings with various SSA administrative and field supervisory personnel concerning how state criminal history record systems operate; what types of personal identifiers and offense-related data these systems contain on subjects; what government officials have access to this information and how they are authorized to use it; and how fingerprints are taken, stored, and retrieved.

The SSA focused particularly on considering several practical, political, and, to some extent, uncontrollable, factors that ultimately would affect the policy and operational parameters for the demonstration project. SSA manpower and financial resources ranked high among the practical considerations. Personnel and funds would be needed to support the initiation and conduct of CHR screening and, in the event fingerprinting was to be undertaken, additional service costs also would have to be accommodated. The SSA would be asking field personnel to take on a new task, one that SSA personnel might perceive to be in conflict with their responsibilities as social services representatives.

The SSA also was concerned that requiring CHR screening, particularly screening that would involve fingerprinting, would discourage many qualified persons from volunteering to serve as payee applicants. The SSA, already facing a diminishing pool of payee applicants, worried that potential resentment or fear of CHR screening could reduce that pool further.

Implementation Issues

Before the SSA and the NCJA could proceed with the design and implementation of demonstration project protocols, the SSA needed to resolve three major policy issues that would define the scope and focus of payee applicant CHR screening. The first of these issues was whether fingerprints would be required to initiate CHR screening of payee applicants. The second issue concerned which payee applicants would be subject to CHR screening. Finally, the SSA had to decide what offense-related data generated by CHR searches might inform decisions about payee applicants' trustworthiness, and how offense-related data on an individual payee applicant would be used in making decisions about that specific applicant's suitability.

In consulting with the NCJA and various law enforcement officials, the SSA learned that many states recommend or require fingerprints to initiate CHR searches. Fingerprints, which are unique to each individual, are a more reliable means of proving identity than names, which can be changed, misspelled, or shared by more than one individual.

The SSA weighed the increased reliability of fingerprinting as a basis for CHR searches against the potential for the public to perceive fingerprinting of payee applicants as overly intrusive. CHR searches without fingerprint verification potentially can fail to identify criminals who use false identifying information or, conversely, can incorrectly link innocent persons with criminal histories belonging to other persons with similar names and identifying information. As a result, states generally will not guarantee the validity of CHR searches conducted without fingerprint verification, and some will not conduct CHR searches for non-criminal justice purposes without fingerprints.

In making its decision, the SSA assessed and carefully evaluated overall program accountability interests; the fiscal and general safety and security interests of SSA beneficiaries; the privacy interests of payee applicants; and several practical and political considerations. SSA project staff therefore chose to

employ fingerprinting as a means of identification for CHR screening under the project. The SSA concluded that use of fingerprints to initiate background checks would be more likely than names to correctly identify the individual being subjected to background checks and therefore are the most reliable means of protecting the interests of both payee applicants and beneficiaries.

The SSA also had to consider whether to conduct CHR screening on applicants who were close family members of the beneficiaries. The SSA foresaw possible questions concerning the appropriateness or negative practical or political repercussions of requiring relatives of beneficiaries--parents, adult children, siblings, spouses, or other relatives--to be fingerprinted or subjected to criminal history background checks. SSA personnel believed that, for applicants closely related to beneficiaries, CHR would not be as relevant to potential performance as it would be for other applicants. The SSA questioned the efficacy of rejecting family members who already had been determined by state or local authorities as suitable to act on behalf of beneficiaries for purposes other than management of SSA benefits payments. In the case of a parent filing to serve as payee for a minor child, SSA believed that, even if the parent had a conviction history, it would be especially difficult to justify appointing a third party as payee when the state has never found a reason to remove the child from the parent's custody. Moreover, SSA personnel anticipated potential for adverse public reaction to a procedure that, in situations involving beneficiaries' family members, could be perceived as overly intrusive. In light of these considerations, the SSA decided to exempt grandparents, parents, and adult children of beneficiaries from CHR screening.

On the matter of the use of CHR information, the Social Security Act barred the SSA from appointing any applicant found to have felony convictions specifically for social security fraud under §§ 208 or 1632 of the Act. Standing SSA policy directed field personnel to consider any other CHR information in the context of all information available about payee applicants. That policy also directed personnel to reject any applicant found to have a felony conviction unless no suitable alternative candidate could be found. For the purposes of the project, the SSA adopted an additional policy of automatically rejecting payee applicants who were found to have felony convictions but did not admit to those convictions on their applications.

Demonstration Sites

In order to accommodate sufficient variations of the project model to reflect its application under varying conditions, while staying within NCJA and SSA resource constraints, the NCJA and the SSA agreed to identify six states for demonstration projects. In choosing demonstration sites, project staff sought sufficient geographic distribution, demographic diversity, expressed interest in project participation, unique experience in CHR-related activities, and active involvement in past NCJA research efforts.

Project staff also took into account state repositories' resource constraints and the potential impact that the additional volumes of CHR requests from payee applicant screening could have on state repositories' operations and resources. In light of these considerations, project staff concluded that, in demonstration states with large populations or large numbers of SSA beneficiaries concentrated in specific locales, demonstration programs would be established for a region of these states, rather than statewide.

Prior to implementation of each state demonstration project, the NCJA arranged meetings between SSA representatives and state and local criminal justice officials to discuss demonstration project operations. At each of these meetings, participants described their agencies' operational capabilities, limitations, and policies in order to inform decisions about procedures for each demonstration project and facilitate interagency coordination. The projects then were implemented and continued to operate as follows:

Figure 1: Demonstration Project Timetable

Demonstration Site	Implementation Date	Termination Date	Approx. Duration
Cook County, Ill.	Dec. 4, 1991	Mar. 31, 1992	4 months
Dade County, Fla.	Feb. 3, 1992	Sept. 11, 1992	7 months
New Jersey	Apr. 1, 1992	Aug. 15, 1992	4 1/2 months
Idaho	June 22, 1992	Dec. 4, 1992	5 1/2 months
Sacramento and Kern Counties, Calif.	Aug. 24, 1992	Jan. 25, 1993	5 months
Greater Kansas City, Mo.	Sept. 14, 1992	Jan. 29, 1993	4 1/2 months

Study Limitations

The study produced the desired assessment of the potential for cooperation between the SSA and state authorities in establishing CHR screening procedures, and produced important insights into the practicality of screening payee applicants. However, limitations on the project scope affected the value of information generated by the study on the feasibility of CHR screening.

The SSA's decision to exempt beneficiaries' parents, grandparents, spouses, and adult children from CHR screening substantially reduced the number of payee applicants screened under the demonstration project. In Cook County, for example, the total number of payee applicants was estimated by the SSA to be slightly more than 1,200 per month. With the specified categories of relatives excluded, about 400 per month actually were screened under the study. The estimated number of payee applicants subjected to CHR screening checks under the project consequently was about one-third of the total number of payee applicants processed in Cook County each month. Overall, the SSA estimates that the exempted types of relatives comprise about 80 percent of the total payee population nationwide. The elimination of that number of potential payees from CHR screening under the demonstration project significantly reduced the project scope in such a way that the data generated cannot be generalized onto the entire universe of payee applicants.

A judgment of the appropriateness of allowing convicted people to serve as payees turns on whether conviction histories indicate a greater likelihood of payee malfeasance. The NCJA/SSA study focused on examining the feasibility of payee applicant CHR screening and did not encompass an assessment of whether a correlation exists between conviction histories and payee performance. Consequently, the study does not answer directly the question of whether it is good policy to allow convicted people to serve as payees. Other, related studies are expected to provide the SSA information that will inform decisions on the matter.³

Likewise, the study did not encompass a complete assessment of the potential impact and technical feasibility of implementing payee CHR screening nationally as part of the SSA's normal field operations. The SSA did not have the necessary systems available during the project period to determine the number of payee applicants nationally and only now is implementing such a system.⁴ Reliable estimates of the national volume of applicants are necessary to fully determine the potential costs and impacts of payee screening.

Findings and Conclusions

Project Performance

Project experiences have demonstrated that it is feasible for the SSA to work with state and local criminal justice agencies to establish systems to obtain state CHR information regarding payee applicants based upon fingerprint identification of those applicants. After making adjustments to project procedures during the initial stages of demonstration project implementation, the state demonstration projects generally operated smoothly. The SSA and state and local agencies were able to establish direct communication lines to ensure coordinated operations and facilitate timely, effective resolution of operational problems.

The local law enforcement agencies that provided fingerprinting services for the project had varying levels of experience and requirements for conducting applicant fingerprinting for non-criminal justice purposes. For a few of the local law enforcement agencies involved, the project provided an opportunity to implement applicant fingerprinting procedures for the first time. A number of the local agencies already had in place applicant fingerprinting services and were well-equipped to accommodate the SSA's payee applicants. In every case, local law enforcement agencies were able to work with SSA to set up fingerprinting procedures appropriate to the needs of the project.

³ See footnote 2, page 1.

⁴ In fall 1992, the SSA began implementation of the Master Representative Payee File, an automated system that will provide SSA personnel with essential identifying information about current and past payees as well as historical information on those payees' performance. This system is intended to produce data on the national volume of payee applicants. The system is currently in operation and is being loaded with information about past and present payees. The SSA expects to finish this information loading process within the next year.

Similarly, state agencies that provided CHR services for the project were able to work with SSA to establish special billing procedures to meet the needs of the project. State repositories also provided training to help SSA personnel understand the formats, symbols, and special language used in state CHR reports.

State and local law enforcement agencies were able to process the limited volumes of applicants screened under the study. However, state and local agency officials were skeptical about whether they could accommodate the full volume of payee applicants, including those applicants who were exempted from screening under the study, with current resources and technology.

Social services agencies and law enforcement authorities necessarily operate from different perspectives. For example, social services agencies may seek to protect the privacy of clients by maintaining as little sensitive information on those persons as possible, whereas law enforcement authorities, in their efforts to protect the general public safety, may attempt to maintain as much information on persons it contacts as possible. Despite these practical and philosophical differences between the SSA and law enforcement agencies' organizational missions, these federal, state, and local officials worked together effectively to build CHR screening capabilities.

In fact, state and local criminal justice agencies involved in the project reported that working with the SSA provided them with valuable insights into the needs and perspectives of social service agencies, which increasingly are drawing on state CHR as a decision making resource. State and local officials noted a growing trend toward increased use of CHR for non-criminal justice purposes and acknowledged that criminal justice authorities must be prepared to meet this growing demand.

Continuing advances in technology such as the automated fingerprint identification systems (AFIS) and "live scan" fingerprinting devices used under the project may have a significant impact on criminal justice information system capabilities. It is hoped that new technologies will dramatically increase the speed and efficiency of CHR screening procedures and help states accommodate increased volumes of CHR requests. Moreover, the U. S. Department of Justice, Federal Bureau of Investigation's development of a national, interstate criminal identification network may further encourage technological advances and make timely federal and 50-state CHR checks readily available for non-criminal justice purposes.

CHR Screening Outcomes

As of June 18, 1993, NCJA staff had collected data on the processing of 2,652 payee candidates at all demonstration sites combined. Of all payee candidates, 96, or slightly less than four percent, did not pursue applications for payeeship. Thirty-five, or slightly more than one percent of all candidates said that they did not apply out of objection to the CHR screening or fingerprinting requirements (See Figure 2).

Figure 2: Payee Candidate Drop-Outs

Site	Candidates Subject to Screening	# that did not apply	% that did not apply	# that objected to CHR screening	% that objected to CHR screening	# that objected to fingerprinting	% that objected to fingerprinting
Cook County, Ill.	1267	41	3.24%	6	0.47%	11	0.86%
Dade County, Fla.	188	5	2.66%	1	0.53%	2	1.06%
Idaho	143	8	5.59%	0	0.00%	4	2.79%
Kansas City, Mo.	111	8	7.21%	1	0.90%	2	1.80%
Kern & Sacramento Counties, Calif.	363	23	6.33%	2	0.55%	0	0.00%
New Jersey	580	11	1.90%	1	0.17%	5	0.86%
National Totals	2652	96	3.62%	11	0.41%	24	0.90%

These figures indicate that a CHR screening requirement likely will not adversely affect the willingness of payee candidates to proceed with the application process. This finding could reflect a growing familiarity among the general public with such procedures and a general sensitivity to the need for special measures to protect vulnerable citizens. Furthermore, it is possible that some of those who declined to

pursue applications did so because they feared detection of personal histories of criminal behavior. Thus, the CHR screening may in fact have deterred would-be predatory criminals from victimizing beneficiaries.

SSA field personnel requested CHR information for the 2,556 representative payee candidates who proceeded with applications. Of those requests, 190, or seven percent, were returned unprocessed by state CHR repositories due to unusable fingerprints, missing identifying information, or other processing errors. The vast majority of these rejections, 171, occurred during the early phases of operation at the first demonstration site in Cook County and were attributable to processing errors that were worked out as the project continued. Thus, CHR request rejection rates at the remaining sites ranged from about one to three percent. Due to the time involved in reissuing CHR requests, the SSA chose to waive the screening requirement for those applicants for whom CHR requests were rejected.

Criminal History "Hit" Rates

For 2,366 applicants, procedures established under the project were successful in yielding a CHR response from the state CHR repositories. Data on both the outcome of CHR requests and subsequent appointment decisions was available for a sample of 2,177 cases for all demonstration sites combined.⁵

In 196, or approximately nine percent, of the sample cases, CHR searches resulted in "hits," or discovery of criminal conviction histories (See Figure 3). For 102, or approximately five percent of the sample, screening revealed histories of felony convictions. Another 94, or approximately four percent, of applicants were found to have records of misdemeanor convictions only.

In general, these cumulative "hit rates" under the project comport with rates for the general population of applicants subject to CHR screening for non-criminal justice purposes. However, local hit rates at the Dade County and Sacramento County demonstration sites were significantly higher than the national average. Of 144 applicants screened in Sacramento County, 15, or approximately 10 percent, were found to have felony convictions; another 18, or 12.5 percent, had records of misdemeanor convictions only. Of 122 applicants screened in Dade County, 20, or approximately 16 percent, had felony conviction records.

Project staff could not identify any definitive reasons for the higher local hit rates in Sacramento and Dade Counties. However, the variances do indicate the possibility that the SSA could expect higher hit rates in certain localized areas if CHR screening were implemented as a broader, operational policy.

Figure 3: CHR "Hit" Rates

Site	Applicants screened with CHR	Applicants w/ conviction histories	Overall "hit" rate	Applicants w/ felony convictions	Felony "hit" rate	Applicants w/ misdemeanor convictions only	Misdemeanor "hit" rate
Cook County, Ill.	1007	56	5.56%	39	3.87%	17	1.69%
Dade County, Fla.	122	28	22.95%	20	16.39%	8	6.56%
Idaho	131	10	7.63%	3	2.29%	7	5.34%
Kansas City, Mo.	88	5	5.68%	2	2.27%	3	3.41%
Kern County, Ca.	158	15	9.43%	6	3.77%	9	5.66%
New Jersey	526	49	9.32%	17	3.23%	32	6.08%
Sacramento County, Ca.	144	33	22.92%	15	10.42%	18	12.50%
National Totals	2177	196	9.00%	102	4.69%	94	4.32%

Use of CHR Data in Payee Appointments

The study found in practice that CHR actually may be of questionable practical value to the personnel faced with appointment decisions. SSA claims representatives appointed 46 percent of applicants with felony convictions; 79 percent of misdemeanants were appointed to serve as payees (See Figure 4).

⁵ Due to omissions in data submitted by SSA personnel, data on the outcome of CHR requests and/or applicant processing was unavailable for 189, or eight percent, of the 2,366 cases in which CHR requests were not rejected.

Disposition of applicants with felony convictions varied widely by site; of applicants with felony convictions in Sacramento County, 33 percent were appointed to serve as payees, while 70 percent of applicants with felony convictions in Dade County were appointed to serve as payees. The data seem to indicate that conviction information was not an overriding factor in appointment decision making. SSA claims representatives consider CHR in the context of other criteria and subjective judgments about the character of the applicants.

Figure 4: Handling of Applicants with Conviction Records

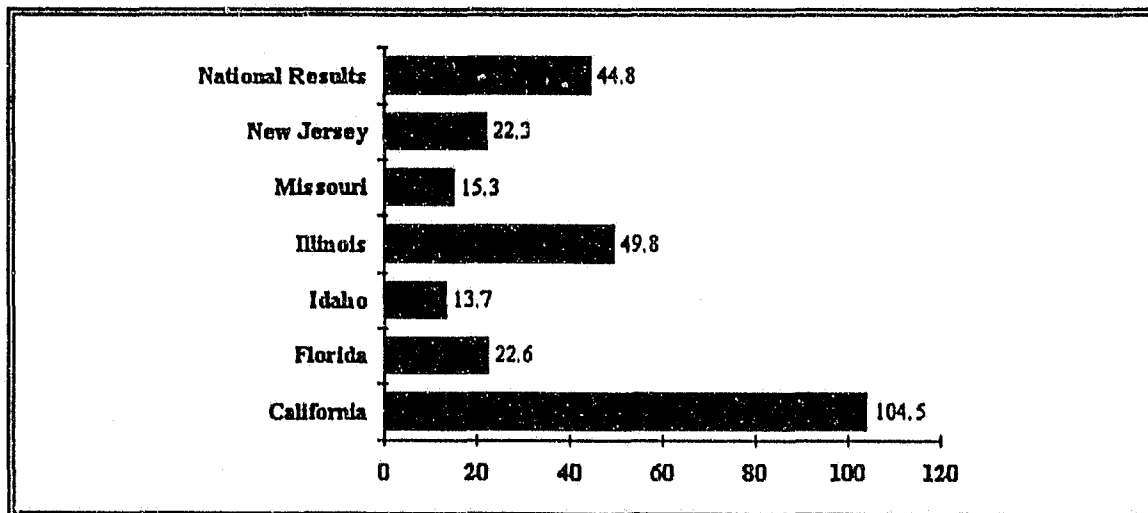
Site	Applicants with felony convictions	Felons appointed	Percent of felons appointed	Applicants with misdemeanor convictions only	Misdemeanants appointed	Percent of misdemeanants appointed
Cook County, Ill.	39	16	41%	17	12	71%
Dade County, Fla.	20	14	70%	8	8	100%
Idaho	3	2	67%	7	7	100%
Kansas City, Mo.	2	0	0%	3	3	100%
Kern County, Calif.	6	2	33%	9	7	78%
New Jersey	17	8	47%	32	28	88%
Sacramento County, Calif.	15	5	33%	18	9	50%
National Totals	102	47	46%	94	74	79%

CHR Screening Costs and Impacts

The costs of fingerprinting and CHR information services combined varied widely among demonstration sites, ranging from \$10 to \$37 per applicant; factoring in the volumes of applicants at each site, the average cost of screening under the project was slightly more than \$21 per applicant, according to SSA estimates. The amount of time that final appointment decisions had to be delayed while claims representatives awaited responses to CHR requests also varied by site, ranging from an average of 14 days in Idaho to more than 104 days in California; the national average was about 45 days (See Figure 5).

To comply with laws that prohibit delaying benefits payments longer than 30 days, field personnel had to institute special procedures to appoint applicants on a conditional basis pending the outcome of CHR checks, and in some instances, directly paid beneficiaries while awaiting CHR information on payee applicants. The SSA must assess whether such lengthy waiting periods and the resulting special procedures would be detrimental to the payee appointment process over a long period of time.

Figure 5: Average CHR Waiting Times



Contemporary Developments in Background Screening

Supplemental research to examine the use of background screening beyond the purview of the demonstration project has raised issues that are relevant to the SSA's consideration of payee applicant screening. NCJA research found that background screening of applicants for certain employment and volunteer positions is coming into increasing use in situations where the employee or volunteer potentially could cause harm to people or property. This increase is apparent especially in professions involving the direct care and education of children, where publicized cases of child abuse by workers who turned out to have pre-existing records of relevant criminal behavior have fueled a rise in applicant CHR screening. Given such cases, CHR screening likely is useful in identifying some troublesome candidates. However, CHR screening cannot indicate a likelihood for employee or volunteer malfeasance when the applicant previously has not been arrested, or in most jurisdictions, convicted, of criminal behavior.

Employers and volunteer recruiters also have resorted to a variety of other background screening techniques, such as credit history review and personality testing. Like CHR screening, each method may provide information that is useful in helping to predict applicants' likely performance, and may help identify troublesome candidates. However, some techniques may be especially costly in terms of the money and labor required. Some techniques also may yield results that can be misinterpreted to indicate dangerous characteristics in candidates who actually are well-qualified. In addition, like CHR screening other background screening methods in some instances may fail to detect applicants' potential for wrongdoing. Therefore, regardless of the screening technique used, recruiters should not assume that background checks that produce no negative finding completely rule out the possibility of incidents of employee or volunteer malfeasance and should take actions to monitor the performance of people in sensitive positions.

Recommendations

In judging the value of CHR information in appointment decisions, the SSA must decide the appropriateness of allowing convicted individuals to serve as payees. The answer to this question hinges at least in part on whether conviction histories indicate a greater likelihood of payee malfeasance. The NCJA/SSA demonstration project was limited to an examination of the feasibility of CHR screening and therefore did not assess how applicants' conviction histories corresponded to their performance as payees (see footnote 2, page ix).

Ultimately, more information is needed to assess fully the value of as well as the SSA's and states' ability to accommodate CHR screening in the representative payee appointment process. Therefore, the NCJA recommends that the SSA:

- obtain CHR information on a random sample of payees and assess the performance of those payees in order to evaluate how conviction histories correlate to payee performance. Such a study should include payees who are beneficiaries' family members in order to help determine the prevalence and relevance of conviction histories among beneficiaries' close family members; and
- as it develops more complete information on the annual number of new payee applicants nationwide, use that information to work with state agencies on determining the potential costs of applicant screening as a nationwide policy and whether such applicant screening could be accommodated by state repositories and within SSA procedures and resource limitations.

CHAPTER I INTRODUCTION

Federal and state entitlement programs are a primary source of financial support for several million elderly and disabled Americans, as well as spouses and dependent survivors of deceased wage earners. Under U. S. Department of Health and Human Services' (DHHS) Social Security Administration (SSA) entitlement programs, beneficiaries who are unable to manage their own financial affairs due to illness, severe mental or physical disability, or chemical dependency rely on "representative payees" to receive and manage their benefits.

In instances where representative payees are necessary, social service agencies managing these entitlement programs have sought to appoint as payees family members, close friends, or caretaking institutions with custody of beneficiaries. However, increases in the numbers of entitlement program beneficiaries who are destitute and without family support has increased reliance on payee candidates with less clearly defined ties to beneficiaries.

In some instances, however, such payees have wilfully misappropriated benefits for their own personal gain. In light of recent cases in which payees who misappropriated benefits from SSA entitlement programs were found to have felony conviction records, the SSA and the Congress have sought to examine the possibility of using state Criminal History Records (CHR) as a source of information to help evaluate the character of potential payees.

The DHHS' Administration on Aging (AoA), meanwhile, has sought to improve protection of low-income and minority older people who are at risk due to diminished mental or physical powers by fostering the development and demonstration of service models that improve the quality of representative payee appointments and services. By helping improve entitlement services in general, the AoA also has sought to encourage increased participation in entitlement programs.

Under a grant from the AoA, the National Criminal Justice Association (NCJA) and the SSA, in cooperation with criminal justice agencies in six states, undertook a demonstration project to assess the feasibility of using state CHR to screen representative

payee candidates under the SSA's Supplemental Security Income (SSI) and Retirement, Survivor, and Disability Insurance (RSDI) programs.¹

Background

Under the Social Security Act of 1935, the Congress created a system of entitlement programs whereby needy individuals could receive financial assistance from state and federal governments. One of these programs, the RSDI program, entitles retirees, disabled wage earners, and dependent survivors of deceased wage earners to receive government financial assistance. To qualify for the RSDI program, applicants must meet minimum requirements for length of time in qualified employment.

Social Security Act amendments enacted in 1939 authorized the SSA to appoint at its discretion representative payees to receive and manage benefits on behalf of entitlement beneficiaries whom the SSA judges to be incapable of managing their own day-to-day affairs. The amendments required the SSA to certify payees "on the basis of an investigation . . . [and] adequate evidence that the certification is in the interest of the individual [beneficiary]" (42 U.S.C. 405(j)).

Under the Social Security Amendments of 1972 (Pub. L. 92-603), the Congress added the SSI program to the system of social security entitlement programs. Under the SSI program, needy individuals with incomes below levels recognized as sufficient may receive supplemental income assistance. In addition, disabled people, including people considered disabled due to substance addiction, who are unable to meet the work history and tax contribution requirements of the RSDI program, often qualify for SSI benefits. The payee appointment provisions rules also apply to the SSI program.

Until the mid-1970s, the SSA encountered few problems with its existing representative payee appointment process. In most instances, family members, close friends, and caretaking institutions with custody of beneficiaries stepped forward to serve as payees

¹ Under §§ 205 and 1631 of the Social Security Act (42 U.S.C. 405 and 42 U.S.C. 1383), the SSA is authorized to appoint individuals or organizations to manage entitlement payments on behalf of beneficiaries who are unable to manage their own financial affairs. These individuals are called representative payees.

and discharged their duties responsibly. However, changing lifestyles and economic conditions and the trend toward deinstitutionalization of the less severely mentally ill have led to a growth in the number of SSA beneficiaries who are isolated from families and other traditional networks of support. These beneficiaries generally are poor, uneducated, and physically or mentally handicapped. In many instances, these individuals are homeless and/or suffer from substance addiction.

Thus, in recent years, the SSA often has been forced to appoint as payees volunteers with uncertain or no familial relationships or long-term commitments to beneficiaries. In a few instances, those payees have misappropriated benefits payments, often leaving beneficiaries with insufficient means to nourish, clothe, and shelter themselves at even the most basic level. The victimization of beneficiaries by their representative payees has led government leaders to seek ways to guard against the appointment as payees of individuals who might abuse this trust and misappropriate funds.

In several recent highly publicized cases involving payee misappropriation, the payees had records of multiple convictions for such felonious offenses as check fraud, extortion, and robbery prior to their appointments as payees. These revelations led the SSA and the Congress to investigate the possibility of accessing state and local CHR as a potential means of determining the trustworthiness of prospective payees.

Subsequently, under a purchase order from the SSA, the NCJA, a leading national organization in the field of criminal justice and public safety research and policy planning, arranged a conference of officials from entitlement programs and criminal justice agencies at the federal and state levels, as well as representatives of concerned interest groups, to discuss issues surrounding available state CHR information, means of access to that information, and the potential for cooperation between federal and state agencies in conducting background checks of representative payee candidates for SSA and other entitlement programs.

In preparing background information for the conference, NCJA staff attended several congressional hearings and followed the progress of proposed legislation regarding background checks for SSA representative payees. The NCJA also conducted legal research on court decisions addressing the responsibility of the SSA for conducting background checks of potential payees and on state statutes affecting dissemination of CHR information for the

purpose of conducting background checks. In addition, the NCJA reviewed technical reports concerning state-of-the-art technologies that could be applied to coordination of criminal records checks among states and the federal government.

To ensure that the conference would benefit from a sufficient body of experience and expertise in the criminal justice and social services, the SSA and the NCJA invited officials from a sample of 19 states and the District of Columbia to participate. The sample jurisdictions were chosen on the basis of their geographical distribution among the 10 federal administrative regions and whether the jurisdiction had a history of significant contact and cooperation with the NCJA in other projects. Those jurisdictions were: in Region I, New Hampshire and Rhode Island; Region II, New Jersey and New York; Region III, Virginia and the District of Columbia; Region IV, Florida and North Carolina; Region V, Illinois and Michigan; Region VI, Oklahoma and Arkansas; Region VII, Missouri and Nebraska; Region VIII, Montana and Wyoming; Region IX, California and Hawaii; and Region X, Idaho and Washington.

Although not all invited states were able to send representatives to the conference, these jurisdictions generally expressed considerable interest in keeping abreast of the outcomes of the conference and participating in any future activities that might be developed as a result of ideas put forward during the one-day seminar. Most of the states recognized that efforts to explore SSA access to CHR for background checks would complement their own efforts to facilitate records sharing for similar purposes. In addition, several states indicated a willingness to participate in a federal demonstration project to develop models of CHR access should the possibility arise.

The conference was held March 15, 1990, in Washington, D. C. Conference participants indicated general agreement that CHR potentially could prove to be a valuable resource in the payee certification process. However, discussions at the conference brought to light a wide range of complex issues that the SSA would need to consider before employing CHR in payee appointment decision making. Among those issues were limits on the dissemination of CHR information for non-criminal justice purposes; protection of payee applicants' privacy; deficiencies in the completeness and timeliness of CHR data bases; the relevance of various CHR data to appointment decision making; and the responsibility for

decisions based on CHR information. In light of these issues and the potential value of CHR information, the NCJA and the SSA agreed to pursue a demonstration project to test the use of CHR in payee appointments.

At the meeting, the NCJA and the SSA also considered the relative usefulness of federal CHR information maintained by the U. S. Department of Justice's Federal Bureau of Investigation (FBI). However, the NCJA and the SSA found that, at that time, the FBI's CHR data base only was partially automated and, as a result, FBI CHR checks for non-criminal justice purposes likely would be prohibitively slow -- taking as long as six months -- and lack the most current and critical information.² Therefore, the NCJA and the SSA chose to focus on the possibility of using state CHR in the payee candidate evaluation process.

To support the development of such a demonstration initiative, the NCJA sought funding from the AoA under a discretionary grant program that sought projects to improve the effectiveness and efficiency of programs for the elderly by testing new models, systems, and approaches for providing and delivering services. Among its more specific objectives, the AoA sought to address protection of low-income and minority elderly people who are at risk due to mental or physical incapacities by supporting research intended to improve the quality of representative payee appointments and services. On an application from the NCJA, the AoA awarded funds to the NCJA to explore the potential for cooperation between state agencies and the SSA in using state CHR to screen representative payee applicants.

Later that year, the study gained additional significance when the Congress, in the Omnibus Budget Reconciliation Act of 1990, addressed the performance of payees with criminal offense histories. Under that act, the SSA was directed to explore the feasibility of obtaining ready access to records of federal criminal fraud convictions and identifying the types of payee applicants most likely to have felony convictions.

² The FBI since has been engaged in extensive efforts to improve the speed and quality of national CHR checks for non-criminal justice purposes. These efforts include the construction of a new headquarters for the FBI's Criminal Justice Information Services Division and the development of an automated interstate CHR sharing network. Implementation of these systems is scheduled to begin in 1995. See discussion of page 67.

Through a study on the types of payee applicants most likely to have criminal histories, the Congress and SSA officials hoped to gain insights on the suitability of persons with felony convictions to serve as payees. To meet this congressional requirement, the SSA established a separate, but related, study, the Representative Payee Felony Study, to ascertain the overall usefulness of CHR information in the payee appointment process. Under that study, the SSA examined the criminal histories and performance of a sample of representative payees who voluntarily admitted to felony convictions on their payee applications. Work on that study has been completed and the results are expected to be delivered to the Congress in early 1994.

Methodology

As a result of the March 1990 meeting and subsequent research, the NCJA identified a variety of issues that assistance agencies such as the SSA must address in order to implement a CHR checking system. For example, substantial variation currently exists among states in statutory and practical limitations on what types of CHR information may be available, which individuals or organizations may have access to such information, and what procedures those individuals or agencies must follow in order to obtain information. Other issues of particular relevance to the NCJA's work include the relative merits of name-based and fingerprint-based identification systems; the volume of records checks to be conducted; definitions of what types of payee candidates would be subject to records checks; procedures for integrating criminal history information into the payee certification process; and the designation of organizations or individuals to assume responsibility for ultimate decisions on payee certification.

The NCJA devoted the first nine months of the project to helping SSA officials understand states' existing CHR dissemination policies and protocols. The NCJA made several presentations to, and participated in numerous meetings with, various SSA administrative and field supervisory personnel concerning the operation of state CHR systems; the types of personal identifiers and offense-related data these systems contain on subjects; government officials' access to this information and authority to use it; and the taking, storage, and retrieval of fingerprints.

The SSA in preparing for project implementation focused particularly on several practical, political, and, to some extent, uncontrollable, factors that ultimately would affect the policy and operational parameters of the demonstration project. SSA manpower and financial resources ranked high among the practical considerations; personnel and funds would be needed to support the initiation and operation of CHR screening and, in the event fingerprinting was to be undertaken, additional service costs also would have to be accommodated. The SSA would be asking field personnel to take on a new task that SSA personnel might perceive to be in conflict with their responsibilities as social services representatives.

The SSA also was concerned that requiring CHR screening, particularly screening that would involve fingerprinting, would discourage many qualified people from volunteering to serve as payee applicants. The SSA, already facing a diminishing pool of payee applicants, worried that potential resentment or fear of CHR screening could reduce that pool further.

Demonstration project experiences illustrate that it is feasible for SSA field personnel to obtain state CHR information for use in payee appointment decision making in states with laws and policies that permit such uses of CHR. However, the NCJA concluded that in order to assess more thoroughly the feasibility and efficacy of conducting payee CHR screening on a nationwide basis, the SSA independently would need to examine a broader base of information on states' CHR access laws and other organizations' experiences in conducting CHR screening programs. In addition, the NCJA suggested that an exploration of experiences with other methods of background investigation, such as credit history review and field investigation, might help the SSA to determine the appropriateness of CHR screening relative to other screening techniques.

In conducting research to support planning of the demonstration projects, the NCJA discovered a widespread use of CHR screening and various other background investigation techniques beyond the purview of the demonstration project. At the SSA's request, therefore, the NCJA undertook supplemental research and a literature review to identify, document, and examine the use of CHR screening by government agencies, businesses, and other organizations seeking to assess the trustworthiness of candidates for employment or volunteer positions. In addition, the NCJA explored the use of other background investigation

techniques to help screen employment and volunteer candidates. The findings of the NCJA's work in these areas is related in Chapter IV of this report and in the report's bibliography.

Study Uses and Limitations

The study produced the desired assessment of the potential for cooperation between the SSA and state authorities in establishing CHR screening procedures, and produced important insights into the practicality of screening payee applicants. However, limitations on the scope of the project affected the value of information generated by the study on assessing the feasibility of the national implementation of CHR screening.

The SSA's decision to exempt beneficiaries' parents, grandparents, spouses, and adult children from CHR screening substantially reduced the number of payee applicants screened under the demonstration project (See Chapter II, "The Demonstration Project"). In Cook County, for example, the total number of payee applicants was estimated by the SSA to be slightly more than 1,200 per month. With the specified categories of relatives excluded, about 400 per month actually were screened under the study. The estimated number of payee applicants subjected to CHR screening checks under the project consequently was about one-third of the total number of payee applicants processed in Cook County each month. Overall, the SSA estimates that the exempted types of relatives comprise about 80 percent of the total payee population nationwide. The elimination of that number of potential payees from CHR screening under the demonstration project significantly reduced the scope of the project to the extent that the data generated by the feasibility study cannot be used to draw conclusions about the entire universe of payee applicants.

A judgment of the appropriateness of allowing people with criminal histories to serve as payees turns on whether felony convictions indicate a greater likelihood of payee malfeasance. The NCJA/SSA study focused on examining the feasibility of payee applicant CHR screening and did not encompass an assessment of whether a correlation exists between conviction histories and payee performance. Consequently, the study does not answer directly the question of whether it is good policy to allow people with criminal histories to serve as payees. Other, related studies are expected to provide the SSA information that will inform decisions on the matter.

Likewise, the scope of the study did not encompass a complete assessment of the potential impact and technical feasibility of implementing payee CHR screening on a broader basis as part of the SSA's normal field operations. The SSA did not have the necessary systems available during the project period to determine the number of payee applicants nationally and only now is implementing such a system.³ Reliable estimates of the national volume of applicants are necessary to determine fully the potential costs and impacts of payee screening.

Overview of Study Findings and Conclusions

Project experiences have demonstrated that it is feasible for the SSA to work with state and local criminal justice agencies to establish systems to obtain state CHR information for payee applicants based upon fingerprint identification of those applicants. However, social services agencies and law enforcement authorities necessarily operate from different perspectives. For example, social services agencies may seek to protect the privacy of their clients by maintaining as little sensitive information on them as possible, whereas law enforcement authorities, in their efforts to ensure public safety, attempt to maintain as much information on certain individuals as possible. Despite these practical and philosophical differences between the SSA and law enforcement agencies' organizational missions, federal, state, and local officials have demonstrated that they can work together effectively to build CHR screening systems.

State and local criminal justice agencies involved in the project reported that working with the SSA provided them with valuable insights into the needs and perspectives of social service agencies, which increasingly are drawing on state CHR as a decision-making resource. State and local officials noted a growing trend toward increased use of CHR for non-criminal

³ In the fall of 1992, the SSA began implementing of the Master Representative Payee File, an automated system that will provide SSA personnel with essential identifying information about current and past payees as well as historical information on those payees' performance. The system is currently in operation and is being loaded with information about past and present payees. The SSA expects to finish this information loading process within the next year.

justice purposes and acknowledged that criminal justice authorities must be prepared to meet this growing demand.

Project experiences also indicated that a CHR screening requirement likely will not have a significant impact upon the willingness of payee candidates to proceed with the application process. Prior to the implementation of the demonstration projects, SSA personnel feared that public distrust of intrusive government procedures could inhibit a large portion of candidates from undergoing CHR screening. However, only about one percent of all candidates declined to apply because they objected to the CHR requirement. This demonstration project finding could indicate a growing familiarity among the general public with such procedures and a general sensitivity to the need for special measures to protect vulnerable citizens. Furthermore, it is possible that some of those who declined to pursue applications did so because they feared detection of personal histories of criminal behavior. Thus, the requirement for CHR screening may in fact have acted to deter would-be predatory criminals from victimizing beneficiaries.

Supplemental research to examine the use of background screening beyond the purview of the demonstration project has raised issues that are relevant to the SSA's consideration of payee applicant screening. NCSA research found that background screening of applicants for certain employment and volunteer positions is coming into increasing use in situations where the employee or volunteer potentially could cause harm to people or property. This increase is apparent especially in professions involving the direct care and education of children, where publicized cases of child abuse by workers who turned out to have pre-existing records of relevant criminal behavior have fueled a rise in applicant CHR screening. Given such cases, CHR screening likely is useful in identifying some troublesome candidates.

However, experiences also point up potential shortcomings of CHR screening. CHR screening cannot indicate a likelihood for employee or volunteer malfeasance when the applicant previously has not been arrested, or in most jurisdictions, convicted, of similar behavior. Also, the amount of time involved in processing CHR requests may require the SSA to make direct payment to incapable beneficiaries in order to avoid unlawful delays while awaiting the results of CHR searches.

Employers and volunteer recruiters also have resorted to a variety of other background screening techniques, such as credit history review and personality testing. Like CHR screening, each method may provide information that is useful in helping to predict applicants' likely performance, and may help identify troublesome candidates. However, some techniques may be especially costly in terms of the money and labor required. Some techniques also may yield results that can be misinterpreted to indicate dangerous characteristics in candidates who actually are well-qualified. In addition, like CHR screening other background screening methods in some instances may fail to detect applicants' potential for wrongdoing. Therefore, regardless of the screening technique used, recruiters should not assume that background checks that produce no negative finding completely rule out the possibility of incidents of employee or volunteer malfeasance and should take actions to monitor the performance of individuals in sensitive positions.

CHAPTER II

REVIEW OF STATES' CRIMINAL HISTORY RECORDS ACCESS LAWS

The NCJA has examined CHR access laws and policies as part of its efforts to help the SSA assess the feasibility of conducting CHR screening for representative payee applicants. Initially, in preparation for the March 1990 conference that gave rise to the demonstration project, NCJA staff reviewed and summarized statutes and regulations governing CHR access and government information dissemination in the 20 jurisdictions (19 states and the District of Columbia) that were invited to participate in the conference. Later, to facilitate the design and implementation of the state demonstration projects, NCJA staff gathered more detailed information on CHR access in the six states selected as demonstration sites.

Staff also contacted state CHR repository personnel in the demonstration sites to inquire about any court challenges to, legal interpretations of, and procedures used to implement, CHR laws and policies. Eventually, NCJA staff, following the completion of the state demonstration projects, conducted further research to determine any changes since 1990 in CHR access policies and procedures in all 20 of the jurisdictions invited to the 1990 conference (see Appendix). Staff also took note of CHR-related legislation in other states that came to light through the NCJA's review of literature on the topic of background investigations.

Scope of Statutes

State statutes may regulate a variety of aspects of the management and dissemination of CHR information, including the methods of gathering, storing, protecting the security of, and ensuring the quality of, CHR information; authorizing uses of, and methods of, disseminating CHR information; and providing individuals who are subjects of criminal records to review those records and secure the correction of inaccurate information. Some states' laws address only some of these issues.

Most states have approached the regulation of CHR dissemination on a piecemeal basis, addressing different aspects of CHR management over a long period of time with

numerous statutes spread over various areas of statutory codes. Illinois, by contrast, has recognized the growing demand for CHR information and the subsequent need to thoroughly address CHR management issues by enacting a single, comprehensive act governing all aspects of CHR management, the Uniform Conviction Information Act (UCIA).⁴ The UCIA is unique in that no other state has yet taken a similar approach to criminal history statutes.

Limitations on Access to CHR Data

Conditions for access to CHR information vary widely according to differences in laws and policies among states. Differences in state dissemination policies reflect varying views on the balance between personal privacy rights, public safety concerns, and freedom of information requirements. Some states provide virtually unrestricted public access to criminal history information; others severely restrict access for non-criminal justice purposes. Most states' policies fall somewhere between the two extremes.

While most states continue to partially limit non-criminal justice uses of criminal records, the apparent trend among state legislatures in recent years seems to be toward expanding access to state CHR information. This expansion of access most readily is apparent in relation to professions that involve direct contact with, and responsibility for, care of children. An increase in publicized cases of child abuse by child care professionals has fueled interest in implementing enhanced methods of screening prospective teachers, school bus drivers, nannies, and other child care workers. For example, New Hampshire, Oregon, Tennessee, and Texas in 1993 joined the ranks of states that have enacted laws specifically authorizing or requiring criminal history screening of child care professionals.

Would-be users of criminal records gain access to CHR information in a variety of ways. In states that have enacted the child care-related laws mentioned above, a particular user or category of users may be authorized or required to use CHR information. Of the 20 jurisdictions whose statutes were reviewed specifically for the project, 10 states have laws that allow any agency or organization to have access to criminal records if another statute specifically authorizes or requires it to use CHR information. In Washington and Virginia,

⁴ Il Rev Stat ch. 20 §2635

non-criminal justice agencies may gain access to CHR data if the organization has a contract with a criminal justice agency.⁵ Virginia also permits access to CHR data pursuant to a court order.

Several states permit the inspection of criminal history records by employers or prospective employers, particularly if the person is an applicant for a position in which he will be in close contact with children or the elderly. In Virginia, criminal history records are available to governmental agencies for the purpose of determining a person's suitability for public employment.⁶ In the same vein, New York, Oklahoma and Virginia permit access to CHR information for licensing purposes. California also permits access to criminal records by public utilities, health officers performing their official duties, or any accredited school when the record is needed to process an application by a convicted felon for admission to a special program for felons.⁷

In Missouri, a recent group of cases held that criminal history records may be used by prosecutors in questioning the preliminary panel of jurors during jury selection. A potential juror may request that attorneys inquire about prior arrests outside the hearing of the jury panel.⁸

Most states also permit access to CHR data bases for statistical research purposes, such as analyses of the amount and nature of crime or offender behavior. However, statutes and regulations permitting such access usually stipulate that identities of persons with criminal histories may not be revealed.

For authorized non-criminal justice uses, most states permit access only to a limited range of CHR data. Almost all of the states permit eligible non-criminal justice agencies to access "conviction information," which generally includes records of arrests and charges leading to convictions as well as judgments of guilt. Illinois only disseminates information

⁵ Va. Code Ann. §19.2-389; Wash. Rev. Code. Ann. §10.97.050.

⁶ Va. Code Ann. §19.2-389

⁷ Cal. Penal Code §11105

⁸ State v. Kalter, 839 S.W. 2d 670 (Mo. Ct. App. 1992); State v. Whitfield, 837 S.W. 2d 503 (Mo. 1992); State v. Wilson 826 S.W. 2d 79 (Mo. Ct. App. 1992).

pertaining to convictions for felonies or serious misdemeanors.⁹ Many states also permit access to "open" arrests and charges, meaning arrests and charges that have not been resolved yet by adjudication. Usually, however, if more than a year has passed since the arrest, no disposition has been recorded, and the charge is not being actively prosecuted, the arrest record may not be distributed. In the majority of the jurisdictions surveyed by the NCJA, information about arrests and charges not resulting in convictions may not be disseminated to non-criminal justice agencies. By contrast, Florida generally is considered to be an "open records" state that only minimally restricts access to CHR; all CHR data is available to the public, unless it discloses criminal intelligence or criminal investigative information.¹⁰

The majority of states surveyed by the NCJA permit a person who is the subject of a criminal history record or his attorney to inspect that record.¹¹ Some states also permit the person to challenge the accuracy of the record. Under the Illinois UCIA, for example, requestors seeking CHR information for applicant screening purposes must provide the applicant with a copy of the state's response. Thereafter, the applicant has seven working days to notify the requester that if the information is inaccurate or incomplete. The applicant also may initiate proceedings with the state to secure correction of inaccurate information.

Most states impose criminal penalties on people who violate the statutory provisions relating to criminal history information. A majority of states make it a misdemeanor to use criminal history information improperly, either by disseminating it to unauthorized users, or by receiving or using that information for an improper purpose. Unauthorized dissemination or receipt of criminal history information in Arkansas is a felony, subject to three years in jail and/or a \$5,000 fine.¹² In Oklahoma, a person who commits the destruction, larceny, alteration or falsification of a criminal history record is subject to up to five years in prison

⁹ II Rev Stat ch. 20 §2635.

¹⁰ Fla. Stat. Ann. §119.07(3)(d).

¹¹ In Rhode Island, it is unclear whether the subject can inspect his own record, although his attorney in a criminal action is permitted to do so. R.I. Gen Law §12-1-4.

¹² Ark. Rev. Stat. § 12-12-212

and a fine of up to \$500.¹³ In California, the news media generally is exempt from liability for unauthorized receipt of criminal history information.¹⁴

Some states distinguish between unauthorized dissemination by public employees and unauthorized use by other persons. For example, in Florida, public officials who violate dissemination restrictions are criminally liable for a second-degree misdemeanor, whereas other people are liable for a first-degree misdemeanor.¹⁵ In Oklahoma, a public officer who commits or permits the destruction, larceny, alteration or falsification of a criminal history record is subject to loss of office as well as the standard punishment of up to five years' imprisonment and a \$500 fine.

Some states' statutes also provide civil remedies to individuals damaged by unlawful dissemination of CHR information. In Washington, Virginia, and Hawaii, for example, a person may file suit to recover actual damages, legal costs, and an injunction against further disclosure.¹⁶

Most of the states provide for civil relief in cases where an authorized person has been denied access to information. A person may file a suit to compel production of the record. In order to prevent frivolous suits, these statutes usually permit winning parties to obtain attorney's fees and reasonable costs.

Sealing and Expunging CHR Data

Whether certain information may be deleted from criminal history records is a related issue. Most states permit non-conviction information to be deleted or sealed after a time. The definition of "non-conviction" generally includes offenses for which the person has not been prosecuted, or the case has been dismissed, as well as offenses for which the person has been adjudicated innocent. In Michigan, a person who is arrested and is not charged or is

¹³ Okla. Stat. tit. 74 §150.7

¹⁴ Cal. Penal Code §11143

¹⁵ Fla. Stat. Ann. §119.02

¹⁶ Wash. Rev. Code §10.97.110; Va. Code Ann. §2.1-342.

acquitted of a crime is entitled to have records of the arrest removed from the state files and "returned" to him.¹⁷ If this right is denied, the person may petition a court to order the return. Arkansas conducts an annual purge of all acquittals and dismissals in its records.¹⁸ Most of the other states examined require that a person petition a court for expunction. In New York, non-conviction information may be sealed, but the records still are available to law enforcement and firearms licensers.¹⁹ North Carolina strictly limits all people to one expungement in their lifetime, regardless of the circumstances involved.²⁰

Conviction records are more difficult to delete than non-conviction records in the majority of states surveyed by the NCJA. Only six of the 20 states surveyed permit expunction of records after convictions. Expunction of conviction information usually means that the information remains on file for criminal justice system uses but is not available to non-criminal justice requesters. However, states place limitations on the circumstances under which expunction is permitted. For instance, most states that permit expunction of conviction records limit the right of expunction to persons convicted of relatively minor offenses or who have only ever been convicted once.

A person whose conviction record has been expunged generally has the legal right to state that he has not been convicted of a crime. Even this right may have limits in some states, however. In Rhode Island, for example, expunction of conviction information is permitted, but a person applying for employment in law enforcement, teaching, coaching, or early childhood education is required to disclose the fact of conviction nevertheless.²¹

In Rhode Island and New Jersey, a person who violates the provisions regarding the disclosure of sealed or deleted records is subject to a fine.²² A person who violates the

¹⁷ Mich. Stat. Ann. § 28.243

¹⁸ Ark. Rev. Stat. §12-12-207.

¹⁹ N.Y. Crim. Proc. Law §160.50.(1)(d)

²⁰ N. C. Gen. Stat. §§ 15A-145 and 146.

²¹ R.I. Gen. Laws §12-1.3-4

²² R.I. Gen. Laws § 12-1-2; N.J. Stat. Ann. §2C:52-30

provisions regarding expunction also is civilly liable in Rhode Island.²³ In California, a person may file suit against a prospective public or private employer who inquires about non-conviction information. A person may recover actual damages, costs, and reasonable attorney's fees. In the case of an intentional violation of this statute, the aggrieved party is entitled to treble damages, and the prospective employer is guilty of a misdemeanor.²⁴ Virginia makes it a misdemeanor for an employer to engage in an inquiry regarding expunged records.²⁵

Completeness and Timeliness of CHR Data

A majority of the states surveyed by the NCJA have statutes requiring law enforcement agencies, courts, and corrections departments to provide information in a timely manner to the state CHR repository. Every state surveyed by the NCJA requires that final dispositions of arrests and charges be reported. The time limits for reporting information to repositories vary from 72 hours to 90 days, depending on the state, the type of agency required to report, and the type of information being reported. The states generally resort to civil penalties for violations of the reporting requirements. For example, if a public employee in New Jersey fails to report to the repository, he is subject to removal from office.²⁶ A failure to report in North Carolina constitutes civil contempt.²⁷

Most states surveyed by the NCJA have statutes requiring the CHR repositories to conduct audits to ensure the accuracy and completeness of the records. Most states require periodic audits but do not specify a time frame. Statutes in Hawaii, Missouri, New

²³ R.I. Gen. Laws §12-1.3-4

²⁴ Cal. Lab. Code §432.7

²⁵ Va. Code Ann. §19.2-392.4.

²⁶ N.J. Stat. Ann. §53:1-20

²⁷ N.C. Gen. Stat. §15A-1383.

Hampshire, Virginia, and Washington, however, specifically require annual audits.²⁸ Some states use these audits to assess criminal justice agencies' compliance with CHR reporting requirements. In North Carolina, for example, if an audit reveals an agency's reporting to be deficient, the agency may lose the right to participate in the police information network.²⁹ In addition to auditing and internal monitoring requirements, some states also rely on the subject's right to challenge his record as a way to help maintain record quality.

²⁸ Haw Rev. Stat §846-6; N.H. Rev. Stat. Ann. §5 B; Va. Code Ann. §9-186; Wash. Rev. Code Ann. §10.97.040. In Missouri, the statute does not call for audits, the state regulations require annual audits.

²⁹ 12 NCAC 4C.0207

CHAPTER III

THE DEMONSTRATION PROJECT

The demonstration project's purpose was twofold: to explore the feasibility of forming intergovernmental partnerships between SSA field personnel and state law enforcement officials to establish criminal history screening procedures involving fingerprinting of payee applicants, and to help the SSA determine the usefulness of state CHR as a source of information concerning payee candidates' character and trustworthiness.

Implementation Issues

However, before the SSA and the NCJA could proceed with the design and implementation of demonstration project protocols, the SSA needed to resolve three major policy issues that would define the scope and focus of payee applicant criminal history background checks:

- Whether fingerprints would be required to initiate CHR screening of payee applicants;
- Which payee applicants would be subject to background checks; and
- What offense-related data generated by a background check might inform SSA decisions about payee applicants' trustworthiness, and how that data would be used in making decisions about specific payee applicants' suitability.

Use of Fingerprinting

In consulting with the NCJA and various law enforcement officials, the SSA learned that many states require fingerprints to initiate background checks. Fingerprints are unique to each individual and therefore provide a more reliable means of proving identity than names, which can be changed, misspelled, or shared by more than one individual.

The SSA weighed the increased reliability of fingerprinting as a basis for CHR searches against the potential for the public to perceive fingerprinting of payee applicants as overly intrusive. CHR searches without fingerprint verification potentially can fail to identify criminals who provide false identifying information or, conversely, can incorrectly link innocent people to the criminal histories of other people with similar names and identifying

information. As a result, states generally will not guarantee the validity of CHR searches conducted without fingerprint verification, and some will not conduct CHR searches for non-criminal justice purposes without fingerprints.

In making its policy decision on the use of fingerprints, the SSA evaluated overall program accountability interests; the fiscal and general safety and security interests of SSA beneficiaries; the privacy interests of payee applicants; and several practical and political considerations. SSA project staff therefore chose to employ fingerprinting as a means of identification for CHR screening under the project. The SSA concluded that use of fingerprints to initiate background checks would be more likely than names to identify correctly the individuals being subjected to background checks.

Persons Subject to Checks

The SSA also had to consider whether to conduct CHR screening on applicants who were family members of the beneficiaries.

The SSA expected possible practical difficulties with requiring relatives of beneficiaries -- parents, adult children, siblings, spouses, or other relatives -- to be fingerprinted or subjected to criminal history background checks. For example, SSA personnel believed that, for applicants closely related to beneficiaries, CHR would not be as relevant to potential performance as it would be for other applicants. In addition, the SSA questioned the efficacy of rejecting family members who already had been determined by state or local authorities as suitable to act on behalf of beneficiaries for purposes other than management of SSA benefits payments.

In the case of a parent filing to serve as payee for a minor child, SSA believed that, even if the parent had a conviction history, it would be especially difficult to justify appointing a third party as payee when the state had not found a reason to remove the child from the parent's custody. Moreover, SSA personnel considered the potential for adverse public or political reaction to a procedure that, in situations involving beneficiaries' family members, could be perceived as overly intrusive. In light of recent instances of violence at U. S. postal offices perpetrated by disgruntled employees, SSA field personnel expressed fear

of the possibility that a disgruntled beneficiary or payee applicant could react violently, inflicting physical harm on claims representatives and other people in SSA field offices.

With these considerations in mind, the SSA decided to exempt grandparents, parents, and adult children of beneficiaries from CHR screening.

Use of Offense Data

On the matter of the use of offense-related information generated by CHR requests, the Social Security Act bars the SSA from appointing any applicant found to have felony convictions specifically for Social Security fraud under §§ 208 or 1632 of the Act. An existing SSA policy directed field personnel to reject any applicant found to have felony convictions unless no suitable alternative candidate could be found. That policy further instructed field personnel to consider any other CHR information available about payee applicants. For the purposes of the project, the SSA adopted an additional policy that called for automatic rejection of payee applicants who were found to have felony convictions but did not admit to those convictions on their applications.

Other issues of concern to the SSA regarding the scope and focus of the demonstration project included what procedures there are or would be for integrating criminal history information into the payee certification process; which agencies would assume ultimate responsibility for decisions to certify individuals as representative payees; and what steps would be taken to ensure the accuracy of information supporting those decisions.

Project Implementation

The NCJA and the SSA jointly formulated a policy framework to guide development and implementation of the national demonstration project initiative. Principal elements of that policy framework were as follows:

- The SSA would retain responsibility for representative payee certifications.

- Payee appointments would be made after completion of CHR searches. Except for minors, incompetents, and people addicted to drugs or alcohol, the beneficiaries would receive direct payment of current benefits pending completion of the payee investigation unless direct payment would cause substantial harm to the beneficiary.
- The SSA generally would not certify representative payee applicants pending completion of the CHR check. However, the SSA *conditionally* would certify representative payee applications if such interim action was necessitated and could be justified by the needs of the beneficiary. Conditional certification would entail payment of current benefits, while any back benefits would be withheld pending final certification.
- Within the categories of applicants subject to screening at each demonstration site, individual applicants would not be allowed to refuse to undergo CHR screening and still be appointed as payees. SSA personnel would be required to find another potential payee in cases in which a candidate declined to permit the record search.
- In reaching a final certification decision, the SSA would consider CHR information in conjunction with other information obtained from the applicant and other sources. The SSA also would take into consideration any supported allegations by the payee applicant of CHR inaccuracies.
- Any information in criminal records bearing upon the representative payee applicant's participation in violent crimes, theft, or misuse of property, fraud, or drug trafficking would be considered by the SSA to be especially relevant to determining the applicant's suitability as a payee.
- Convictions for felonies presumptively would disqualify applicants. The disqualification could be overcome based on the facts of individual cases; however, a decision to appoint despite a conviction would require a second review to assure its correctness. SSA Office of Retirement and Survivors Insurance (ORSI) policy analysts also would be available for phone consultation for such decisions.
- The SSA would not retain the original or any copies of the criminal record (the so-called "rap sheet") but would return it to the applicant or destroy it.

- To protect applicants' privacy, the SSA would not include any individually identifiable information in project data to be gathered by the NCJA. In consultation with the NCJA, the SSA developed a "Case Summary" data form for SSA field personnel to summarize and use in submitting to the NCJA essential information about the processing of payee candidates subject to the CHR screening (see Figure 1).
- There would be no change in existing SSA policy requiring SSA personnel to cooperate with law enforcement actions, such as situations in which police serve warrants or make arrests on SSA property.
- The ORSI staff would produce policy guidance and instructions pertaining to acquisition, use, and disposal of CHR information in the payee appointment process as well as any other necessary national policy.
- Each SSA regional office, in cooperation with the NCJA and the state and local criminal justice agencies, would develop supplemental procedures to fit the specific characteristics of the jurisdiction.
- The NCJA would identify the state agency through which CHR would be obtained and would make the arrangements for obtaining records from that agency.
- The SSA's Office of Public Affairs would be responsible for public information and public relations materials and for providing guidance to regional external affairs officers about handling the media.
- The SSA Office of Legislative and Congressional Affairs (OLCA), with ORSI assistance, would be responsible for keeping key congressional staff informed about the study.

Project Site Selection

In order to accommodate sufficient variations of the project model to reflect its application under varying conditions yet stay within existing resource constraints, the NCJA and the SSA agreed to identify six states for demonstration projects. In choosing demonstration sites, project staff strived for sufficient geographic and demographic diversity and considered individual states' expressed interest in participating in the project, unique experience in CHR-related activities, and active involvement in past NCJA research efforts.

CRIMINAL HISTORY RECORD STUDY CASE SUMMARY
(Revised March 1992)

D/O Code _____

Candidate/Applicant Identifier Number		Type		Gdn.		Cus.		Date of Application or Interview		Final Systems Input or Case Closed
_____		_____		_____		_____		___/___/___		___/___/___

Title II Beneficiary Identifier #		BIC		OR	Title XVI Recipient Identifier #		Suffix
_____		_____			_____		_____

1. Candidate/Applicant Did Not Pursue (Check One)

- Did not file SSA-11BK
- Abandoned/Withdrew SSA-11BK
- Other

2. Reason Did Not Pursue (Check One)

- Objects to being fingerprinted
- Objects to criminal history check
- Other
- No reason given

3. Is applicant currently payee for others?

- Yes: How many? _____
- No

4. SSA-11BK Shows: (Check One)

- Felony conviction
- No felony conviction

5. SSA-11BK Shows Residence (Check if Appropriate)

- At present address less than one year

6. Was applicant conditionally appointed as payee while awaiting receipt of the criminal history record?

- Yes
- No

7. Final Appointment as Payee (Check One)

- No payee appointed
- Applicant appointed
- Someone else appointed (and see below)

8. Applicant Not Appointed Because (Check One)

- Sec. 208/1632a felony conviction
- Criminal history only
- Criminal history + other factors
- Other factors only

9. Is this a Zebley case? (Check One)

- Yes
- No

Enter Criminal History Information on Reverse

Figure 1

Date Applicant Fingerprinted __ / __ / __. Date CHR/No CHR Response Rec'd. __ / __ / __

No record of criminal activity (STOP)

No CHR furnished, unusable print (STOP)

No CHR furnished, other reasons (STOP)

Criminal History Record Shows (Check All That Apply)

FELONIES

MISDEMEANORS

Crimes against person
 __ (Year, Most Recent Conviction) OR

No disposition

Property crimes
 __ (Year, Most Recent Conviction) OR

No disposition

Drug offenses
 __ (Year, Most Recent Conviction) OR

No disposition

Financial offenses
 __ (Year, Most Recent Conviction) OR

No disposition

All other offenses
 __ (Year, Most Recent Conviction) OR

No disposition

Multiple felonies on record.

Crimes against person
 __ (Year, Most Recent Conviction) OR

No disposition

Property crimes
 __ (Year, Most Recent Conviction) OR

No disposition

Drug offenses
 __ (Year, Most Recent Conviction) OR

No disposition

Financial offenses
 __ (Year, Most Recent Conviction) OR

No disposition

All other offenses
 __ (Year, Most Recent Conviction) OR

No disposition

Multiple misdemeanors on record.

Figure 1 (cont'd)

Project staff also took into account the state repositories' resource constraints and the potential impact that additional CHR requests from payee applicant screening could have on state repositories' operations and resources. Repository personnel would be hard pressed to process all the CHR requests that a statewide demonstration project would generate. In light of these considerations, project staff concluded that regional rather than statewide demonstration programs would be established in states with large populations or large numbers of SSA beneficiaries concentrated in specific locales.

Prior to implementation of each state demonstration project, the NCJA arranged meetings between SSA representatives and state and local criminal justice officials to discuss coordination of demonstration project operations. At each of these meetings, participants described their agencies' operational capabilities, limitations, and policies in order to inform decisions about project procedures and facilitate interagency coordination. The key issues to be resolved at each site included establishing:

- which agencies would provide state CHR information and fingerprinting services and at what locations;
- the hours, and fees for fingerprinting services, especially in areas where law enforcement agencies previously had not provided applicant fingerprinting services;
- how to determine when applicants subject to CHR screening have not reported for fingerprinting in a timely manner so that SSA claims representatives could encourage those individuals to report;
- how to find alternative candidates in cases in which the applicant was unwilling to be fingerprinted;
- how to verify the identity of individuals reporting for fingerprinting in order to prevent applicants from sending in substitutes who have "clean" records;
- billing procedures for fingerprinting and CHR services that could accommodate the SSA's payment capabilities and regulations;
- methods of securely transmitting applicant fingerprints to state repositories to prevent tampering by applicants; and
- procedures for transmittal of state responses to SSA field offices.

Project Site Development

Cook County, Illinois

Planning for the first demonstration project commenced with a meeting on Sept. 24, 1991, at the offices of the Illinois Criminal Justice Information Authority (ICJIA) in Chicago, Ill., to discuss implementation of a project in Cook County, Ill. Cook County, which includes the city of Chicago, is a large, densely-populated metropolitan area with a high concentration of SSA beneficiaries. The ICJIA, which coordinates state criminal justice policy, and the Illinois State Police (ISP), which maintains the state's CHR data base, have explored extensively issues relating to CHR accuracy, timeliness, and public dissemination. A unique state statute, the Uniform Conviction Information Act, comprehensively governs all CHR-related activity in the state.

At the ICJIA's recommendation, the Cook County Sheriff's Department (CCSD) was asked to provide fingerprinting services for the project. The CCSD previously had not provided applicant fingerprinting services for the general public; however, it was considered an ideal candidate for a few reasons. First, the CCSD has jurisdiction over the entire county, whereas the Chicago Police Department covers the city only. Second, county sheriff's departments traditionally have been more involved in providing community services than city police departments. Third, as demand is growing for applicant fingerprinting for non-criminal justice purposes, the project presented the CCSD with an opportunity to gain experience in providing such a service.

In attendance at the Sept. 24 meeting were representatives of the NCJA, SSA national project staff, SSA local personnel, the ICJIA, the ISP, and the CCSD. The meeting was the first encounter between SSA project personnel and state and local law enforcement representatives, and therefore was an important step in the SSA's education about the mission, capabilities, and procedures of law enforcement agencies.

Among the most critical issues addressed at the meeting were the hours and locations at which the CCSD would provide fingerprinting services; the fees for fingerprinting services; the method through which fingerprinted CHR request cards would be transmitted to the ISP

for CHR searches and the security of those transmissions; and the billing procedures for both fingerprinting and CHR services.

Fingerprinting hours and locations required considerable deliberation because the CCSD had no existing public fingerprinting services. SSA representatives sought a sufficient geographic distribution of fingerprinting stations to enable applicants throughout the county to reach those stations via public transportation, if necessary, without undue hardship. Additionally, SSA representatives sought service hours that could accommodate applicants' varying work and personal schedules. At the same time, CCSD representatives asserted that the number of locations and service hours should not exceed the department's resource constraints. In consideration of these issues, CCSD and SSA officials eventually agreed to establish fingerprinting services from 9 a.m. to 5 p.m. on Tuesdays, Thursdays, and Saturdays at three CCSD offices to cover the northern, central, and southern portions of Cook County.

CCSD representatives stated in the meeting that the agency would need to charge fees for fingerprinting services in order to cover the personnel expenses. Having been informed at the meeting that NCJA research showed applicant fingerprinting services at various law enforcement agencies ranging from free-of-charge to \$10 per applicant, the CCSD chose to set its fingerprinting fee at \$5 per applicant.

Billing procedures posed the next major issue. The ISP, like most state CHR repositories, generally requests that payment for CHR searches to be submitted with CHR requests. Likewise, most law enforcement agencies that conduct applicant fingerprinting require fingerprinting fees to be paid at the time of service. However, standard SSA payment procedures do not permit the SSA to pay in advance for services and often produce a 30-day lag time between receipt of bills and issuance of payment. Furthermore, to avoid discouraging payee candidates from applying, the SSA did not wish to require that applicants pay for their own fingerprints. At the same time, the SSA did not wish to give applicants money to cover fingerprinting costs, fearing that some of them would abandon the process and keep the money.

A related issue involved how to ensure the secure transmission of CHR request cards to the ISP after applicant fingerprinting was completed at the CCSD. In many applicant screening programs, fingerprinted request cards are returned to the applicant for submission to

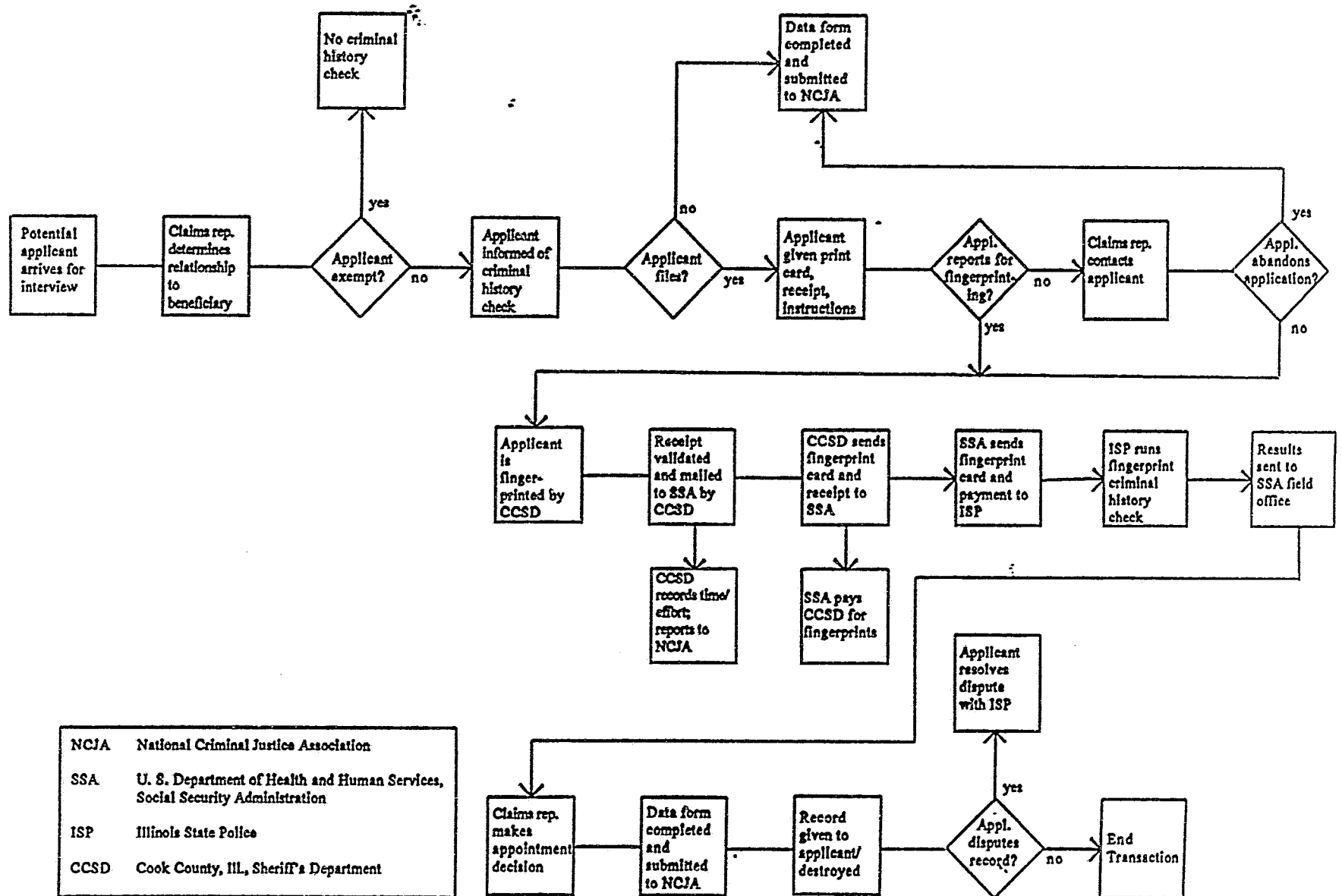
the state repository. However, the SSA sought to reduce the potential for applicants to tamper with fingerprints to conceal their criminal histories.

In order to address both the billing and transmission security needs, meeting participants agreed to establish the following procedure: fingerprinted CHR request cards would be kept by the CCSD, batched at a central location, and submitted to a central SSA office on a weekly basis. Upon receipt of the weekly batches, SSA personnel would use "third-party drafts" -- an alternative, immediate SSA payment procedure -- to pay the CCSD for the applicant fingerprints. SSA personnel would then forward the cards to the ISP with a third-party draft attached to pay the associated CHR search fees.

As a result of the meeting and continued interagency correspondence in the weeks that followed, participating agency representatives agreed on an outline of project operations. (See Figure 2). Under this operational outline, the demonstration project CHR screening was conducted through the following procedural steps:

1. Upon a potential applicant's arrival at an SSA field office in Cook County, an SSA claims representative would determine immediately whether the payee applicant, by virtue of his relationship to the beneficiary, was subject to CHR screening.
2. If the applicant was not subject to CHR screening, the applicant would not be considered part of the study and no processing data would be collected for the project.
3. If the candidate was subject to screening, the claims representative would inform the candidate immediately of the requirement. Anonymous, summary data about the processing of the applicant would be supplied to the NCJA for collection and analysis.
4. If a candidate subject to screening declined to apply, the claims representative would record this refusal and the reason for the refusal, if given, on a case summary form for submission to the NCJA. The case would be considered closed and a suitable alternative payee candidate sought.
5. If the candidate chose to pursue an application, the claims representative would refer him to the nearest available CCSD fingerprinting location. The claims representative would ask the applicant to provide a form of positive identification, such as a driver's license, and fill out a CHR request fingerprint card, recording what type of positive

Figure 2: Cook County, Ill., NCJA/SSA Demonstration Project Transaction Chart



NCJA	National Criminal Justice Association
SSA	U. S. Department of Health and Human Services, Social Security Administration
ISP	Illinois State Police
CCSD	Cook County, Ill., Sheriff's Department

identification the applicant supplied. The applicant would be sent for fingerprinting with a set of instructions, the fingerprint card, and a receipt for the CCSD to deliver back to the SSA indicating that the person had reported for fingerprinting. The claims representative would maintain responsibility for seeing the applicant through the process and making the ultimate appointment decision.

6. If the claims representative did not receive back the fingerprinting receipt within 14 days of the initial interview, the representative would contact the applicant to see if he had reported yet for fingerprinting. This would serve as a reminder for applicants who inadvertently may have forgotten to report for fingerprinting. The representative would ask if the applicant had decided to abandon the application process. If the applicant had chosen to abandon the application process, the claims representative would record the abandonment and the applicant's stated reason for the abandonment, if given, on a case summary form for submission to the NCJA. The case would be considered closed and a suitable alternative payee candidate sought.
7. If the applicant reported for fingerprinting, he would be required by CCSD personnel to produce the same form of identification indicated on the fingerprint card. This measure was intended to prevent an applicant with a criminal history from sending another person to supply fingerprints in his place. Upon verification of the applicant's identity, CCSD personnel would take the applicant's fingerprints.
8. To prevent applicants from tampering with fingerprints, the CCSD would keep the fingerprint cards, batch them at a central location, and deliver them to a central SSA program office on a weekly basis. Upon receipt of the cards, the SSA office would issue a third-party draft to cover fingerprinting fees for the number of cards received.
9. Receipt of the fingerprint cards after fingerprinting would enable the SSA to send payment to the ISP with the CHR requests, as required by ISP policy.
10. Upon receipt of the CHR request, the ISP would first search for records based on the applicant's name, date of birth, and other non-fingerprint identifying information contained on the request card. If this search connected the name and other information to CHR files, the ISP would use the fingerprints to verify whether any of the indicated files corresponded to the actual applicant. If the initial search did not

turn up any CHR files, the ISP would process the fingerprints through an automated fingerprint identification system (AFIS) to see if any of them matched fingerprints contained in the ISP's criminal records. While the AFIS search process is very time-consuming, the process helps to identify applicants who have used false identifying information in an effort to conceal their criminal record.

11. If the search revealed no CHR file for the applicant, the ISP would send a "no record" response to the SSA field office from which the request originated.
12. If the ISP made a "hit," or positively connected a CHR file with the applicant, the ISP would screen the file for information that cannot be released under Illinois law -- information about any arrests or charges that did not lead to a conviction or information that has been ordered purged or sealed by a court. All other information would be sent to the SSA in an edited "rap sheet" response. If no information could be released under state law, the ISP would send the SSA a "no record" response.
13. The ISP's CHR search response then would be routed to the SSA claims representative responsible for processing the applicant. Taking the search response into account, the claims representative would make a final appointment decision. The claims representative then would complete the case summary form and submit it to the NCJA.
14. The claims representative would inform the applicant of the appointment decision. If a rap sheet was issued by the ISP, the rap sheet would be given to the applicant along with information on how to dispute the accuracy of CHR information contained in the CHR response.
15. If the applicant wished to dispute any information contained in his rap sheet, he would be directed to contact the ISP.

The participating agencies at the Cook County site agreed to commence project operation on Wednesday, Dec. 4, 1991. During the first month of operations, the project experienced problems attributable to the SSA's and the CCSD's inexperience in operating an applicant fingerprinting operation. However, project staff took the necessary measures to bring about smooth project operations.

During the first week of project operations in Cook County a minor mishap, aggravated by a lack of communication, caused significant anxiety among SSA personnel about the viability of the project. The CCSD decided to relocate fingerprinting operations at its downtown Chicago office to a different room than originally planned. The CCSD did not report this change to local SSA personnel, who were instructing applicants to report to the original location. In addition, the CCSD did not post a sign or other notification at the original location to refer applicants to the new location. As a result, payee applicants were unable to find the correct room for fingerprinting services, and reported to SSA personnel that no fingerprinting services were being provided.

Local SSA personnel, who already were apprehensive about instituting CHR screening of representative payee applicants became doubly so, doubting whether the CCSD would be able to carry out its project duties. Through a brief series of phone contacts, however, NCJA staff resolved the misunderstanding.

A second problem surfaced during the early weeks of project operation. The CCSD found that the projected income from fingerprinting fees would not cover the CCSD's costs for personnel devoted to fingerprinting. To prevent a shutdown of project operations due to a lack of resources, NCJA staff intervened to devise alternative payment options. These options included increasing the fingerprinting fees to \$10 per applicant or having the SSA pay a flat fee covering the cost of personnel hours devoted to the SSA applicant fingerprinting. The SSA decided to pay directly for the personnel hours.

The third operational difficulty involved the disposition of fingerprint cards following the completion of CHR screening. To protect the privacy of applicants subject to CHR screening under the study, the SSA had established a policy of destroying applicant fingerprint cards or returning them to applicants after processing. At the initial project meeting, ISP representatives had agreed to return fingerprint cards to the SSA with CHR search responses.

However, as the project developed, it became apparent that the ISP was not returning these cards. Illinois law requires the ISP to keep the cards in order to facilitate notification of CHR requesters if any new CHR information regarding the applicants is reported within a 30-day period following the CHR search. This information had not surfaced during project

planning sessions. To resolve this apparent policy conflict, the NCJA contacted the ISP and was informed that a special exception to this requirement could be granted upon written request. Subsequently, a request was issued, the exception was granted, and the ISP began returning applicant fingerprint cards to the SSA.

A final operational problem was unresolvable: the lengthy time span involved in obtaining CHR information for appointment decision making. Generally, SSA claims representatives seek to make final appointment decisions and begin issuing payments to payees within 30 days of initial interviews to prevent undue hardship to beneficiaries. In Cook County, however, claims representatives waited an average of 50 days from the time of an applicant interview before making a final appointment decision because of a delay in receiving CHR information.

A portion of the wait likely could be attributed to the time required for applicants to report for fingerprinting and for fingerprint cards to be routed back to the SSA. Given the weekly delivery schedule, if an applicant reported for fingerprinting on the first possible day after the interview, this process would take at least two to seven days. However, the waiting period was lengthened further by the CHR repositories' obligation to give CHR requests for criminal justice purposes priority over non-criminal justice requests.

Faced with this potential for delay, the SSA adjusted its procedures accordingly. SSA claims representatives were instructed that in the event of a lengthy delay they were to institute payment of current benefits directly to beneficiaries pending payee appointment, if it was felt that the beneficiary could manage such payment in the short term. In cases in which direct payment was not feasible, claims representatives were directed to appoint applicants conditionally, releasing only current benefits payments. In either case, any back benefits due would be withheld until final appointment of a payee.

Once the various operational difficulties were addressed, the Cook County project ran smoothly for the remainder of its operational period. The Cook County project concluded operations on March 31, 1992.

Dade County, Florida

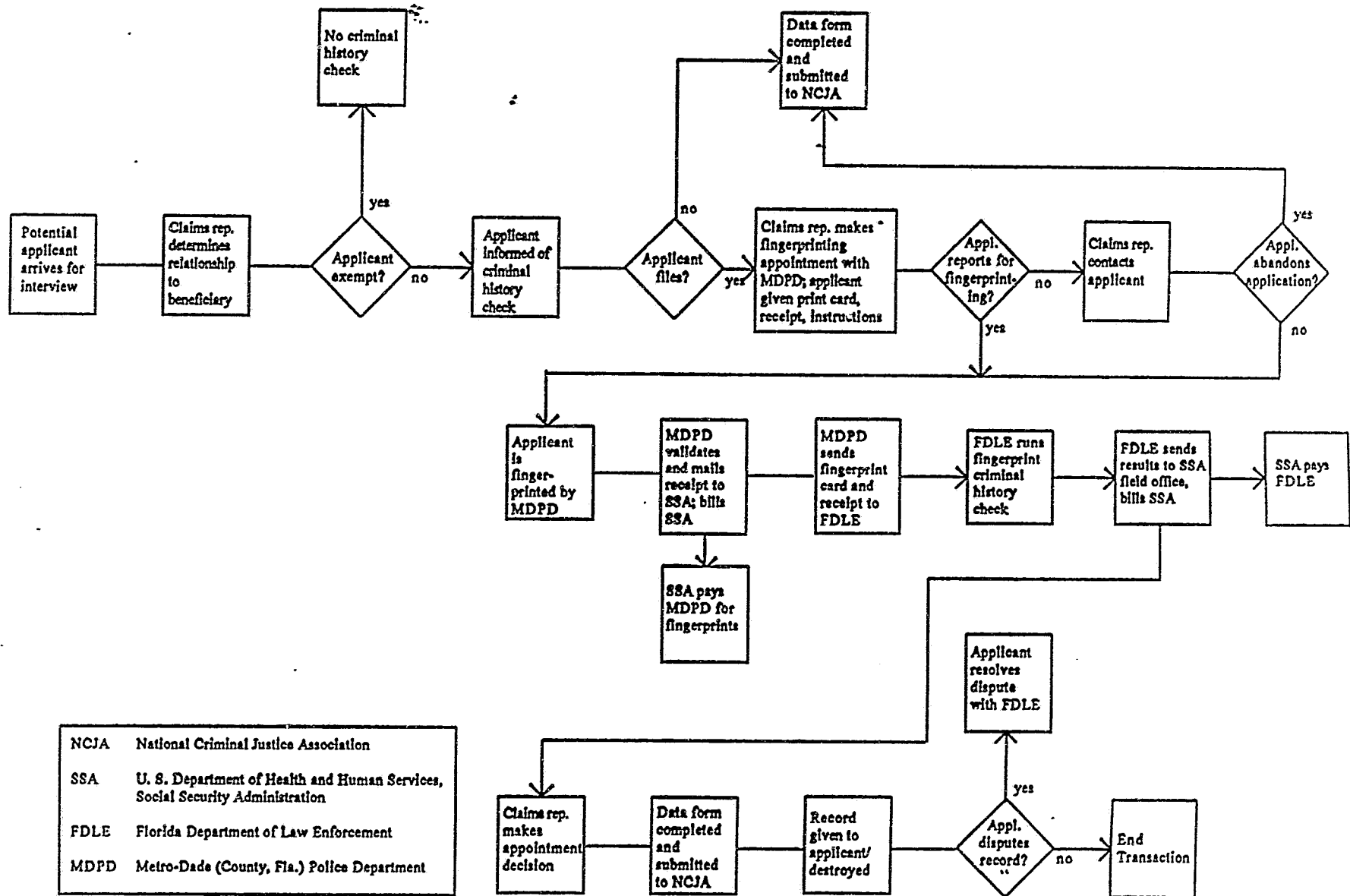
Dade County, Fla., was the second demonstration project site. Dade County, like Cook County, is a large metropolitan area encompassing the city of Miami. The Florida Department of Law Enforcement (FDLE), which maintains the state's CHR data base, handles a large volume of non-criminal justice CHR requests and has participated in a U. S. Department of Justice, Federal Bureau of Investigation (FBI), pilot program to test a model for a national federal-state identification and CHR system.

A meeting to discuss implementation of the Dade County project was held on Dec. 20, 1991, at the office of the SSA area director for the Miami area. Participating in that meeting were representatives of the NCJA; the SSA; the FDLE; and the Metro-Dade Police Department (MDPD), which was recruited to provide fingerprinting services for the project. Compared with the difficulties faced in Cook County, establishing project procedures for Dade County was relatively easy. The MDPD already operated extensive applicant fingerprinting services throughout the county, and both the FDLE and the MDPD were equipped to handle billing procedures in such a way as to accommodate the SSA's needs.

Procedures developed in Cook County served as an operational model upon which subsequent field demonstrations were based, with minor variations. The ISP's technique of running a name-based search before conducting an AFIS search is common to nearly all CHR agencies with AFIS equipment. Project procedures for Dade County were the same as those for Cook County with these minor variations (see Figure 3):

- By contrast to Cook County, where applicants were instructed to report to fingerprinting locations at any time during fingerprinting hours, the MDPD asked that SSA claims representatives make appointments for applicant fingerprinting to help control the flow of applicants.
- The MDPD sent fingerprinted CHR request cards directly to the FDLE. In turn, the FDLE billed the SSA for CHR requests after processing the requests. These card transmittal and billing procedures served as the model for the remaining projects.

Figure 3: Dade County, Fla., NCJA/SSA Demonstration Project Transaction Chart



NCJA	National Criminal Justice Association
SSA	U. S. Department of Health and Human Services, Social Security Administration
FDLE	Florida Department of Law Enforcement
MDPD	Metro-Dade (County, Fla.) Police Department

Initially, local SSA personnel resisted participation in the project, expressing concerns that requiring would-be payee applicants to report to police agencies for fingerprinting might discourage many of them from applying. Their fears were especially acute in light of the fact that many payees in the Miami area are legal aliens who have emigrated from nations where police are feared as oppressive.

Upon assurances from national SSA project officials that significant measures were being taken to protect the privacy of applicants, local personnel resistance to participating in the project was overcome. The Dade County project was initiated on Feb. 3, 1992.

SSA claims representatives in Dade County reported a much faster CHR turnaround time than the Cook County project reported, with an average wait of about 23 days. Although the number of applicants screened in Dade County turned out to be lower than expected, the Dade County project generally ran smoothly, with one exception. After the project drew to a close on Sept. 11, 1992, it became apparent that the NCJA was receiving case summaries for far fewer applicants than the SSA had records of screening. Upon investigation, the SSA reported to the NCJA that SSA field offices in southern Dade County had been damaged by Hurricane Andrew, which had struck the area in late August. It was assumed by the SSA that the missing case summaries had been destroyed in the disaster, although the matter never was resolved definitively.

New Jersey

The third demonstration project was implemented in New Jersey, a state with a variety of urban, suburban, and rural communities, as well as a sufficient geographic distribution of SSA field offices to permit statewide implementation. The New Jersey Department of Law and Public Safety's (NJDLPS) Division of State Police (NJSP) was experienced in providing CHR to non-criminal justice users and was eager to participate in the project. Therefore, the NJSP was recruited to provide state CHR information for the project, while the NJDLPS's Office of the Attorney General, as the NCJA's central contact in the state of New Jersey, assisted in project planning.

Planning of the New Jersey project on a statewide basis presented a special challenge. Under the previous projects, fingerprinting was conducted by a single agency, an arrangement

that fostered a relatively controlled system. However, because the New Jersey project was to be statewide in scope, fingerprinting services had to be offered at enough locations to provide adequate coverage. Ideally, the NJSP would have provided fingerprinting services at its various barracks throughout the state. However, personnel cutbacks prompted by state fiscal constraints had reduced these barracks to skeletal operations. As a result, it was necessary to find local agencies to conduct fingerprinting services in the proximity of the various SSA field offices.

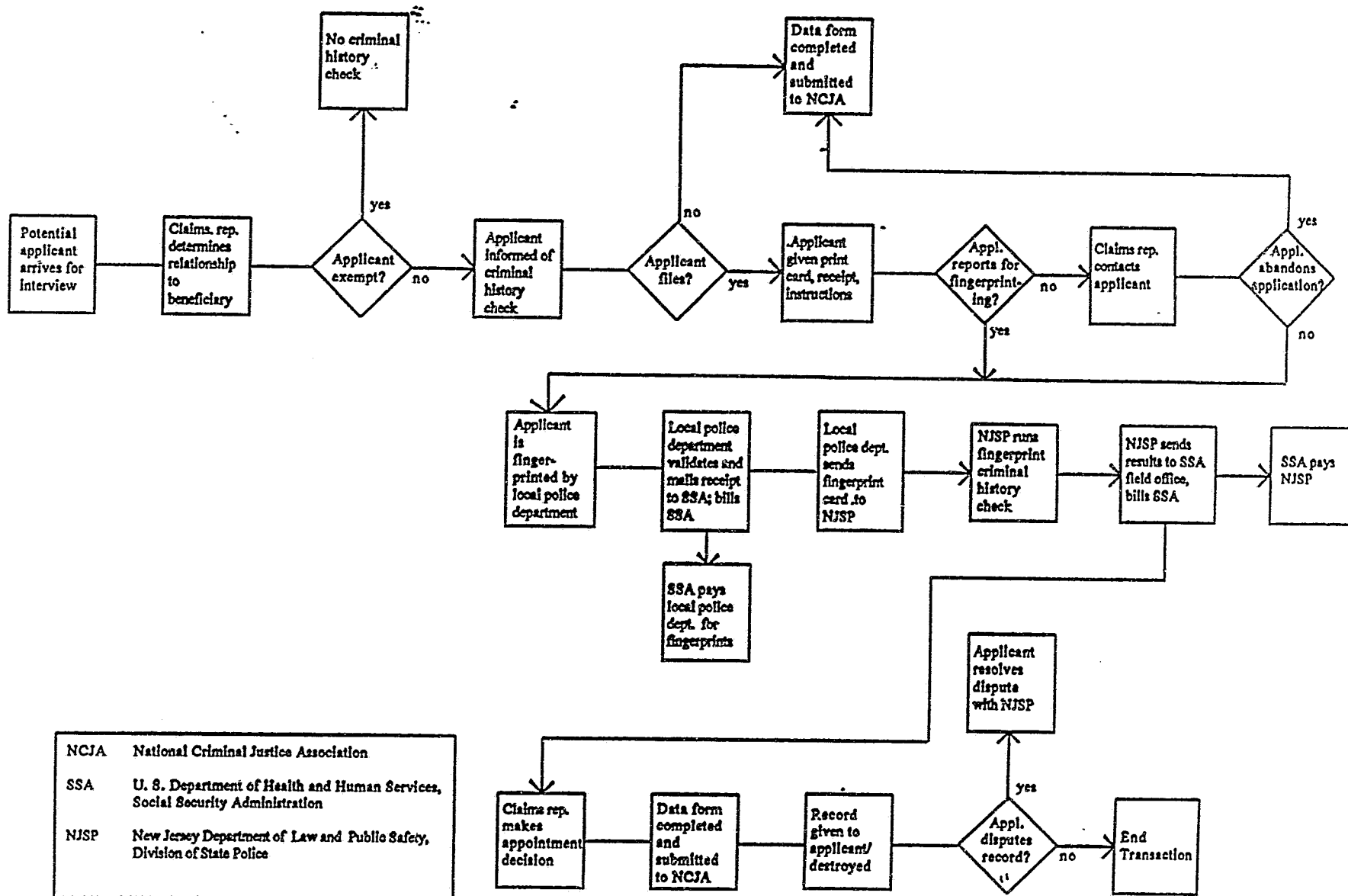
SSA field office managers were asked to make arrangements for fingerprinting services with appropriate local law enforcement agencies. To that end, field managers were directed to draw upon any previously developed working relationships with local law enforcement agencies. To assist in these arrangements, the NJSP conducted a quick survey of local law enforcement agencies to determine which agencies conducted applicant fingerprinting services and what fees were charged for those services.

These fingerprinting arrangements lengthened the planning phase by one month and the project finally commenced on April 1, 1992. Project procedures for New Jersey were the same as those arranged for Dade County except that fingerprinting was carried out by several law enforcement agencies and payee applicants did not have to make appointments for fingerprinting at every participating police agency (see Figure 4). As in Dade County, SSA claims representatives reported waiting an average of about 22 days from interviewing applicants to the receipt of applicants' CHR. The New Jersey project was characterized by a high level of enthusiasm and cooperation from all involved parties, and ran without mishap to the conclusion of operations on Aug. 15, 1992.

Idaho

Idaho, the fourth demonstration site, provided a model for rural, statewide implementation. Idaho, it was hoped, also offered the opportunity to test the use of an interstate CHR network in representative payee screening. The Idaho Department of Law Enforcement (IDLE), which manages the state's CHR data base, participates in one such network, known as the Western Identification Network-Automated Fingerprint Identification

Figure 4: New Jersey NCJA/SSA Demonstration Project Transaction Chart



NCJA National Criminal Justice Association
 SSA U. S. Department of Health and Human Services, Social Security Administration
 NJSP New Jersey Department of Law and Public Safety, Division of State Police

System (WIN-AFIS). The WIN-AFIS is an automated system linking the identification and CHR storage capacities of several western states.

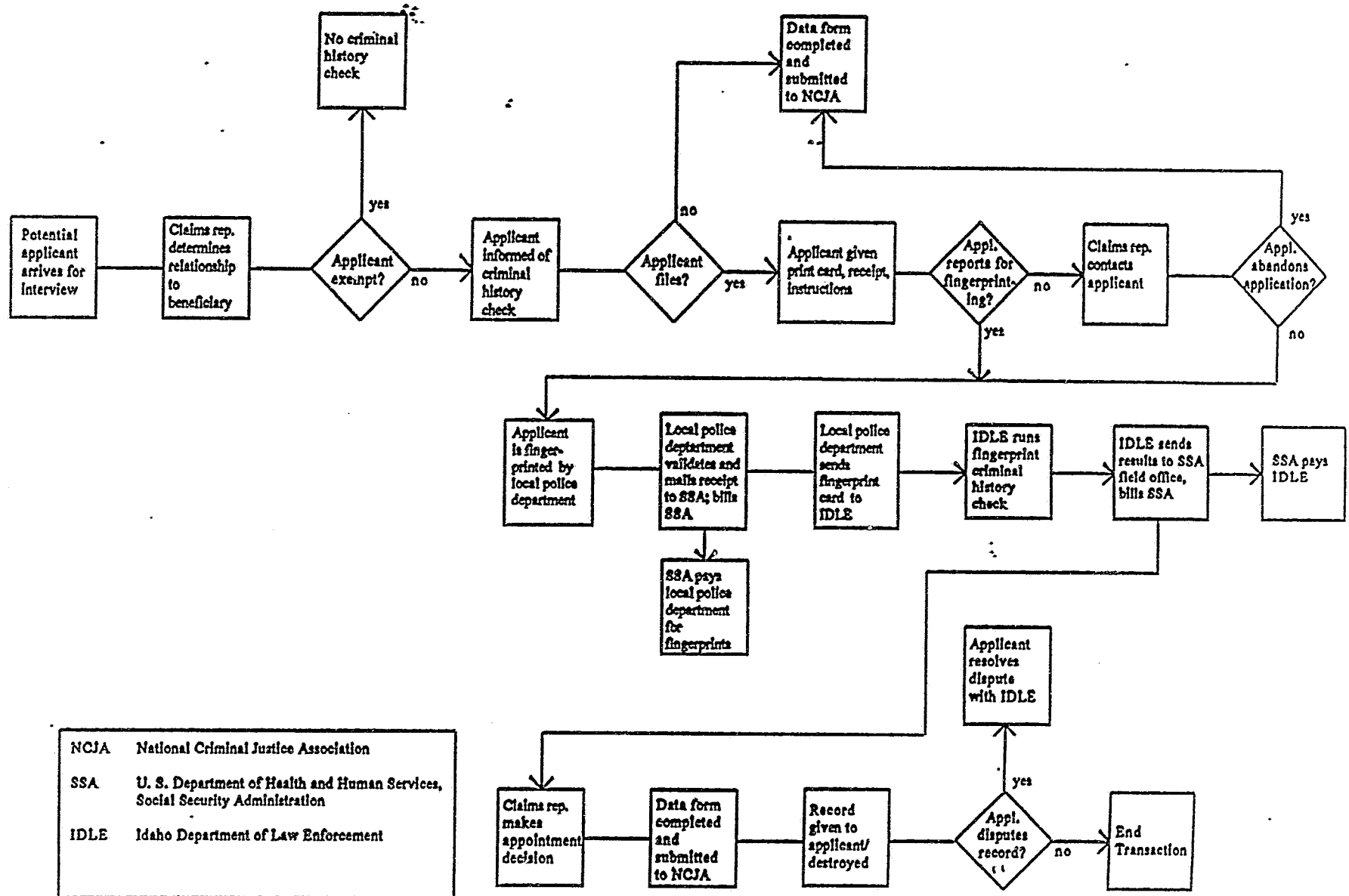
Project staff found, however, that such interstate networks currently are being employed only for criminal justice purposes because not all participating states permit non-criminal justice uses of CHR information. WIN-AFIS states will need to conduct further negotiation and policy development before interstate sharing of CHR information for non-criminal justice purposes can become a reality.

The IDLE was recruited to provide state CHR information and assist in planning the project. The Idaho project was similar to the New Jersey project in that it required making fingerprinting arrangements with several law enforcement agencies in order to ensure adequate coverage across the state. However, in the planning of the Idaho project, NCJA staff took a much more direct role in recruiting agencies for fingerprinting services. To assist in this process, the IDLE provided a list of contacts at law enforcement agencies located near SSA field offices throughout the state.

Obtaining the cooperation of local law enforcement agencies for the Idaho project was relatively easy, because most of the agencies had prior experience in providing applicant fingerprinting services. Participating agencies included the Caldwell Police Department, the Idaho Falls Police Department, the Kootenai County Sheriff's Office, the Nez Perce County Sheriff's Office, the Pocatello Police Department, and the Twin Falls Police Department. In addition to providing state CHR information, the IDLE provided fingerprinting services for the greater Boise area. Generally, the Idaho project followed the same procedures as the New Jersey project (see Figure 5).

The Idaho project operated for more than five months, from June 22 to Dec. 4, 1992. The project operated smoothly and was marked by a high level of cooperation from all participating agencies. The Idaho project exhibited the most rapid CHR turnaround time of all the demonstration projects, with SSA claims representatives reporting an average wait of about 14 days.

Figure 5: Idaho NCJA/SSA Demonstration Project Transaction Chart



NCJA	National Criminal Justice Association
SSA	U. S. Department of Health and Human Services, Social Security Administration
IDLE	Idaho Department of Law Enforcement

Sacramento County, California

Sacramento County, Calif., was selected as the fifth demonstration project site. California had experience in conducting CHR screening, but severe resource constraints and a massive volume of CHR requests that had combined to create a sizable backlog of CHR requests. The average delay in processing non-criminal justice requests was more than three months (104.5 days), posing a "real world" problem that the SSA would be faced with if it chose to institute CHR screening as an actual policy. Under these conditions, temporary direct payment to beneficiaries and conditional payee appointments became an important tool for claims representatives.

Sacramento also served as a model for implementation in a moderately-sized metropolitan area. In addition, the county is home to a significant population of SSA beneficiaries and is the site of one of the most infamous and highly publicized cases of payee malfeasance. That case involved the owner of a boarding house who, while serving as representative payee for one of her elderly borders, killed several of her borders and collected their benefits payments. It later was found that the offender had a prior history of felony offenses.

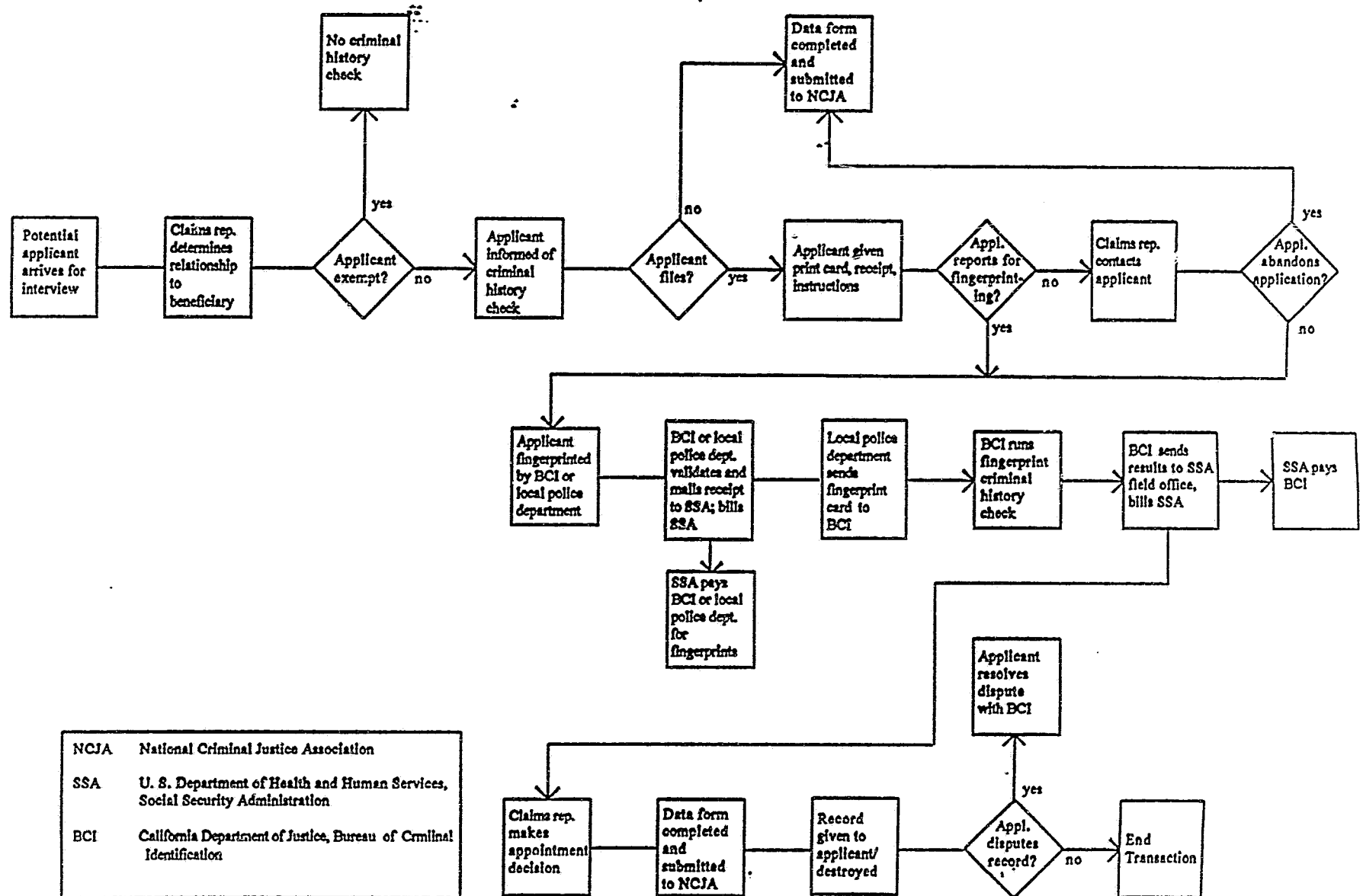
The Bureau of Criminal Identification (BCI), under the California Office of the Attorney General's Division of Law Enforcement, provides CHR information for the state. Like the IDLE, the BCI participates in the WIN-AFIS network.

Development of the Sacramento County project was simplified by the fact that the BCI, headquartered in the city of Sacramento, was able to provide its own fingerprinting services for the project, thus precluding the necessity for recruiting an additional law enforcement agency. Otherwise, the Sacramento County project procedures closely paralleled those of the previous projects (see Figure 6). The Sacramento County project operated from Aug. 24, 1992, to Jan. 25, 1993.

Kern County, California

As project staff began planning for the Sacramento County project, a second California location, Kern County, came to light as a potential site for a demonstration project. Kern County, which includes the city of Bakersfield, was experiencing a highly publicized problem

Figure 6: Sacramento County, Calif., NCJA/SSA Demonstration Project Transaction Chart



NCJA	National Criminal Justice Association
SSA	U. S. Department of Health and Human Services, Social Security Administration
BCI	California Department of Justice, Bureau of Criminal Identification

with representative payees who used SSA benefits payments for drug purchases and other inappropriate purposes. Local officials, most notably Bakersfield Police Department (BPD) Chief Robert Patterson, were outspoken about their desire to take measures to address the problem.

Planning of the Kern County project was conducted concurrently with planning for the Sacramento County project. Because the BCI already had agreed to provide California state CHR for the project, the only major task remaining was to enlist an agency to conduct fingerprinting services in the Bakersfield area. With Patterson's interest in addressing payee malfeasance, the BPD readily offered its services. In addition, the BPD asked the Kern County Sheriff's Department to be ready to fingerprint applicants living in the outlying areas of Kern County.

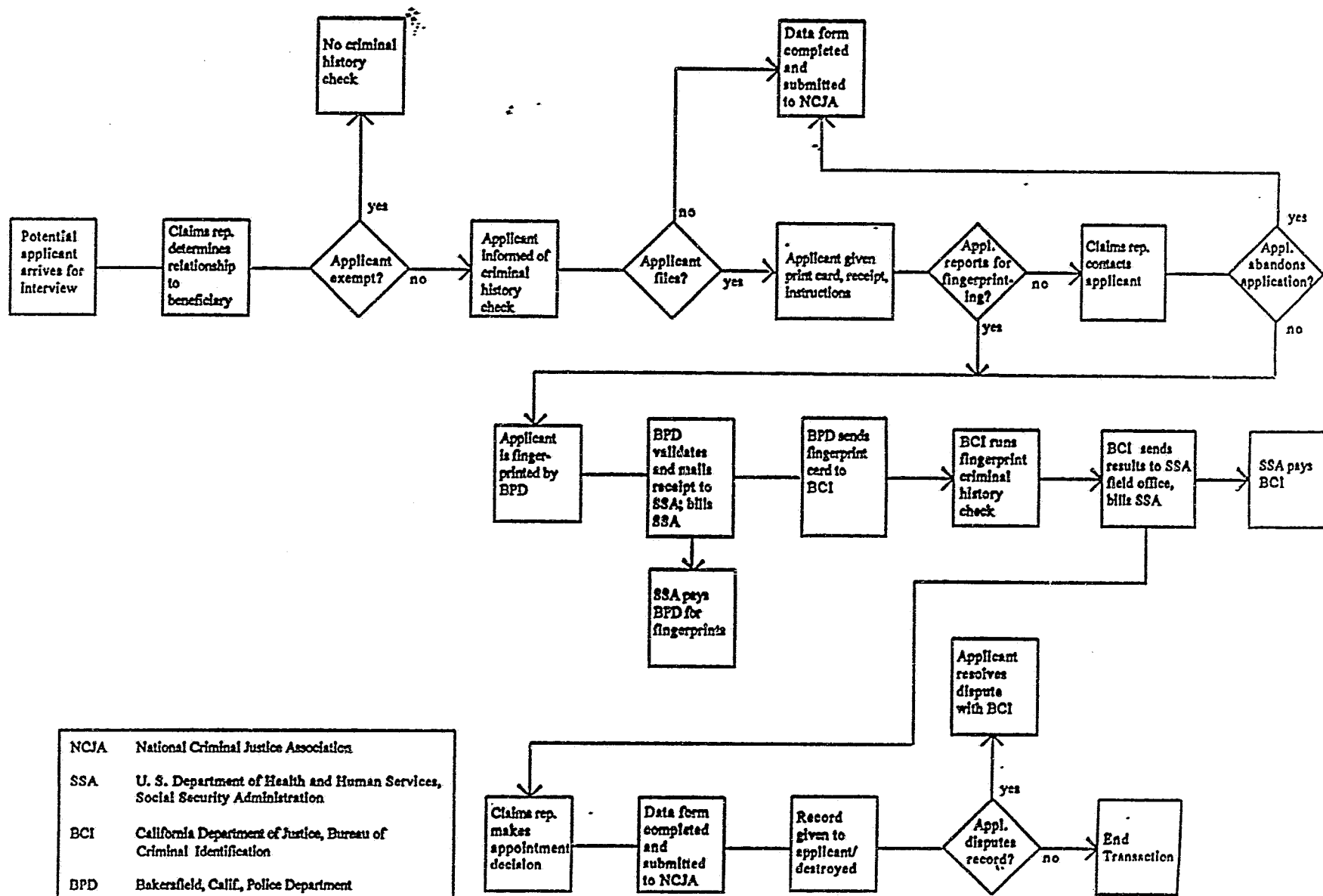
With the addition of the BPD as the fingerprinting agent, the Kern County project followed the same operational procedures as the Sacramento County project (see Figure 7). The project also faced the same CHR processing delays. The Kern County project operated during the same period as the Sacramento County project, from Aug. 24, 1992, to Jan. 25, 1993.

Jackson and Clay Counties (Greater Kansas City), Missouri

The seventh and final project site was Greater Kansas City, Mo., another moderately-sized metropolitan area. During the early stages of the national project planning, Kansas City was identified as a desirable site because local authorities there were participating in a regional interstate identification network with authorities across the border in Kansas. As in the case in Idaho and California, however, access to criminal history data through the interstate network was permitted only for criminal justice users.

Nonetheless, the Kansas City site presented an opportunity for a unique test. Project staff arranged with Identix, Inc., a manufacturer of advanced identification technology, and the Kansas City Police Department (KCPD) to test the use of inkless, "live scan" automated fingerprinting technology for applicant fingerprinting. Project staff wanted to determine whether such technology could increase the speed and efficiency with which applicant screening could be conducted. Such a test also was of significant interest to the Missouri

Figure 7: Kern County, Calif., NCJA/SSA Demonstration Project Transaction Chart



NCJA	National Criminal Justice Association
SSA	U. S. Department of Health and Human Services, Social Security Administration
BCI	California Department of Justice, Bureau of Criminal Identification
BPD	Bakersfield, Calif., Police Department

Department of Public Safety's State Highway Patrol (MHP), which had been recruited to provide state CHR and assist in planning the Missouri project.

During the planning stages, project staff explored the possibility of instituting direct electronic transmission of fingerprints from the live-scan machine at the KCPD over telephone lines to the MHP's AFIS equipment in Jefferson City, Mo. It was discovered, however, that the technological capability for the different pieces of equipment to communicate directly with one another had not yet been developed. Project staff then considered instituting direct transmission of fingerprints to a remote laser printer at the MHP. Such a link was technologically feasible and presented the potential for speeding applicant processing by eliminating the amount of time associated with sending fingerprinted CHR request cards to the MHP by mail or special delivery. However, project staff found that sufficient resources were not available for establishing the dedicated communications link necessary for the electronic fingerprint transmission. Therefore, it was decided that the computer-generated fingerprints would be printed out at the KCPD and then sent to the MHP.

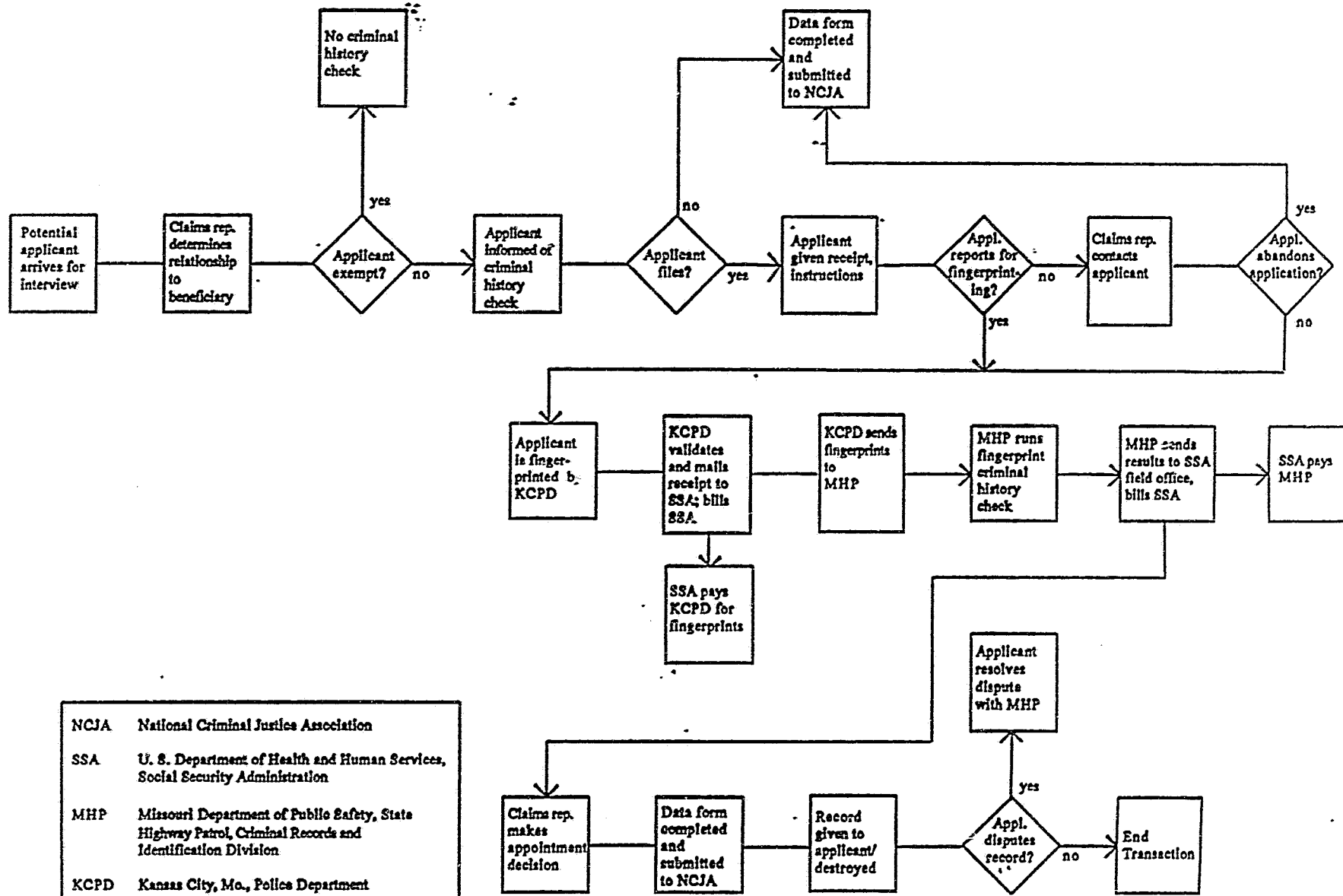
Although electronic transmission of fingerprints was not feasible for the demonstration project purposes, the live-scan equipment had the advantage of allowing fingerprinting personnel to verify the quality of a fingerprint print image before actually printing that image on paper and permitted rapid correction of poor images. In addition, the live-scan equipment allowed fingerprinting to be performed without the use of messy ink, thus lessening the inconvenience for payee applicants associated with having to undergo such a procedure.

The Kansas City project began operations on Sept. 14, 1992. With the exception of the special fingerprinting technology, the project followed the same general operational outline as the previous demonstrations (see Figure 8). The project ran smoothly and did enjoy one of the more rapid average CHR processing times, with SSA claims representatives reporting an average wait of about 15 days from initial interview dates. The project concluded operation on Jan. 29, 1993.

Processing of CHR Requests

As of June 18, 1993, NCJA staff had collected data on the processing of 2,652 payee candidates, the combined total from all demonstration sites. Of the total number of payee

Figure 8: Jackson and Clay Counties, Mo., NCJA/SSA Demonstration Project Transaction Chart



NCJA	National Criminal Justice Association
SSA	U. S. Department of Health and Human Services, Social Security Administration
MHP	Missouri Department of Public Safety, State Highway Patrol, Criminal Records and Identification Division
KCPD	Kansas City, Mo., Police Department

candidates, 96, or slightly less than four percent, did not pursue applications to become payees. Thirty-five of those 96 candidates, or slightly more than one percent of all candidates, said that they did not apply out of objection to the CHR screening or fingerprinting requirements (See Figure 9).

Figure 9: Payee Candidate Drop-Outs

Site	Candidates Subject to Screening	# that did not apply	% that did not apply	# that objected to CHR screening	% that objected to CHR screening	# that objected to fingerprinting	% that objected to fingerprinting
Cook County, Ill.	1267	41	3.24%	6	0.47%	11	0.86%
Dade County, Fla.	188	5	2.66%	1	0.53%	2	1.06%
Idaho	143	8	5.59%	0	0.00%	4	2.79%
Kansas City, Mo.	111	8	7.21%	1	0.90%	2	1.80%
Kern and Sacramento Counties, Calif.*	363	23	6.33%	2	0.55%	0	0.00%
New Jersey	580	11	1.90%	1	0.17%	5	0.86%
National Totals	2652	96	3.62%	11	0.41%	24	0.90%

The remaining 2,556 candidates proceeded with applications, and SSA field personnel requested CHR information for these applicants. Of those requests, 190, or seven percent, were returned unprocessed by state CHR repositories due to unusable fingerprints, missing identifying information, or other processing errors. The vast majority of these rejections, 171, occurred during the early phases of operation at the first demonstration site in Cook County and were attributable to processing errors that were worked out as the project continued. Subsequently, CHR request rejection rates at the remaining sites were significantly lower, ranging from about one to three percent (See Figure 10). Due to the time involved in reissuing CHR requests, the SSA chose to process applicants whose fingerprints were rejected without CHR.

Figure 10: Rejection of CHR Requests

Site	Applicants for whom CHR was requested	CHR requests returned as unprocessable	Percent returned as unprocessable
Cook County, Ill.	1226	171	13.95%
Dade County, Fla.	183	3	1.64%
Idaho	135	2	1.48%
Kansas City, Mo.	103	3	2.91%
Kern County, Calif.	180	2	1.18%
New Jersey	569	6	1.05%
Sacramento County, Calif.	170	3	1.76%
National Totals	2556	190	7.43%

For the remaining 2,366 applicants, or 93 percent of all applicants, procedures established under the project were successful in yielding a CHR response from the state CHR repositories. Due to omissions in data submitted by SSA personnel, data on the outcome of CHR requests and/or applicant processing was unavailable for 189 cases, or eight percent of the 2,366 cases in which CHR requests were not rejected. Therefore, the analysis of criminal history request results and subsequent appointment decisions was limited to a sample of 2,177 cases for all demonstration sites. In 196 cases, or approximately nine percent of the sample, CHR searches resulted in "hits" -- the discovery of criminal conviction histories, meaning for either misdemeanor or felony offenses. (See Figure 11). In 102 cases, or approximately five percent of the sample, screening revealed histories of felony convictions. Another 94, or approximately four percent of the sample, were found to have records of misdemeanor convictions only.

In general, these cumulative "hit rates" comport with rates for the general population of applicants subject to CHR background screening for other non-criminal justice purposes. However, local hit rates at the Dade County and Sacramento County demonstration sites were significantly higher than the national average (See Figures 12, 13, and 14). Of 144 applicants screened at the Sacramento County site, 15, or approximately 10 percent, were found to have felony convictions; another 18, or 12.5 percent, had records of misdemeanor convictions only.

Of 122 applicants screened at the Dade County site, 20, or approximately 16 percent, had felony conviction records.

Figure 11: CHR "Hit" Rates

Site	Applicants screened with CHR	Applicants w/ conviction histories	Overall "hit" rate	Applicants w/ felony convictions	Felony "hit" rate	Applicants w/ misdemeanor convictions only	Misdemeanor "hit" rate
Cook County, Ill.	1007	56	5.56%	39	3.87%	17	1.69%
Dade County, Fla.	122	28	22.95%	20	16.39%	8	6.56%
Idaho	131	10	7.63%	3	2.29%	7	5.34%
Kansas City, Mo.	88	5	5.68%	2	2.27%	3	3.41%
Kern County, Ca.	159	15	9.43%	6	3.77%	9	5.66%
New Jersey	526	49	9.32%	17	3.23%	32	6.08%
Sacramento County, Ca.	144	33	22.92%	15	10.42%	18	12.50%
National Totals	2177	196	9.00%	102	4.69%	94	4.32%

Figure 12: Overall "Hit Rates" -- Percentages of Applicants with Any Convictions

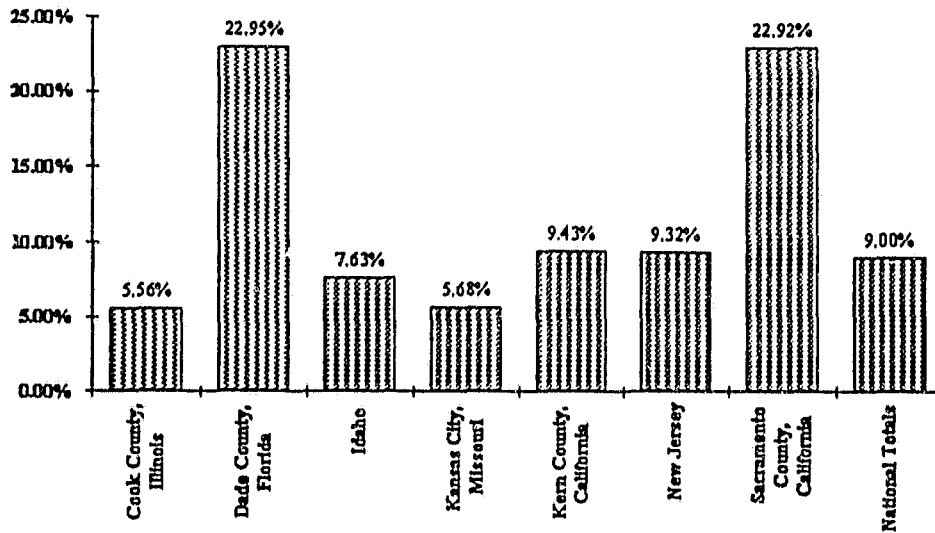


Figure 13: Percentage of Applicants with Felony Convictions

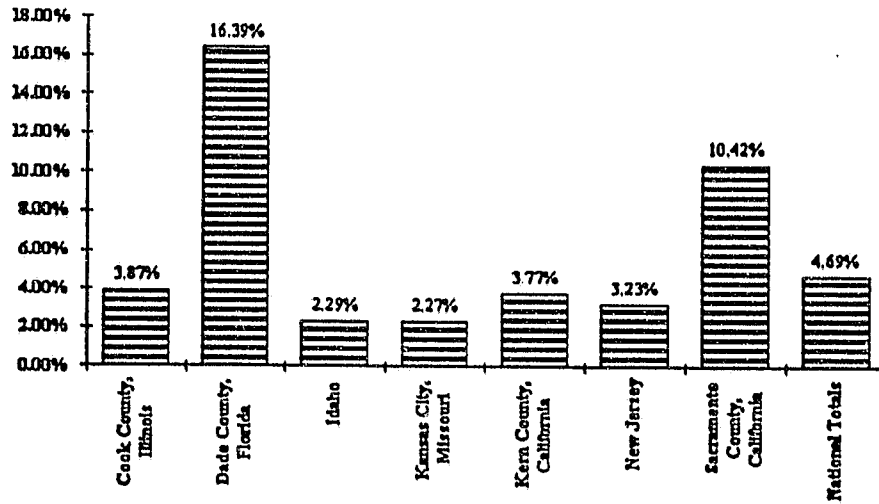
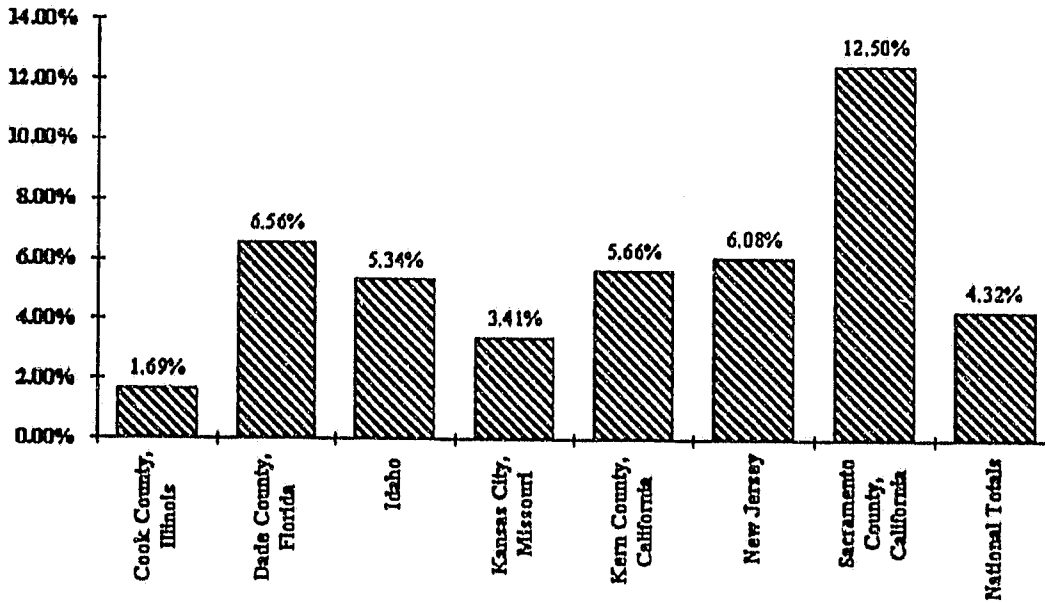


Figure 14: Percentage of Applicants with Misdemeanor Convictions Only



Project staff could not identify any definitive reasons for the higher local hit rates in Sacramento and Dade counties. However, the variances do indicate the possibility that the SSA could expect higher hit rates in certain localized areas if CHR screening were implemented as a broader, operational policy.

After making adjustments to procedures during the initial stages of implementation, the state demonstration projects generally operated smoothly. The SSA and state and local agencies were able to establish direct lines of communication to ensure coordinated operations and facilitate timely, effective resolution of operational problems.

The local law enforcement agencies that provided fingerprinting services for the project had varying levels of experience in conducting applicant fingerprinting for non-criminal justice purposes. For a few of the local law enforcement agencies involved, the project provided an opportunity to implement applicant fingerprinting procedures for the first time. A number of the local agencies already had in place applicant fingerprinting services and were well-equipped to accommodate the SSA's payee applicants. In every case, local law enforcement agencies were able to work with the SSA to set up fingerprinting procedures appropriate to the needs of the project.

Similarly, state agencies that provided CHR services for the project were able to work with the SSA to establish special billing procedures to meet the needs of the project. State repositories also provided training to help SSA personnel understand the formats, symbols, and special language used in state CHR reports.

State and local law enforcement agencies were able to process the limited volumes of applicants screened under the study. However, state and local agency officials were skeptical about whether they could accommodate the full volume of payee applicants, including those applicants who were exempted from screening under the study, with current resources and technology. Advances in criminal justice information technology eventually may increase the agencies' ability to handle additional volumes of applicant CHR requests.

Findings and Conclusions

Through the demonstration project, the NCJA and the SSA found that it is feasible for the SSA to work with state and local criminal justice agencies to establish systems to obtain

state CHR information regarding payee applicants based upon fingerprint identification of those applicants.

The demonstration project also produced information to help the SSA determine the practical value of using CHR information in the payee appointment process. Five percent of applicants screened were found to have histories of felony convictions; of these, 46 percent were appointed to serve as payees in spite of their conviction histories.

This study also produced information that will help the SSA examine the potential usefulness of CHR information as a predictor of payee performance but did not produce a definitive answer on that matter. A separate but related study that the SSA has undertaken is expected to yield information on the correlation between CHR information and payee performance.

CHR frequently are reviewed by government agencies and private firms to assess the character of candidates for jobs requiring a high degree of trust worthiness, and to support licensing decisions. However, an organization exploring such uses of CHR must consider carefully a wide range of complex issues regarding the usefulness of CHR and the impact of CHR screening programs upon the organization's operations. To arrive at a final decision on the efficacy of payee CHR background checks, the SSA necessarily must weigh carefully cost management, accountability, and public safety considerations.

The study found in practice that CHR actually may be of questionable practical value to the personnel faced with appointment decisions. SSA claims representatives appointed 47, or 46 percent, of applicants with felony convictions; 74, or 79 percent, of misdemeanants were appointed to serve as payees (See Figures 15 and 16). Disposition of applicants with felony convictions varied widely by site; of applicants with felony convictions in Sacramento County, 33 percent were appointed to serve as payees, while 14, or 70 percent, of applicants with felony convictions in Dade County were appointed to serve as payees. The data seem to indicate that conviction information was not an overriding factor in appointment decision making. SSA claims representatives consider CHR in the context of other criteria and subjective judgments about the character of the applicants.

Figure 15: Appointment of Applicants with Felony Convictions

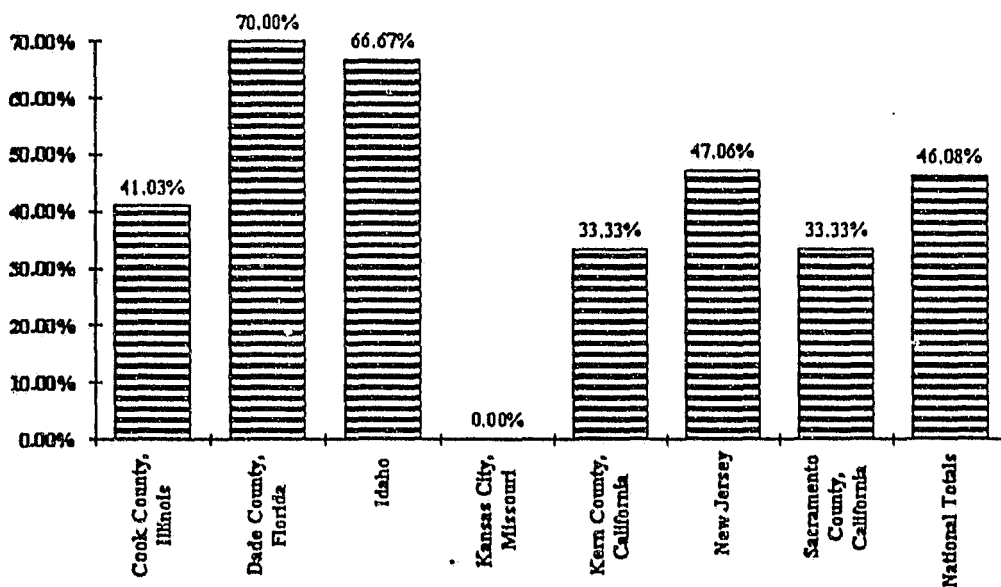


Figure 16: Handling of Applicants with Conviction Records

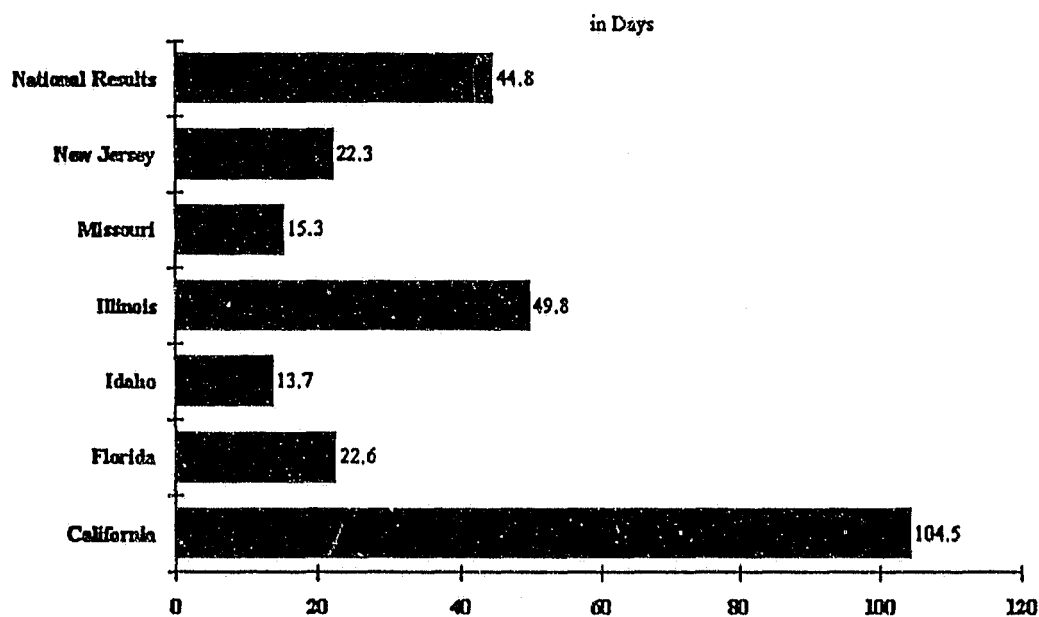
Site	Applicants with felony convictions	Felons appointed	Percent of felons appointed	Applicants with misdemeanor convictions only	Misdemeanants appointed	Percent of misdemeanants appointed
Cook County, Ill.	39	16	41%	17	12	71%
Dade County, Fla.	20	14	70%	8	8	100%
Idaho	3	2	67%	7	7	100%
Kansas City, Mo.	2	0	0%	3	3	100%
Kern County, Calif.	6	2	33%	9	7	78%
New Jersey	17	8	47%	32	28	88%
Sacramento County, Calif.	15	5	33%	18	9	50%
National Totals	102	47	45%	94	74	79%

Costs and Other Impacts of CHR Screening

The combined costs of fingerprinting and CHR information services combined varied widely among demonstration sites, ranging from \$10 per applicant in Florida to \$37 per

applicant in California; factoring in the volumes of applicants at each site, the average cost of screening under the project was slightly more than \$21 per applicant, according to SSA estimates. The amount of time that final appointment decisions had to be delayed while claims representatives awaited responses to CHR requests also varied by site, ranging from an average of 14 days in Idaho to more than 104 days in California; the national average was about 45 days (See Figure 17). These costs and waiting times present potential impacts upon appointment procedures that must be considered by the SSA in evaluating the efficacy of payee screening as an operational policy.

Figure 17: Average CHR Waiting Times



Although the study clearly demonstrated utility of CHR use in background checks and the feasibility of achieving the intergovernmental cooperation necessary for using state CHR in payee applicant screening, as well as the willingness of applicants to undergo CHR screening, other aspects of the feasibility of CHR screening are less certain.

One important issue is the impact of CHR waiting periods upon the SSA's applicant processing. SSA field personnel at demonstration sites in Illinois and California reported

waiting averages of 50 and 104.5 days, respectively, from interviewing applicants to receiving the applicants' CHR information. To comply with laws that prohibit delaying benefits payments longer than 30 days, field personnel had to institute special procedures to appoint applicants on a conditional basis pending the outcome of CHR checks, and in some instances, directly paid beneficiaries while awaiting CHR information on payee applicants. The SSA must assess whether such lengthy waiting periods and the resulting special procedures would be detrimental to the payee appointment process over a long period of time.

Other aspects of the feasibility of payee applicant CHR screening also are uncertain. The exemption of close family members from CHR screening and the concentration of the study in four of the demonstration states to selected metropolitan areas were made necessary by resource, operational, and policy considerations. At the same time, these considerations precluded a true test of state repositories' ability to accommodate the SSA's entire potential volume of CHR requests. A lack of information on the annual number of payee applicants nationwide prevented estimation of the potential costs of instituting broad, nationwide applicant CHR screening as a long-term SSA operational policy.

Continuing advances in technology such as the automated fingerprint identification systems (AFIS) and "live scan" fingerprinting devices used under the project may have a significant impact on criminal justice information system capabilities. It is hoped that new technologies will dramatically increase the speed and efficiency of CHR screening procedures and help states accommodate increased volumes of CHR requests. Moreover, the FBI's development of a national, interstate criminal identification network may further encourage technological advances and make timely federal and 50-state CHR checks readily available for non-criminal justice purposes.

In judging the value of CHR information in appointment decisions, the SSA ultimately must decide the appropriateness of allowing convicted individuals to serve as payees. The answer to this question hinges at least in part on whether conviction histories indicate a greater likelihood of payee malfeasance. The NCJA/SSA demonstration project was limited to an examination of the feasibility of CHR screening and therefore did not assess how applicants' criminal histories corresponded to their performance as payees.

More information is needed to assess fully the value of, as well as the SSA's and states' ability to accommodate, CHR screening in the representative payee appointment process. Therefore, the NCJA recommends that the SSA:

- obtain CHR information on a random sample of payees and assess the performance of those payees in order to evaluate how conviction histories correlate to payee performance. Such a study should include payees who are beneficiaries' family members in order to help determine the prevalence and relevance of criminal histories among beneficiaries' close family members; and
- determine the annual number of new payee applicants nationwide, and use that information to work with state agencies on estimating the costs of applicant screening as a nationwide policy and whether such applicant screening could be accommodated by state repositories and within SSA procedures and resource limitations.

CHAPTER IV
CONTEMPORARY USE OF CRIMINAL HISTORIES RECORD REVIEWS AND
OTHER INVESTIGATIVE METHODS TO
CONDUCT NON-CRIMINAL JUSTICE BACKGROUND CHECKS

Most employers and volunteer organization recruiters must conduct at least a minimal amount of background investigation to assess the suitability of candidates for available positions. Background investigation also is used to screen applicants for loans or lines of credit, as well as for certifications required for certain privileges, such as gun ownership. Background screening techniques range in intensity from simple interviewing of an applicant to comprehensive, in-depth investigations that are intended to gather extensive personal information. Some other available methods for carrying out background checks include criminal history screening, as well as credit history review and psychological tests. In determining what type of screening is appropriate for a particular paid or volunteer position, an employer or volunteer recruiter needs to consider these questions:

- What levels of talent and trustworthiness are necessary for satisfactory performance of the position;
- What potential exists for harm to people or property if the job is performed unsatisfactorily or if the employee misuses authority or access afforded by virtue of his position;
- What is the employers' liability for harm to people or property resulting from an inadequate pre-employment investigation;
- What resources are available for background screening;
- What types of information are provided by each form of background screening; and
- What resources are necessary for each form of background screening?

Generally, the more intensive the screening method used, the greater the information yielded, and the greater the costs, in terms of time and money. Therefore, the decision on what screening techniques to use may center upon the findings of a cost-benefit analysis.

Typically, most employers and many volunteer recruiters (for convenience, both heretofore are referred to as "recruiters") interview applicants and require the applicants to provide the names and addresses of schools attended, previous employers, and individuals who credibly can testify to the applicants' personality, abilities, and work habits. For many jobs and volunteer positions, the required qualifications and inherent risk are low enough that verifying levels of education and consulting with former employers and personal references are sufficient to minimize the employer's risk.

In some instances, a recruiter may judge the qualifications for a position basic enough and the risks involved in an unsuccessful recruit insignificant enough that only a very minimal amount of screening, such as a face-to-face interview, is necessary. Looked at another way, a recruiter may feel that the potential for harm resulting from improper performance in an available position are not significant enough to justify the additional time and expense of more intensive screening.

Sometimes the time and money involved in more thorough screening are prohibitive to recruiters with limited resources, such as small businesses or non-profit organizations. In other cases, recruiters may recognize a significant potential for loss due to an unsuccessful recruit and have sufficient resources available for more intensive screening, but believe that they can assess an applicant sufficiently with a minimal amount of information. In yet other cases, recruiters may ask for character and employment references with no intention of verifying those references, wagering that the mere possibility that the references would be investigated is enough to keep undesirable applicants away.

When poor performance or misbehavior on a job pose a risk for significant harm to people or property, however, recruiters long have sought more intensive screening methods than interviews and reference checking. The same is true of financial businesses that provide loans or open lines of credit.

Until recently, the use of more intensive screening methods, for the most part, was limited to individuals applying for credit or employment involving protection of public safety or access to confidential information, large amounts of currency, or highly valuable properties. In recent years, however, a perceived increase in predatory crime committed by individuals who abuse their professional or volunteer positions has fueled an increased interest

in background investigations. Moreover, concern over the proliferation of violent crimes committed with firearms has led to the establishment of background screening as a condition of firearms purchases. For all of these purposes, perhaps the most prominent background investigation technique being used is criminal history screening.

Criminal History Screening

CHR information, once used almost exclusively to assist law enforcement investigations and judicial decisionmaking, has come into increasing use to screen employment applicants, volunteers, and most recently, prospective firearms purchasers. The increasing use of CHR checks has been accompanied by a growing body of state and federal laws requiring CHR screening for various non-criminal justice purposes and the development of government programs to improve CHR systems to meet the increased demand.

Efforts to prevent the possession of firearms by convicted criminals and mentally unstable persons have led to perhaps the most publicly visible use of CHR screening. A range of gun control advocates over the past decade have appealed to federal and state governments to enact laws requiring CHR screening of prospective firearms purchasers. These efforts have led to passage by the Congress in 1993 of the Brady Handgun Violence Prevention Act (Pub. L. 103-159), named after James S. Brady, the former White House press secretary who was wounded in the 1981 assassination attempt on President Ronald Reagan. Known as the "Brady Law," the act requires all U. S. handgun dealers to conduct CHR screening of handgun purchasers and directs state and local authorities to work with federal authorities on establishing systems to provide dealers with access to CHR nationwide.

Prior to the passage of the Brady Law, 18 states already had in place some type of CHR screening of people seeking to buy firearms or obtain a firearms ownership permit. Under the Brady Law, the remaining states will need to institute new systems to accommodate CHR screening of handgun purchasers.

The Brady Law's requirements that the Justice Department devise a system to enable thorough searches for CHR throughout the United States places a higher priority on and directs increased resources toward the FBI's existing efforts to develop a national interstate

CHR sharing network.³⁰ As the FBI's new CHR systems are intended to be available for other approved non-criminal justice uses, the Brady Law is likely to help increase the availability and improve the quality of comprehensive, national CHR screening for a wide variety of non-criminal justice purposes.

Another area of increased interest in CHR screening is among professions that require direct contact with, and responsibility for, the welfare of children. A rise in single-parent households and the growing need for both parents in a two-parent household to maintain paid employment has led to increased use of professional child care services, such as day care, preschooling, and in-home child monitoring (such as that provided by babysitters, au pairs, or nannies). Subsequently, the public has witnessed a marked increase in publicized incidents of educators or child care providers misusing their access to children to abuse or molest those children.

The resulting public outcry over child abuse cases increasingly has led to enactment of laws and policies that call for pre-employment screening, typically including criminal history investigations, of school personnel and child care providers. The U. S. Congress in 1993 enacted legislation establishing a system for screening prospective child care and school personnel for histories of child abuse. The National Child Protection Act of 1993 (Pub. L. 103-209) directs the U. S. Department of Justice to establish a specialized national system that lists people with histories of convictions for child abuse or molestation. The law authorizes schools and child care employers to use the data base in screening potential employees.

Similar actions also were taken at the state level in 1993. State legislatures in New Hampshire, Oregon, and Tennessee enacted laws that authorize CHR screening of child care and/or school personnel, effective Jan. 1, 1994. The Oregon law, in fact, requires that applicants for school employment provide fingerprints for the initiation of national CHR checks conducted by the FBI.

In addition, some county and municipal governments may be following suit, as evidenced by recent developments in Dallas County, Texas. In 1993, Dallas County

³⁰ See discussion under heading, "*National CHR System Development*," p. 67.

commissioners enacted a measure that authorizes nonprofit organizations in the county that serve "vulnerable" populations, such as children, the elderly, and physically or mentally disabled persons, to access state CHR information for screening of prospective employees and volunteers. To lower the costs and expedite the process for non-profit groups, the screening will be coordinated through the Volunteer Center of Dallas County, itself a non-profit organization that helps other non-profit groups obtain needed volunteer help. State CHR information will be provided by the Texas Department of Public Safety.

Other child care-related areas in which CHR screening has come into use include the screening of school bus drivers, applicants for licenses to operate centers that treat youths for substance abuse, and guardian ad litem volunteers, who volunteer to help children who are abuse victims navigate their way through legal proceedings.

Given the previous criminal histories of that have been found in cases of abuse by child care professionals, CHR screening can identify some candidates with a propensity for abusive or criminal behavior, and may deter other such candidates from applying in the first place.

For example, a highly publicized case in Fairfax County, Va., involved a man who worked as a substitute teacher in a county school until the results of a state and federal CHR check indicated that he was an escaped convicted murderer. Under the county's screening program, school personnel were hired pending the outcome of the CHR checks because those checks usually take up to three months to be completed. The fact that the screening delay enabled a fugitive killer to receive access to children caused county residents and policymakers to question whether it might be necessary to wait for the results of CHR checks before allowing new employees to begin work.

Other cases illustrate the inability of CHR checks to indicate the potential for criminal behavior by people who previously have not committed criminal acts or been convicted for such acts. In Chicago, a substitute schoolteacher was charged with exposing himself and masturbating in front of students, and a school janitor was charged with molesting female students. CHR checks for both men revealed no prior convictions. In Florida, two adult Boy Scout troop leaders were charged with molesting scouts under their supervision. In this case, no pre-appointment CHR screening was conducted, but further investigation found that CHR screening would have revealed nothing because neither man had previous convictions.

Officials of Boy Scouts of America noted that the case emphasizes the need to address criminal behavior by volunteers and employees regardless of screening methods used.

Another employment field where CHR screening is coming into increasing use is the licensing and hiring of professional security personnel and private investigators. As in other fields, the hiring of security guards and investigators was largely unregulated until publicized cases of theft and physical harm committed by security personnel came to light. Several states now require CHR screening as a condition of employment for security guards. The Congress also has begun to address this issue through proposed legislation. H. R. 1534, currently pending before the Congress, would require states to implement licensing programs under which prospective security personnel would be subject to specific training and CHR screening requirements.

As in the case of child care personnel, the screening of security guards has revealed potential weaknesses of CHR checks. For example, a recently enacted Washington state licensing program requiring CHR screening of private security personnel has been criticized because, under that program, only armed security guards are checked for out-of-state criminal histories; unarmed security guards are screened only for in-state criminal histories. State licensing officials say costs of out-of-state CHR screening prohibit conducting nationwide checks on all guards. However, critics of the program contend that such limitations would do little to prevent cases such as that of Kenneth Bianchi, who stalked and killed two Western Washington University students while working as a private unarmed campus security guard. Bianchi, who had no prior criminal history in Washington, had an out-of-state record for reckless endangerment and criminal mischief that might have signaled the possibility of abusing a position as a guard. Bianchi eventually confessed to five of the widely publicized "Hillside Strangler" rape-murders in California.

NCJA research has uncovered some other interesting applications of CHR screening. For example, case law in Missouri has permitted the use of CHR in screening potential jurors. An incident in Harris County, Texas, in which a grand jury foreman was found to be under indictment prompted public discussion of whether CHR should be used to screen grand jurors. In many cities, people are screened for drug convictions before they are permitted to live in publicly-sponsored housing. In Washington state, CHR screening is conducted on volunteer

nursing home ombudsmen, who visit nursing homes weekly to talk with residents about their problems or concerns. In Encinitas, Calif., the San Diego County Sheriff's Department checks criminal histories of prospective members of the Volunteer Patrol, a program that recruits senior citizens to help police respond to the special needs of elderly citizens and monitor neighborhoods with mostly elderly residents.

National CHR System Development

In response to the increasing demand for applicant and firearms purchaser CHR screening to protect the public safety, both the Congress and the Justice Department in recent years have taken a number of interrelated measures to improve CHR screening services.

To meet the needs of law enforcement agencies as well as increasing non-criminal justice uses of CHR, the FBI has launched a massive, multi-year effort to implement a new, more effective system for conducting nationwide, interstate CHR checks.. Under the original system, the FBI maintains criminal histories for all federal offenses as well as state offender records that, for the most part, duplicate information contained in state files. Under this system, the FBI relies on state and local agencies to submit voluntarily copies of all arrest, disposition, and correctional information.

However, state and local participation in this system historically has been incomplete. According to the FBI, arrest reporting is known to be poor in a few states, while disposition reporting is estimated to average about 50 percent among the states.

Moreover, a significant proportion of the FBI's criminal history records have not yet been entered into the FBI's computerized CHR system. At the beginning of 1993, 17.1 million of the FBI's criminal history records were fully automated; another 11.3 million were not fully automated. As a result of this backlog of unautomated records and the gaps in state and local reporting, FBI national records checks generally are processed slowly and often are missing critical information.

To remedy this situation, the FBI is developing the Interstate Identification Index (III, pronounced "Triple Eye"). The III provides national criminal history checks by acting as an index of state criminal history records, which generally are more current and complete than the FBI's duplicate copies. Under this system, the FBI would cease collecting and keeping state criminal history information from states that are participating as non-criminal justice

providers. The FBI would continue to duplicate state recordkeeping on behalf of states participating in the III only for criminal justice purposes and states that cannot participate in the III due to equipment or resource limitations.

Some 30 states currently participate in the III for criminal justice purposes, with at least a portion of their records available through the system. In addition, use of the III for non-criminal justice purposes is being tested in Florida, North Carolina, and Oregon. However, because states' laws and policies vary on the non-criminal justice uses of CHR, widespread use of the system for non-criminal justice purposes will require agreement among participating governments as to the specific conditions under which non-criminal justice CHR requests can be made. The FBI has developed the Interstate and Federal-State Compact on the Exchange of Criminal History Records for Noncriminal Justice Purposes as one possible method for reaching that agreement.

At the same time, the Congress, as an outgrowth of legislative activity regarding CHR screening of firearms buyers, has in recent years directed the Justice Department to develop a national program for improvement of CHR systems. Through the National Criminal History Records Improvement Program, managed by the Justice Department's Bureau of Justice Statistics, the Congress has over the past several years appropriated funds for grants to help states make improvements to their CHR systems. The Congress also has required that states use at least five percent of their annual criminal justice block grant funding for CHR system improvements. In addition, in the act making fiscal year 1994 appropriations for the Justice Department (Pub. L. 103-121), the Congress provided \$10 million to the FBI as reimbursement for startup costs associated with establishing a national repository of criminal history information for use in a national background check system.

Fingerprinting of Welfare Recipients

While criminal history searches may be initiated using applicants' names and vital statistics alone, fingerprinting often is associated with CHR screening. Fingerprints can help CHR repositories identify persons with criminal histories when applicants supply inaccurate identifying information. Recently, however, fingerprinting is coming into use without CHR screening in the compilation of data bases intended to prevent double-dipping by welfare

recipients. Los Angeles County, Calif., and Suffolk County, N. Y., for example, have implemented programs to fingerprint entitlement program beneficiaries to prevent beneficiaries from receiving additional benefits by using separate names and addresses. In addition, New York state has established demonstration programs to test this use of fingerprinting in Rockland and Onondaga Counties.

Credit History Review

Another frequently used background investigative technique is credit history review, more commonly known as a credit check. Currently in the United States, there are a handful of nationally-recognized companies that gather information about individuals' histories of paying bills, managing lines of credit, and paying off debts. These companies, such as Equifax Credit Information Services, TRW, and Trans Union, supply this information to virtually any requester for a fee. In many instances, requesters with appropriate computer and telecommunications equipment directly access these credit data bases directly in a matter of seconds.

By providing information about an individual's history of managing financial responsibilities, credit checks generally are seen as a way of assessing applicants' ability to handle additional financial burdens, and as a general indicator of their level of responsibility and trustworthiness. By providing information about a person's current financial burdens, checks also may indicate the likelihood of his intentionally or unintentionally breaching a financial trust in response to heavy financial pressures. Like CHR checks, credit investigations may help indicate applicants' likelihood of committing a crime involving breach of trust.

As mentioned above, financial businesses customarily have employed credit checks to screen people who apply for loans or lines of credit. Many real estate companies use credit checks before entering into leases with prospective property renters. For many years, credit checks have been used to screen candidates for jobs that involve the handling of large sums of money or valuable properties. However, credit checks recently are being put to new uses.

In Medina County, Ohio, credit checks are being used to locate fathers who have neglected to make child support payments and to assess how much child support those fathers

reasonably should be able to pay. The Medina County Child Support Enforcement Agency uses computer equipment to access credit files directly to find delinquent fathers' addresses and to obtain information about their debts and spending on cars, mortgages, and credit cards.

Also in Ohio, controversy over the use of court-appointed, state-funded legal counsel for defendants who later were found to have sufficient resources to hire counsel has led to public consideration of credit checks as a condition of receiving state-funded counsel. According to *The Plain Dealer*, a Cleveland newspaper, two studies on the appointment of state-funded counsel concluded that the process was deficient in ensuring that only indigent defendants receive appointed counsel. As a result, state lawmakers are looking into credit checks to assess whether defendants truly are indigent.

Personality Profiles

Yet another screening method that has come into more frequent use is psychological tests designed to provide profiles of applicants' personalities. Under this method, applicants are asked to respond to a series of questions or stimuli crafted to subtly elicit responses that may provide insights into applicants' personality traits. Generally, such tests are administered and the results analyzed by psychologists or other professionals specially trained in interpretation of the test responses. One such test, the Minnesota Multiphasic Personality Inventory (MMPI), is used by police departments and security guard agencies to identify applicants with tendencies for violence, paranoia, or addictive behaviors. In order to address losses due to employee theft, many companies in the retail shopping industry use personality tests to detect applicants with a propensity toward dishonesty, stealing, or justifying dishonesty or theft under certain circumstances.

Proponents of personality tests maintain that, if properly administered and interpreted, the tests can uncover potentially dangerous traits that have not yet surfaced in an applicant's behavior and would not be made apparent through CHR screening or credit checks. However, the validity of such tests has come in to question. Critics contend that there is a potential for test responses to be misinterpreted in such a way that an applicant might be denied a position wrongfully. Furthermore, critics have insisted that the tests may reveal information of questionable relevance about applicants' private lives, such as sexual orientation, marital

problems, or political beliefs; as such, the tests may violate personal privacy rights and be used to subtly discriminate against applicants. Currently, the use of the MMPI in screening job applicants is being challenged before the California Supreme Court.

Consumer Investigative Reporting/Private Investigation

In response to the demand for background screening services, a variety of companies have established commercially available comprehensive background investigation services. Often referred to as consumer investigative reporting, this type of background screening involves a packaging of information from a variety of publicly available sources, such as CHR, credit files, education records, and driver registration records, and therefore represents a coordinated combination of other screening methods. This type of service capitalizes on the fact that so many databases of personal information are available to the public, often directly and expeditiously through appropriate computer telecommunications equipment.

Because of its more comprehensive nature, consumer investigative reporting tends to be significantly more expensive than other screening techniques, with prices generally starting around \$100. For that price, however, a requester may receive a wide range of potentially useful information. Nonetheless, because of its vast reach, consumer investigative reporting has come under fire as intrusive and often incorrectly linking individuals with negative information. In one such case, James Wiggins of Washington, D. C. was fired from a job after a post-employment investigation incorrectly connected him with a criminal history record belonging to another man with a similar name. As a result of such cases, some legislators in recent years have proposed tightening regulation of the industry to prevent further harm to innocent people by investigatory mistakes.

Private investigators perform a kind of work similar to that done by contemporary consumer investigative companies. Unlike the stereotypical "gumshoe" of the past, today's private investigators spend little, if any, time on the streets observing subjects and questioning people. Instead, most private investigators rely on vast, publicly available databases of personal information to build their investigations.

Security Clearances

"Security clearance" investigations long have been used to screen people applying for jobs involving access to sensitive information relating to national defense operations and law enforcement investigations, especially at the federal level. A security clearance typically is conducted by a thoroughly trained government investigator and entails a thorough, exhaustive examination of several factors regarded as relevant to an applicant's character, likelihood of maintaining necessary secrecy, and ability to carry out duties under extreme pressure. As a government investigator, a security clearance investigator usually avails himself of virtually unlimited access to all available databases of personal information, including criminal history records, driving records, and credit histories. In addition, the investigator also conducts personal interviews of applicants' family members, friends, previous employers, and other associates, to gain insights into an applicant's personality that may not be apparent from archived information.

Security clearance investigations are an extremely thorough method of screening applicants, and probably are appropriate given the circumstances involved in the jobs for which they are conducted. However, given the labor and resource intensive nature of such investigations, similar techniques are probably inappropriate for the vast majority of employers and volunteer recruiters.

APPENDICES

APPENDIX A

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SACRAMENTO AND KERN COUNTIES, CA., DEMONSTRATION SITES

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Missouri Department of Public Safety, State Highway Patrol (State CHR Repository)

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Missouri Department of Public Safety
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Mr. Gary Howell, Director
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Kansas City Police Department
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Deputy Chief James A. Reynolds, Commander
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Mr. Jim Davis, Manager
Identification Unit
Kansas City Police Department
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PRIVATE SECTOR PERSONNEL

Identix, Inc. (Provider of "Live-Scan" Fingerprinting Equipment for Greater Kansas City Demonstration Project)

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APPENDIX B

**Criminal History Records Access
for Non-Criminal Justice Purposes:
A Survey of State Laws and Policies**

INTRODUCTION

The following profiles briefly describe statutes, policies, and processes affecting non-criminal justice uses of criminal history records (CHR), as well as the quality and content of those records, in a sample of 19 states and the District of Columbia. The 19 states are Arkansas, California, Florida, Hawaii, Idaho, Illinois, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Virginia, Washington, and Wyoming. These jurisdictions were reviewed because they initially were identified as potential participants for the March 1990 conference that led to the development of the demonstration project. Demonstration projects eventually were implemented in six of these states.

In all 50 states and the District of Columbia, all CHR is available for criminal justice purposes. Generally, states define "criminal justice purposes" for use of CHR as investigatory, prosecutorial, sentencing, or correctional uses. Thus, although federal entitlement agencies' potential use of CHR in certifying payees is intended to prevent criminal fraud and embezzlement, it essentially is applicant screening and subject to statutes and regulations on non-criminal justice uses of CHR.

Readers should bear in mind that these profiles describe conditions surrounding CHR access as of Dec. 1993; these conditions generally are subject to change at any time. Each profile lists the name of the state agency that compiles and disseminates CHR and describes processes through which non-criminal justice agencies may request CHR searches and fees charged for each search. These procedures and fees generally are subject to change at any time. The turnaround time, listed next in each profile, indicates the typical amount of office processing time for a CHR check *as reported by the state repository*; these processing times generally are not guaranteed and requesters may experience significantly different processing times. The profiles then describe information included in a CHR check, such as information on arrests, charges, and convictions, and whether the subject state allows dissemination of arrests and charges without disposition information.

Generally, the following factors must be kept in mind for all of the states:

1. *Fingerprinting* -- Except for California, New York, and Washington, the selected states do not require non-criminal justice requesters to submit subjects' fingerprints. However, due to the common use of aliases and false personal information by career criminals, state CHR authorities generally recommend the use of fingerprint-based checks and refuse to guarantee the accuracy of non-fingerprint based checks.
2. *Deletion of Records* -- States statutes and policies vary in setting forth what types of CHR may be released for non-criminal justice purposes. Almost all of the states have provisions allowing for "deletion" or "expunging" of records of arrests and charges that have not resulted in a conviction. Some states also permit expunction of a limited range of conviction information, such as first convictions, and under strict circumstances. However, deletion or expunction of both non-conviction and conviction information generally means that the information is not available for non-criminal justice uses but remains on file for law enforcement investigative uses.

ARKANSAS

CHR Repository: Arkansas Crime Information Center, Identification Bureau

Dissemination for Non-criminal Justice Purposes: Arkansas law states that the Arkansas Crime Information Center shall make CHR information available only to criminal justice agencies in their official capacity, to regulatory agencies with specific statutory authority for access, and to any person or his attorney who has reason to believe that a criminal history record is being kept on him. Ark. Rev. Stat. § 12-12-211.

Process: Non-criminal justice requests should include the subject's name and descriptive information and will be received by mail only.

Fee: None

Turnaround Time: Three to four days

Information Provided: For non-criminal justice purposes, the bureau will provide only information concerning convictions and open arrests.

Reporting Requirements: Ark. Rev. Stat. § 12-12-209, states that all law enforcement officials shall furnish data to the Arkansas Crime Information Center in a manner prescribed by the Center's Supervisory Board, but does not specifically list case dispositions among the required data. Section 16-93-304, however, requires all municipal court judges to report to the Arkansas Crime Information Center all probation orders related to criminal offenses.

Deletion of Criminal History Records: There is no statute addressing expunction of conviction records. However, Ark. Rev. Stat. § 12-12-207, requires the state annually to purge its files of all records on individuals relating to cases in which there have been acquittals or dismissals of charges.

Auditing Requirements: To ensure the accuracy, timeliness, and completeness of all records and information, Ark. Rev. Stat. § 12-12-210 requires the director of the Arkansas Crime Information Center to appoint special information service agents to monitor and audit all records and information collected by the Center.

Criminal Penalties for Violations of CHR Laws: Any sheriff, chief of police, city marshal, corrections official, prosecuting attorney, court clerk, or other state, county, or local official who willfully fails to comply with statutory provisions or regulations concerning record dissemination is guilty of a misdemeanor and subject to a fine not to exceed \$500. Ark. Rev. Stat. § 12-12-209(c).(2). A person who willfully releases or discloses CHR information to any unauthorized recipient or any person who willfully obtains CHR information for purposes not authorized by statute, is guilty of a felony. A conviction is punishable by a fine not exceeding \$5,000 and by a prison term of up to three years. Ark. Rev. Stat. § 12-12-212.

CALIFORNIA

CHR Repository: California Department of Justice, Bureau of Criminal Identification

Dissemination for Non-criminal Justice Purposes: According to Cal. Penal Code § 11076, CHR information compiled by the state department of justice is to be disseminated only to agencies authorized by statute to receive such information. Cal. Penal Code § 11105 specifically authorizes the following non-criminal justice entities to obtain state CHR when needed in the course of their duties:

- any state agency, state official, person, or entity required by statute or regulation to check a person's background to be checked for specific criminal conduct;
- any city, county, or district, that needs access in order to assist in fulfilling employment, certification, or licensing duties;
- city, county, or district health officers in the performance of duties involving enforcement of the Health and Safety Code;
- public utilities; and
- any campus of the California State University or Colleges or the University of California, or any accredited school processing a convicted felon's application for admission to a special program for felons.

Process: Before running any CHR checks, a non-criminal justice agency must receive clearance by contacting the bureau's Criminal Records Security Unit. The requester must identify the law or regulation under which it has access to CHR and the purposes for which access is sought. Once the security unit has given clearance, CHR checks may be run through the bureau's Office of Records Control. *The state of California will conduct only fingerprint-based checks for applicant certification purposes.*

Fee: \$27/check

Turnaround Time: Currently, 30 days. The bureau hopes to improve its turnaround time to 15 days.

Information Provided: Conviction information only. Access by other than criminal justice agencies to records of arrests and charges without convictions is prohibited by court order.

Reporting Requirements: The superior, municipal, or justice court that disposes of a case for which an arrest had been reported to the state justice department must provide a report of such disposition to the department within thirty days of the disposition. The court also must furnish a copy of the disposition report to the law enforcement agency having primary jurisdiction to investigate the offense alleged in the complaint or accusation. Cal. Penal Code § 13151.

Deletion of Criminal History Records: A person who has been arrested and charged, but not convicted may petition the law enforcement agency having jurisdiction over the offense to destroy its records of arrest. The law enforcement agency, upon a determination that the person arrested has not been found guilty, must seal its arrest records and the petition for three years from the date of the arrest. After three years, the agency must destroy the arrest records and the petition.

Auditing Requirements: The state attorney general may direct any agency that maintains or has received criminal offender records to produce for inspection statistical data, reports and other information concerning the storage and dissemination of criminal offender record information. Cal Penal Code, § 11079.

Criminal Penalties for Violations of CHR Laws: Any justice department employee who knowingly furnishes CHR information to a person who is not legally authorized to receive CHR information is guilty of a misdemeanor. Cal. Penal Code § 11141. Any person authorized by law to receive CHR information who knowingly furnishes that information to an unauthorized recipient is guilty of a misdemeanor. Cal. Penal Code § 11142. Any person who, knowing he is not authorized to receive CHR information, buys, receives, or possesses such information, is guilty of a misdemeanor. The news media generally is exempt from these sanctions. Cal. Penal Code § 11143.

Civil Remedies for Violations of CHR Laws: No public or private employer may ask an employment applicant to disclose information concerning an arrest or detention that did not result in a conviction, and no employer may seek from any source whatsoever, or consider as a factor in determining any condition of employment, including hiring, promotion, or termination, any record of arrest or detention that did not result in a conviction. However, an employer may ask an employee or applicant for employment about an arrest for which the employee or applicant is released on bail pending trial. Cal. Lab. Code, § 432.7. For a violation of this provision, an applicant may file suit for actual damages, costs, and reasonable attorney fees. An intentional violation entitles the applicant to treble damages and constitutes a misdemeanor.

Related Issues:

CHR Checks for Employment Applicants: A savings association may deliver fingerprints of an employment applicant to local, state, or federal law enforcement agencies for the purpose of ascertaining whether the applicant has ever been convicted of a criminal offense or currently is charged with robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, check or credit fraud, or the unlawful use of computers. Cal. Fin. Code § 6525. There are similar provisions for banks and trust companies (§ 6525) and credit unions (§ 14409.2).

A new bill signed into law by the governor of California on Oct. 10, 1993, that includes photographs within the definition of criminal history record. The attorney general would be required to perform a feasibility study of automated systems for storing and communicating law enforcement-related photographs on or before Jan. 1, 1995. The attorney general would procure from any available source photographs of all persons convicted of a felony or imprisoned and of all well-known and habitual criminals. The photographs, as part of the criminal history record, would be made available to those people who were previously eligible to obtain a CHR. CA Legis 1270 (1993)

DISTRICT OF COLUMBIA

CHR Repository: District of Columbia Superior Court, Criminal Division, Criminal Information Center

Dissemination for Non-criminal Justice Purposes: Under the district's freedom of information laws, there is a general presumption toward release of information maintained by the district's government. The release of CHR information specifically, however, is governed by the Duncan Ordinance. Under the ordinance, non-criminal justice agencies and the private sector may gain access only to information regarding convictions for offenses committed in the 10-year period preceding the date of the record request, except in cases where the individual whose record is sought has been incarcerated for any or all of that 10-year period. D.C. Mun. Regs tit. I §1000 et. seq.

Process: Requesters may seek information by telephone or mail. Requesters must provide the search subject's name and date of birth and specify the years for which information is sought. Telephone requesters may obtain information only about convictions entered into the division's computerized records since 1973.

Fee: None. However, district law permits the mayor or an agency to establish and collect fees for the dissemination of information, not to exceed the actual cost of retrieval or \$10 per request, whichever is lower.

Information Provided: Records of convictions for felonies or misdemeanors handed down by the district's Superior Court. Requests by telephone may obtain only information entered into computerized records since 1973.

Reporting Requirements: The district police department is required to keep a record of each case in which an individual in the custody of police is charged with having committed a criminal offense in the district. The record must show whether the individual was released (except on bail) without having his guilt or innocence determined by a court; the circumstances under which the individual was released; whether the individual's guilt or innocence has been determined; the sentence imposed; and whether the individual was released from prison and the circumstances of his release. D.C. Code Ann. § 4-132.

Civil Remedies for Violations of CHR Laws: Any citizen of the district denied the right to inspect a public record of a public body may petition the mayor to review the public record to determine whether it may be withheld from public inspection. If the mayor denies the petition or does not make a timely determination of the request, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in superior court. If the mayor decides that the public record may not be withheld, he must order immediate disclosure of the record, and if the public body continues to withhold the record, the person seeking disclosure may bring suit in superior court to compel the production of the requested record. If a person seeking the right to inspect a public record prevails in such a suit, he may be awarded reasonable attorney fees and other costs of litigation. D.C. Code Ann. § 1-1527.

Privacy Legislation: Any citizen of the district has the right to inspect or copy any public record of the mayor or any agency, except as otherwise expressly provided by reasonable rules issued by the mayor or the agency concerning the time and place of access. D.C. Code, § 1-1522. The following provisions may be exempt from disclosure under the provisions of the District's Freedom of Information Act: investigatory records compiled for law enforcement purposes; and information specifically exempted from disclosure by statute, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld. D.C. Code Ann. § 1-1524.

FLORIDA

CHR Repository: Florida Department of Law Enforcement, Division of Criminal Justice Information Systems

Dissemination to Non-criminal Justice Agencies: Under the state Public Records Act, all state, county, and municipal records are to be open at all times for personal inspection by any person. Fla. Stat. Ann. § 119.01. Excepted from this general rule is active criminal intelligence information and active criminal investigative information. Fla. Stat. Ann. § 119.07(3)(d). Criminal intelligence information and criminal investigative information does not include the time, date, location, and nature of a reported crime; the name, sex, age, and address of a person arrested; the time, date, and location of the incident and of the arrest; and the crime charged. Fla. Stat. Ann. § 119.011(c).

Florida statutes regulate dissemination of CHR on the basis of its origin. Criminal history information compiled by the Division of Criminal Justice Information Systems from intrastate sources is available to non-criminal justice government agencies. Fla. Stat. Ann. § 943.053. Criminal record information derived from the U. S. Department of Justice is available to the extent allowed by applicable federal laws and regulations and approved by the state attorney general. Fla. Stat. Ann. § 943.054.

Process: A non-criminal justice agency wishing to conduct CHR checks for applicant certification purposes must sign a user agreement stating the purposes for which the CHR will be used. For each applicant checked, the requester must submit in writing the name, date-of-birth, sex, race, and, if possible, social security number. The user may also submit fingerprints, if desired; the division runs name-based checks first and, if a positive indication of a criminal history exists, the division may run a fingerprint check to confirm the positive identification. *For large volumes (at least 4,000/year):* To expedite the process, the requester may wish to submit names in large batches on computer tape. The division has indicated that it can handle any amount of records checks that SSA might wish to run; however, it would need to know in advance if more than 1,000-2,000 checks/year will be desired, so that it can request legislative authorization to hire additional employees. Those employees would be funded by the cost of the checks.

Fee: \$10

Turnaround Time: 10-12 days

Information Provided: All information in Florida public records, including arrests and charges for which no disposition is recorded, except any information that has been sealed or deleted. A circuit court may order deletion of records of any arrests or charges that have not resulted in the conviction of an individual who has not been convicted previously of a criminal offense.

Reporting Requirements: State law directs each criminal justice agency in the state to monitor its records and submit disposition reports to the Division of Criminal Justice Information Systems in such format and detail as established by the Department of Law Enforcement. Fla. Stat. Ann. § 943.052. When no active prosecution of a charge is known to be pending, arrest information more than a year old can be disseminated only when accompanied by information relating to the disposition of the arrest. Fla. Stat. Ann. § 943.054(b).

Deletion of Criminal History Records: A court can order expunction of only non-conviction records if the petition to expunge is accompanied by a certificate of eligibility and a sworn statement attesting that the petitioner has never been convicted of a criminal offense, has not been convicted of any of the charges stemming from the arrest or alleged criminal activity to which the petition pertains, has never secured a prior

sealing or expunction of a criminal history record, and has no other petition to expunge or seal pending in any court. Fla. Stat. Ann. § 943.0585.

Auditing Requirements: The Division of Criminal Justice Information Systems is responsible for conducting any audits of state and local criminal justice agencies necessary to ensure compliance with federal rules and regulations, this chapter, and the rules of the Department of Law Enforcement pertaining to the establishment, operation, security, and maintenance of the criminal justice information systems. Fla. Stat. Ann. § 943.055.

Criminal Penalties for Violation of Public Records Act: For public officials, second degree misdemeanor. For other persons, first degree misdemeanor. Fla. Stat. Ann. § 119.02.

Related Issues

Other CHR Policy: The Florida Department of Law Enforcement's Division of Criminal Justice Information Systems is responsible for participating in interstate and federal information networks.

Roesch v. State 596 So. 2d 1214 (1992). The court held that when a motion for post-conviction relief is not yet filed, but a request for public records is related to the motion, a defendant is entitled to the public records of his prior arrests and convictions. After a conviction and sentence becomes final, a defendant is entitled to the portions of the state attorney's criminal investigation file that are subject to the Public Records Act. A defendant is not entitled to receive copies of the documents without paying for them.

FL Legis 93-39, approved by the governor in April 1993, requires background checks of service provider personnel who have direct contact with unmarried minor clients or clients who are developmentally disabled. This requires a criminal history check relating to crimes such as murder, manslaughter, vehicular homicide, killing an unborn child by injury to the mother, aggravated assault, aggravated battery, kidnapping, false imprisonment, sexual battery, removing minors from the state or concealing minors contrary to court order, and prohibited acts of persons in familial or custodial authority. The check should be done locally, statewide, regionally, and federally.

HAWAII

CHR Repository: Hawaii Criminal Justice Data Center

Dissemination for Non-criminal Justice Purposes: Haw. Rev. Stat. §§ 846-8 through 846-10 provide that conviction records and information regarding pending arrests and charges may be disseminated without restriction. Dissemination of other non-conviction data to non-criminal justice agencies, however, is limited to:

- recipients conducting research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; and
- state or federal government agencies that are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

However, Haw. Rev. Stat. § 831-3.1 provides that, in connection with an application for employment, state agencies may not use or distribute the following types of information:

- records of arrests not followed by valid convictions;
- convictions that have been annulled or expunged;
- convictions for offenses for which no jail sentence may be imposed; and
- convictions for misdemeanors in cases where a period of 20 years has passed since conviction and there have not been any subsequent convictions.

Except as provided above, the state or any of its agencies may consider as a possible justification for the refusal of employment any conviction for a penal offense when such offense directly relates to the applicant's possible performance of the job in question.

Fee: \$18

Turnaround Time: One week

Information Provided: For non-government agencies, information regarding convictions and pending charges. For authorized government agencies, all available CHR information.

Reporting Requirements: It is the responsibility of every criminal justice agency in the state to report to the data center the disposition of cases from its area to ensure that all systems maintained in the state contain complete and accurate criminal history record information. All dispositions must be reported as promptly as feasible, but no later than 90 days after the occurrence of an event that constitutes a disposition. Haw. Rev. Stat. § 846-5.

Deletion of Criminal History Records: Haw. Rev. Stat. § 831-3.2 provides that a defendant who accepts a deferred guilty or nolo contendere plea may request expunction of the charges after one year has passed from the discharge of the defendant and the dismissal of the charge. The state attorney general or his representative, upon written application from a person arrested for or charged with but not convicted of a crime, shall issue an expunction order rescinding the record of arrest. Any CHR information may be retained, however, if the subject has a record of prior conviction or is a fugitive from justice.

Auditing Requirements: All criminal justice agencies must have a process of data collection, entry, storage, and systematic audit of CHR information that will minimize the possibility of recording and storing inaccurate information. The state attorney general's office is to conduct annual audits of a representative sample of criminal justice agencies on a random basis to verify the accuracy and completeness of criminal record information maintained by agencies. Haw. Rev. Stat. § 846-6.

Criminal Penalties for Violations of CHR Laws: Any person who knowingly permits unauthorized access to information, or any person who knowingly gains unauthorized access to such information, is guilty of a misdemeanor. Haw. Rev. Stat. § 846-16.

Civil Remedies for Violations of CHR Laws: An individual may bring a civil action against an agency for unlawful disclosure of information and obtain actual damages, the cost of the proceedings and attorney fees, and an injunction against further disclosure.

Related Issues:

Liquor Licensing: Hawaii Rev. Stat. § 846-42 states that a county liquor commission may request CHR checks on applicants for liquor licenses. The CHR check can be done by means of a fingerprint-based FBI search or by the Hawaii data center. If the state data center conducts the check, a fee may be charged. The licensing background check requires an applicant to disclose any non-vacated convictions in any jurisdiction that would indicate his unfitness to obtain a liquor license. The liquor commission can verify the information given by the applicant with a state CHR check. In order to request the state CHR, the commission must receive the applicant's written consent to be fingerprinted and release the record.

IDAHO

CHR Repository: Department of Law Enforcement, Bureau of Criminal Identification

Dissemination for Non-criminal Justice Purposes: State law requires the bureau to make available all information in its files to any other agency of this state or political subdivision thereof, and to any other federal agency as authorized, upon assurance of the agency concerned that the information is to be used for official purposes only. Idaho Code § 19-4812(2)(m). State law does not address the use of CHR by non-governmental entities.

Process: A non-criminal justice agency wishing to conduct CHR checks must sign an indemnification statement absolving the department of any liability should the requester release any CHR provided. The requester should request each check in writing and provide the subject's name, date of birth, and Social Security number. In addition, the requester must obtain the subject's signed consent to the records check.

Fee: \$5/check

Turnaround Time: One to two days

Information Provided: All information in Idaho records, including arrests and charges for which no disposition or conviction is recorded.

Reporting Requirements: All law enforcement agencies, all courts, all state, county, and municipal penal and correctional institutions, and all state and county probation and parole offices are required to provide the bureau with information concerning the number and nature of all offenses and legal actions taken in connection with such offenses, from the inception of complaints to the final discharge of defendants. Idaho Code § 19-4813(5).

Deletion of Criminal History Records: Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, may request a court order to have any fingerprint record taken in connection with the arrest or charge returned. Idaho Code § 19-4813(1).

Related Issues:

The Idaho Department of Law Enforcement's Criminal Identification Bureau is required to cooperate with other agencies of this state, the criminal justice agencies of other states, and the FBI's Uniform Crime Reporting and National Crime Information Center systems in developing and conducting interstate, national, and international systems of criminal identification, records, and statistics. Idaho Code § 19-4812(2)(n). These provisions are to be liberally construed in the interest of efficient enforcement of criminal laws and prompt apprehension of offenders. Idaho Code § 19-4810.

ILLINOIS

CHR Repository: Department of State Police, Bureau of Forensic Sciences and Identification

Dissemination for Non-criminal Justice Purposes: All issues relating to criminal history records are governed by the Illinois Uniform Conviction Information Act (UCIA), Il Rev Stat ch. 20 § 2635. Under the UCIA, conviction information maintained by the Illinois Department of State Police is publicly available. "Conviction information" means data reflecting a judgment of guilt or nolo contendere. The term includes "all prior and subsequent criminal history events directly relating to such judgments, such as, but not limited to: (1) the notation of arrest; (2) the notation of charges filed; (3) the sentence imposed; (4) the fine imposed; and (5) all related probation, parole, and release information." The department must give first priority in filling CHR requests to criminal justice agencies, and may give next priority to other state or federal agencies. The department must respond to requests within two weeks. The subsequent dissemination of conviction information furnished by the Department is only permitted for the 30-day period immediately following receipt of the information. Subject to some exceptions, any requester still wishing to further disseminate or to rely on the accuracy and completeness of conviction information more than 30 days from receipt of the information from the Department should request that the department conduct a formal update inquiry and review to verify that the information originally provided still is accurate.

Process: A non-criminal justice agency wishing to conduct CHR checks should contact the bureau to get request forms. For each subject to be checked, the requester should provide name, date of birth, race, and sex; fingerprints are not required but are preferred; the bureau will not guarantee the accuracy of any CHR check done on name basis only. Should a non-fingerprint check result in the identification of multiple persons in state CHR files, the department may not disseminate any information unless the requester can provide additional identifiers, such as fingerprints, that can help to more precisely locate the correct records. Illinois will not hold requesters liable for use of CHR if they provide records check subjects with a copy of information found through a CHR check and allow seven working days to challenge that information.

Fee: \$4/name-based check; \$14/fingerprint-based check. In establishing fees, the department and the Illinois Criminal Justice Information Authority may take into account the costs relating to multiple or automated requests and the costs relating to any other special factors or circumstances required by statute or rule. Il. Rev. Stat. ch. 20 § 1608.

Turnaround Time: Two to six weeks; priority is given first to criminal justice agencies and then to other government agencies.

Information Provided: Under the UCIA, information on convictions for felonies and classes A and B misdemeanors are available to the public. However, no records of arrests or charges without convictions may be disseminated for non-criminal justice purposes.

Reporting Requirements: To help the Illinois State Police maintain a complete and accurate CHR database, Il. Rev. Stat. ch. 20, par. 206-2.1 requires all police agencies, circuit court clerks, and state's attorneys to report arrests, charges, and dispositions to the state police within 30 days of their occurrence.

Deletion of Criminal History Records: Information ceases to be "conviction information" when a judgment of guilt is reversed or vacated.

Auditing Requirements: The UCIA requires the state police to regularly conduct audits of its record keeping policies and practices and other criminal justice agencies' reporting policies and practices to ensure compliance with the act and with state disposition reporting requirements. No specific time frame for audits

is indicated. The results of such audits are to be reported to the state governor and legislature and made available to the public.

Criminal Penalties for Violations of CHR Laws: Any person who disseminates inaccurate or incomplete conviction information, fails to disseminate or make public conviction information as required under the UCIA, or violates any other provision of the of the UCIA, shall for each offense be guilty of a Class A misdemeanor, subject to up to one year's imprisonment and a fine of up to \$1000.

Civil Remedies for Violations of the UCIA: An individual aggrieved by a violation of the UCIA by a state agency or unit of local government may seek recovery of actual and compensatory damages, along with legal fees, or other appropriate remedy, including a civil action to compel the department to disclose or correct conviction information in its files, once administrative remedies have been exhausted. An individual aggrieved by a willful violation of this Act is entitled to recover \$ 1,000. In addition, an individual aggrieved by a non-willful violation of this Act for which there has been dissemination of inaccurate or incomplete conviction information may recover \$200, provided the department fails to correct the information within 30 days.

Related Issues:

Subject's Opportunity to Challenge: Requesters seeking CHR for employment or licensing purposes must submit a written application signed by the individual who is the subject of the CHR check and provide the subject with a copy of the department's response. In accordance with § 7 of the UCIA, the state will indemnify a requester from liability for damages to the subject resulting from actions taken in consideration of the CHR information provided, if the requester has provided the department with information that accurately identifies the subject; the requester has provided the subject with a copy of the department's response; and the requester has not been notified by the subject or the department that the information furnished is inaccurate or incomplete.

State Indemnification for CHR Checks Not Based Upon Fingerprints: Upon disseminating CHR not based upon fingerprint identification, the department must issue a warning indicating that the information furnished cannot be identified with certainty as pertaining to the subject of the CHR request and may only be relied upon as being accurate and complete if it has not been challenged by the subject. If identifying information submitted by the requester to the department corresponds to more than one individual in the department's files, the department may not disclose the information to the requester, unless it is determined by the department that dissemination is still warranted for dire public safety reasons or to administer the criminal laws. In such instances, the department may require the requester to submit additional identifying information or fingerprints. Illinois does not guarantee the accuracy and completeness of any information disseminated based upon information other than fingerprints.

State Liability for CHR Checks Based Upon Fingerprint Identification: Illinois will guarantee the accuracy and completeness of conviction information disseminated by the department that is based upon fingerprint identification.

Indemnification of Local Criminal Justice Agencies That Report CHR Information Correctly and in a Timely Manner: Illinois provides for the indemnification of a clerk of the circuit court, a criminal justice agency, and their employees and officials from all civil claims brought by others due to dissemination of inaccurate or incomplete conviction information based upon positive fingerprint identification, provided that the conviction information in question was initially reported to the department accurately and in the timely manner required by law.

MICHIGAN

CHR Repository: Central Records Division, Department of State Police

Dissemination for Non-criminal Justice Purposes: Department of State Police regulation 28.520 provides that access to criminal history data for non-criminal justice purposes is restricted to governmental agencies whose primary function is to maintain vehicle registration and driver records, and private persons who, upon fingerprint verification of their identity, wish to review CHR maintained about them by the department. Dept. of State Police, regulation 28.5210, rule 210 (2). Michigan law prohibits an employer other than a law enforcement agency in connection with an application for employment from requesting or maintaining a information regarding an arrest, charge, or detention that did not result in a conviction. This restriction does not apply to information relative to a felony charge before conviction or dismissal. Mich. Stat. Ann. § 37.2205a.

Process: Non-criminal justice requesters must mail their request and include a release signed by the person who is the subject of the request.

Fee: \$3

Turnaround Time: One week

Information Provided: Conviction information only.

Reporting Requirements: The director of the bureau of criminal identification must collect information concerning the number and nature of offenses committed in the state, the legal actions taken in connection with these offenses from the inception of the complaint to the final discharge of the defendant, and other information useful in the study of crime and the administration of justice. Mich. Stat. Ann. § 28.242(2). The clerk of any court, the arresting officer, or other official that the director designates, must immediately advise the FBI of the final disposition of the arrest for which the accused was fingerprinted. Mich. Stat. Ann. § 28.243 (4).

Deletion of Criminal History Records:

Conviction Records: No sooner than five years after imposition of sentence or five years after completion of a subsequent term of imprisonment, whichever occurs later, a person who previously never has been convicted may apply for a court order setting aside the conviction, except if the conviction is for a felony subject to life imprisonment or a traffic offense. The application must contain a statement that the applicant has not been convicted of an offense other than the one which the applicant seeks to have set aside and a statement regarding whether the applicant has any other criminal charge pending against him in any court in the United States or other country. Mich. Stat. Ann. § 780.621.

Non-conviction Records: If an accused person is released without being charged or is acquitted of the offense charged, the official holding the person's fingerprints, arrest card, and description must immediately surrender this information to the person, regardless of whether a request has been made. Mich. Stat. Ann. § 28.243 (2) and (3).

Auditing Requirements: The commanding officer of the central records division may perform random performance audits of the criminal and juvenile history record information. If the commanding officer finds that criminal or juvenile history record information is not being supplied to the division as required by law, the commanding officer shall report this fact to the attorney general. Mich. Stat. Ann. § 28.245a.

Criminal Penalties for Violations of CHR Laws: Any officer having the custody of any county, city, or township records who fails or neglects to furnish the records and files in his office to any person having the right to examine those records is guilty of a misdemeanor punishable by up to one year's imprisonment or a fine of not more than \$500.00. Mich. Stat. Ann. § 750.492.

Civil Remedies for Violations of CHR Laws: If a person is accused but not charged for a crime or is acquitted of the crime for which he is charged, he has a right to demand the surrender of non-conviction information. If, however, such information is denied him, the accused may petition the court for a preemprory writ of mandamus to require issuance of an order of return. Mich, Stat. Ann. §§ 28.243 (2) and (4).

MISSOURI

CHR Repository: Missouri Highway Patrol, Criminal Records Division

Dissemination for Non-Criminal Justice Purposes: Under Missouri's general public records statutes, CHR that has not been declared confidential by law is available to any citizen of the state. Mo. Ann. Stats. § 109.180. However, records that have been declared confidential or closed are available to non-criminal justice agencies only for purposes related to child care employment and nursing home employment and to federal agencies for such investigative purposes as authorized by law or presidential executive order. Non-criminal justice state agencies and private persons or groups may gain access to closed criminal history information only for research or statistical compilation, provided that specified steps are taken to ensure the anonymity of individuals whose criminal histories are accessed. Mo. Ann. Stats. §§ 610.120, 43.507, and 43.531. Closed records include records of any arrest for which a person has not been charged within 30 days of the arrest; any arrest or charge that is dismissed; and any charge of which the accused is found not guilty or for which the sentence is suspended.

Process: A non-criminal justice agency should request CHR checks in writing and provide the subject's name, date of birth, and Social Security number. The patrol will conduct fingerprint-based checks, if desired.

Fee: \$5/name-based check; \$14/fingerprint-based check. Any payment must be by certified check or money order

Turnaround Time: Three days

Information Provided: Information on only those Missouri arrests and charges that have resulted in a conviction. No information on arrests or charges without a recorded conviction may be released.

Reporting Requirements: Prosecuting and circuit attorneys are required to report all charges filed against individuals and to indicate cases in which charges were not filed against arrestees. Court clerks are required to report all conviction or non-conviction final case dispositions, reversals of convictions, and modifications of sentences. The state Department of Corrections and Human Resources must report all receipts of prisoners, escapes, executions, deaths, releases, pardons, paroles, commutations of sentences, and grants of clemency. Mo. Ann. Stat. § 43.503.

Auditing Requirements: Although Missouri statutes do not call for auditing of criminal justice records, state regulations require annual audits of the criminal history records central repository and of a representative sample of criminal justice agencies throughout the state.

Criminal Penalties for Violations of CHR Laws: Any official who violates statutory provisions regarding open dissemination of open public records is subject to dismissal and is guilty of a misdemeanor punishable by a fine not exceeding \$100, not more than 90 days confinement in a county jail, or both. Mo. Ann. Stats. § 109.180. Any person violating provisions regarding dissemination of closed records is guilty of a class A misdemeanor and subject to up to one year of imprisonment and a fine of up to \$1000. Mo. Ann. Stat. § 610.115.

Related Issues:

There have been some relevant cases in Missouri dealing with the issue of making criminal history records available for the purpose of jury selection: State v. Kalter, 839 SW 2d 670, State v. Whitfield, 837 SW 2d 503, and State v. Wilson, 826 SW 2d 79. These cases hold that prior arrest records may be used by prosecutors in questioning potential jurors. A potential juror can request that inquiry about his prior arrests outside the hearing of the other potential jurors.

MONTANA

CHR Repository: State Department of Justice, Identification Bureau

Dissemination for Non-Criminal Justice Purposes: Montana law provides for dissemination to the general public of "public criminal justice information." Criminal history information qualifying as public information includes information regarding convictions, deferred sentences, deferred prosecutions (diversions), post-conviction proceedings and status, initial offense reports, and initial arrest records. Mont. Code Ann. §§ 44-5-103(12) and 44-5-301. However, fingerprints, photographs and other information "not clearly defined as public criminal justice information" is considered confidential. Mont. Code Ann. §§ 44-5-103(3) and 44-5-302. According to Mont. Code Ann. §§ 44-5-302, and 44-5-304, dissemination of confidential CHR information for non-criminal justice purposes is restricted to situations where:

- the information is disseminated with the consent or at the request of the individual about whom it relates;
- a district court considers dissemination necessary;
- the agency receiving the information is authorized by law to receive it; or
- for development of statistical information pursuant to an agreement that outlines the limits of use and confidentiality of the information.

Fee: \$5. Mont. Code Ann. § 44-5-214 permits the bureau to charge requesters for the cost of supplying copies.

Turnaround Time: One week.

Information Provided: Generally, conviction information only, unless the subject of the record consents to release of additional information.

Reporting Requirements: Agencies originating criminal history records, (arresting or prosecuting agencies), must submit copies to the state repository. Mont. Code Ann. 44-5-202 and 213. Courts must report dispositions resulting from court proceedings to originating agencies and the state repository within 15 days of the event; an originating agency must advise the state repository within 30 days of any termination of criminal proceedings; and the department of institutions must report within 30 days all dispositions subsequent to conviction. In addition, prior to dissemination of any criminal history information, criminal justice agencies and the state repository must ensure the timeliness of the information and must make inquiry regarding the current status of a case if no final disposition is on record, except when time constraints require dissemination before an inquiry can be made. Mont. Code Ann. § 44-5-213.

Deletion of Criminal History Records: All copies of criminal records must be returned to the person whom the records are about in the following situations: upon a court order; if no charges were filed concerning the offense for which the records were compiled; if the charge was a misdemeanor and did not result in a conviction; or if the person was found innocent of the offense charged. Mont. Code Ann. § 44-5-202(8).

Auditing Requirements: Montana law requires each criminal justice agency to "ensure that all its criminal justice information is complete, accurate, and current," and directs the justice department to establish rules for criminal justice agencies to ensure adequate disposition reporting and accuracy of records. Mont. Code Ann. § 44-5-213(6) and (7). The justice department is further authorized to "conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies" for

compliance with information management statutes. Mont. Code Ann. § 44-5-105. In addition, a person who is the subject of a criminal history record may request review and correction of the record by the agency maintaining the record. Mont. Code Ann. § 44-5-215.

Civil Remedies for Violations of CHR Laws: The state attorney general may order the withholding of the salary of any officer who fails to provide information as required by law following an investigation into the incident. Mont. Code Ann. § 44-2-205.

Related Issues:

Montana law authorizes criminal justice agencies to take photographs and fingerprints and compile associated information regarding any person arrested for or charged with a felony or a misdemeanor, except when the misdemeanor is a traffic, regulatory, or fish and game offense not resulting in incarceration.

NEBRASKA

CHR Repository: Nebraska State Patrol

Dissemination for Non-Criminal Justice Purposes: Nebraska law specifically limits direct access to criminal history record files to authorized recordkeeping criminal justice agencies only. However, recordkeeping criminal justice agencies may compile reports on this information for the general public. Neb. Rev. Stat. § 29-3520. (These provisions do not make Nebraska unique, however; while most states' laws do not specifically state so, most states limit direct file access to criminal justice agencies and disseminate CHR dissemination through compilation of a record report by the repository agency.) In addition, people or their authorized representatives are entitled to review and copy their records upon verification of identity of the subject. Neb. Rev. Stats. § 29-3525. Records of an arrest more than one year old may not be disseminated to non-criminal justice requesters if no prosecution has arisen out of the arrest, unless the subject of the record is currently under prosecution or correctional control, is currently running for or holding public office, or has authorized the release of such records. Arrest records may also be disseminated for statistical compilation, provided that the identity of the subject is kept confidential. Neb. Rev. Stats. § 29-3523.

Process: Requests should be mailed to the patrol's crime information division, and should include a release, signed by the subject of the request, authorizing release of the record. Requesters may supply fingerprints for a fingerprint-verified CHR search.

Fee: \$10

Turnaround Time: 10-15 days

Information Provided: Information regarding felony and misdemeanor charges.

Reporting Requirements: Every criminal justice agency is required to report any disposition of a felony under its administration to the Nebraska State Patrol within 15 days of the disposition. Dispositions in all other cases must be reported to the local centralized criminal records system if one exists or to the arresting agency within 15 days. Neb. Rev. Stats. §§ 29-3516, 29-209.

Deletion of Criminal History Records: Although Nebraska law does not provide for the deletion or expunction of conviction or non-conviction information, Nebraska statutes do require that dissemination of information concerning an arrest be restricted beginning one year after an arrest if no prosecution has arisen out of the arrest. Neb. Rev. Stats. § 29-3523.

Auditing Requirements: Each criminal justice agency must institute a process of data collection, entry, storage, and systematic audit of criminal history record information that will minimize the possibility of recording and storing inaccurate information. Any criminal justice agency which finds that it has reported inaccurate information of a material nature must notify all criminal justice agencies having received that information. All criminal justice agencies must maintain records of individuals and agencies who have received information and what information those individuals or agencies received. Neb. Rev. Stats. § 29-3517.

Criminal Penalties for Violations of CHR Laws: Any person who permits unauthorized direct access to criminal history information, knowingly fails to disseminate criminal history information open to public inspection, or knowingly makes an unauthorized disclosure of criminal history information is guilty of a Class IV misdemeanor. Neb. Rev. Stats. § 29-3527.

Civil Remedies for Violations of CHR Laws: Any person who has been denied access to public records may petition the state attorney general to evaluate the denial or may petition a district court to review the denial and grant equitable relief upon finding that the person has been unjustly denied access to public records. Equitable relief may include requiring the release of the withheld records and restitution of any costs incurred due to the withholding of records, including attorney fees and court costs. Neb. Rev. Stats. § 84-712.03 and 84-712.07.

NEW HAMPSHIRE

CHR Repository: Department of Safety, Division of State Police

Dissemination for Non-Criminal Justice Purposes: Dept. of Safety, Div. of State Police regs. § 3B provides access to conviction records only for non-criminal justice requesters authorized by statute or executive order and other agencies approved by the director of state police. Individuals and agencies collecting criminal history record information for the express purpose of research, evaluative, or statistical activities also are granted unlimited access to such records. In addition, any individual may obtain his own record upon presentation of satisfactory identification. The dissemination of information regarding arrests for which there is no disposition is limited to police agencies only. Dept. of Safety, Div. of State Police regs. § 4B.

Process: Requests should be mailed to the state police and, except in the case of users authorized by law or executive order, must include a waiver, signed by the request subject and notarized, authorizing access to the subject's record.

Fee: \$10

Turnaround Time: Two weeks

Information Provided: Conviction information only.

Reporting Requirements: Superior and municipal court clerks, sheriffs, deputy sheriffs, police officers, jailers, and prison superintendents must forward to the director of the state police all information relative to persons brought before their courts or otherwise placed in their custody. N.H. Rev. Stat. Ann. § 106 B:14. If no disposition is reported within 90 days of an arrest, the repository should contact the police department or the corresponding court prior to disseminating information regarding that arrest. Dept. of Safety, Div. of State Police regulations § 4 B.

Deletion of Criminal History Records: N.H. Rev. Stat. Ann. § 651:5 provides that individuals may apply to the court in which they were sentenced for annulment of their conviction record under the following circumstances:

Probation: If the person has been sentenced to probation or conditional discharge and has complied with the conditions of his sentence;

Unconditional Discharge: If a person who has been sentenced to unconditional discharge has not been convicted of another crime during a two-year period following such sentence; and

Persons Under 21: If a person under 21 years of age at the time of his criminal act is sentenced to imprisonment and in a three-year period following his release has not been convicted of another offense.

Class B Misdemeanor: A person convicted and sentenced for a class B misdemeanor who has met the conditions of his sentence may apply to annul the record one year after the conditions have been met. If the person has not committed a crime during the time period between the date of sentencing and the date of completion of the terms, the court must order the annulment. The convicted person must be given written notice of his right to apply for an annulment. No court shall order an annulment if the conviction may be counted towards habitual offender status until seven years after the date of conviction.

Auditing Requirements: N.H. Rev. Stat. Ann. § 5 B. requires the supervisor of the state police records and reports unit to conduct annual audits of a representative sample of local and county law enforcement agencies to ensure compliance with record keeping requirements.

Criminal Penalties for Violations of CHR Laws: A person who, during the life of another who has had a record of conviction annulled, discloses the existence of such record is guilty of a misdemeanor and subject to up to one year of imprisonment and a fine of up to \$10,000. N.H. Rev. Stat. Ann. § 651:5 X.

Related Issues

Freedom of Information Requirements: Every citizen during the regular business hours of all public bodies and agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, except as otherwise prohibited by statute. N.H. Rev. Stat. Ann. § 91-A:4. The records of the following bodies are exempt from the provisions of this chapter: Grand and petit juries; parole and pardon boards; personal school records of pupils; records pertaining to internal personnel practices, confidential, commercial, or financial information, personnel, medical, welfare, and other files whose disclosure would constitute invasion of privacy, and; non-conviction records kept by criminal justice agencies.

NEW JERSEY

CHR Repository: New Jersey State Police

Dissemination for Non-Criminal Justice Purposes: *Lack of State Laws/Use of Federal Regulations* -- New Jersey has statutes specifically regulating the use of CHR for child care and lawyer employment background checks, but no statutes or regulations addressing the dissemination of CHR to non-criminal justice agencies generally. Thus, the governor, by executive order established the Criminal Justice Privacy and Security Counsel which, under the authority of the state attorney general, is charged with the responsibility of reviewing requests for access to CHR by non-criminal justice agencies and individuals. In reviewing such requests, the attorney general, at his discretion, generally defers to U. S. Department of Justice regulations governing CHR dissemination. Generally, the attorney general requires that non-criminal justice agencies wishing to access state CHR provide some type of specific authority in the form of a state or federal statute, regulation, or executive order authorizing the specific use intended.

According to federal CHR regulations, "Criminal history record information contained in any Department of Justice criminal history record information system will be made available . . . to Federal agencies authorized to receive it pursuant to Federal statute or Executive order; . . . [and] for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States . . ." 28 CFR § 20.34(a). "Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates." 28 CFR § 20.33(c). However, "when no active prosecution of the charge is known to be pending, arrest data more than one year old will not be disseminated pursuant to this subsection unless accompanied by information relating to the disposition of the arrest." 28 CFR § 20.33(a)(3).

Process: A non-criminal justice agency wishing to conduct CHR checks must contact the attorney general's office and provide one of the above-listed types of authorization. Upon the attorney general's acceptance of the authorization provided, the agency may then request CHR checks based upon name, date of birth, and Social Security number or fingerprints. For name-based checks, the state will include with any results a notice that it does not guarantee the accuracy of the information provided.

Fee: \$8/name-based check; \$12/fingerprint-based check.

Turnaround Time: One week.

Information Provided: Only New Jersey arrests and charges that have resulted in convictions. In accordance with its policy of following federal statutes and regulations, New Jersey will not release for non-criminal justice purposes any information on arrests and charges that have not resulted in a conviction. Release of non-conviction information would require special authorization from the U. S. attorney general.

Reporting Requirements: The clerk of every court before which a person appears on any criminal charge must report to the state bureau of identification within 30 days regarding the court's sentence or other disposition of the case. These statistics are included in an annual report on crime conditions that is submitted by the state police. N. J. Stat. Ann. § 53:1-18.

Deletion of Criminal History Records: In any case in which a person has been arrested or charged for a crime, but in which proceedings were dismissed, or the person was acquitted or discharged without

conviction, that person may petition the superior court in the county in which the disposition occurred for the deletion of all records and information pertaining to the case. N. J. Stat. Ann. § 2C:52-6.

Criminal Penalties for Violations of CHR Laws: Any official who neglects or refuses to make any report or to do any other required act regarding maintenance of and access to records is guilty of a misdemeanor and is subject to removal from office. N. J. Stat. Ann. § 53:1-20. Any person who reveals the existence of an arrest, conviction, or related legal proceeding with knowledge that the records of such legal action have been deleted or sealed is a disorderly person and subject to a fine not exceeding \$200. N. J. Stat. Ann. § 2C:52-30.

Civil Remedies for Violations of CHR Laws: Any citizen denied the right to inspect, copy, or obtain a copy of a record, contrary to provisions of the Public Records Act, may apply to the Superior Court of New Jersey for an order to copy or obtain a copy of the record. A successful plaintiff is entitled to costs and a reasonable attorney's fee not to exceed \$500. A defendant who prevails is entitled to taxed costs also. N.J.S.A. § 47:1A-3.

Related Issues

In New Jersey, a case relating to the expunction of criminal history records is relevant: Application of V.S., 609 A. 2d 530 (1992). The court held that a public school guidance counselor, who had been convicted of child abuse 19 years ago, was entitled to expunction of the records of his conviction after he successfully completed his probationary sentence. After his sentence, he led a law abiding life, and even though the order for expunction would not preserve the availability of the criminal records for inquiries by the public school systems, the court permitted the expunging.

NEW YORK

CHR Repository: Division of Criminal Justice Services, Bureau of Identification

Dissemination for Non-Criminal Justice Purposes: Dissemination of CHR for non-criminal justice purposes is limited to uses authorized by state or local law. Some state-authorized uses are hiring of child care and supervision employees (N.Y. Soc. Serv. Law, § 378-a), school districts seeking to employ bus drivers (N.Y. Veh. & Traf. Law, § 509(d)), and hiring of private security guards. N.Y. Crim. Proc. Law § 160.50(1)(c), however, provides that upon termination of a criminal proceeding with a result favorable to the accused, official records relating to the proceeding on file with the division, a court, a police agency, or a prosecutor's office are to be sealed and not made available to any person or public or private agency. NYCRR Regulation 6050.1 authorizes individuals to inspect and copy their own CHR information record to ensure its accuracy. The regulation also permits the subject of the criminal record to challenge any perceived defects in the record. NY EXEC § 837, passed in 1993, authorizes the state police, on behalf of the state racing and wagering board, to be granted access to the CHR of the division of criminal justice services in order to execute the responsibilities of the board and the division of the state police in regard to the regulation, oversight, licensing or certification, including fingerprinting, CHR checks, and background investigations of persons applying to engage in such activities.

Process: Requesters must submit a fingerprint request card to the bureau containing information identifying the subject of the request. The bureau will not release CHR for non-criminal justice purposes without fingerprints.

Fee: \$44

Turnaround Time: Three to six weeks.

Information Provided: Conviction information only.

Reporting Requirements: The division is responsible for collecting and analyzing criminal justice information and data, including the offense for which a person is arrested, the county within which the arrest is made, the charge filed, and the disposition of the charge, and any resulting sentence. N.Y. Exec. Law, § 837(4)(c).

Deletion of Criminal History Records:

Conviction Records: There is no requirement to expunge conviction records for criminal offenses. N.Y. Crim. Proc. Law, § 160.55, however, provides for the sealing of conviction records concerning certain non-criminal offenses, such as traffic infractions.

Non-conviction Records: Upon the termination of a criminal action or proceeding against a person in favor of that person, the court must enter an order to have sealed all official records and papers relating to the arrest or prosecution that are on file with the division of criminal justice services, any court, police agency, or prosecutor's office. N.Y. Crim. Proc. Law, § 160.50(1)(c). Section 160.50(1)(d) states that such records shall be made available to persons who are the subject of such records, prosecutors, law enforcement agencies, parole officials, and state or local agencies that issue firearms permits.

Auditing Requirements: There are no provisions relating to the requirement to conduct audits of criminal history record information. N.Y. Exec. Law, § 837-b(2), however, require criminal justice agencies to install and maintain records needed for reporting data required by the commissioner of the New York State Division of Criminal Justice Services and to give him access to records for the purpose of inspection.

Civil Remedies for Violations of CHR Laws: If a court or peace officer does not supply criminal history information as required, the commissioner may apply to the supreme court for an order requiring compliance. Failure to comply with such an order is considered in contempt of court and punishable by confinement pending compliance. N.Y. Exec. Law § 837-b(3).

Related Issues:

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer must provide, within 30 days of a request, a written statement setting forth the reasons for such denial. N.Y. Corr. Law § 754.

NORTH CAROLINA

CHR Repository: State Bureau of Investigation, Division of Criminal Information, Identification Section

Dissemination for Non-Criminal Justice Purposes: Access to state CHR for non-criminal justice purposes is strictly limited to government agencies that are required by law to conduct background investigations for employment or licensing purposes. Entities not authorized to receive state CHR may obtain, for employment screening purposes, conviction information maintained by county governments.

Any person has the right to review any computerized CHR information maintained about him by the state. However, review may take place only under strict supervision and individuals may take notes but may not make copies of criminal history information. 12 NCAC 4C.0205. An attorney engaged in defending an individual against a criminal charge also may obtain access to criminal history information upon showing that such information is relevant to the case. 12 NCAC 4C.0204.

Process: Government agencies authorized by law to use state CHR must first have the relevant statute reviewed and verified by the state attorney general's office and must execute a user agreement with the repository.

Fee: \$15

Turnaround Time: One to two weeks

Information Provided: Conviction information only.

Reporting Requirements: The division of criminal information is directed to compile all dispositions arising from criminal charges. N. C. Gen. Stat. § 114-10. When an individual is fingerprinted or convicted, a report of the disposition of that individual's case must be made to the state bureau of identification. N. C. Gen. Stat. § 15A-1382.

Deletion of Criminal History Records:

Conviction Records: State law provides for expunction of offense records for first-time misdemeanor offenders who committed their offense while under 18 years of age and first-time drug-related misdemeanor offenders who committed their offense when under the age of 21. An individual is allowed only one expunction in a lifetime, and while records are deleted at all agencies, confidential records of individuals who have received expunction are kept for use only by judges for the purpose of determining whether or not an individual has already received an expunction. N. C. Gen. Stat. §§ 15A-145 and 90-96.

Non-conviction Records: Individuals charged with a drug-related misdemeanor that resulted in no prosecution or a finding of innocence may apply for expunction if proceedings against them occurred when they were under 21 years old. N. C. Gen. Stat. § 90-96. Individuals found innocent or not prosecuted for any other offense, felony or misdemeanor, may apply for expunction of records regardless of their age at the time of proceedings against them. N. C. Gen. Stat. § 15A-146. As in the case of convictions, individuals are entitled to only one expunction in a lifetime.

Auditing Requirements: When an individual challenges the accuracy of a criminal history record relating to him, the criminal justice agency holding the record must conduct an audit to determine the accuracy of the information." 12 NCAC 4C.0205(k). In addition, agencies participating in the statewide Police Information

Network (PIN) are subject to periodic audits for compliance with record-keeping laws and regulations. Agencies may lose the right to participate in the PIN if an audit reveals deficiencies in record-keeping activities. 12 NCAC 4C.0207

Civil Remedies for Violations of CHR Laws: A person responsible for reporting case dispositions to the state bureau of investigation who fails to report as required is guilty of civil contempt. N. C. Gen. Stat. § 15A-1383. In addition, PIN-participating agencies who fail to comply with rules governing security and accuracy of records may lose the privilege of continuing to participate in the network. 12 NCAC 4C.0207.

OKLAHOMA

CHR Repository: State Bureau of Investigation

Dissemination for Non-Criminal Justice Purposes: Oklahoma statutes authorize the dissemination of specific CHR information to non-criminal justice state agencies and the general public. The Oklahoma Open Records Act (Okla. Stat. tit. 51 § 24A.3 et. seq.) states that law enforcement agencies shall make available to the public arrest records, conviction information, jail register information regarding the names of prisoners and the reasons for their commitment and discharge as well as specified types of non-criminal history law enforcement information. The Oklahoma Department of Consumer Credit, the Oklahoma State Insurance Commission, the Oklahoma Horse Racing Commission, or any other state agency, board, department or commission may obtain an analysis of fingerprints for licensing purposes by the Bureau on any person." 74 Okla. Stat. § 150.9.B. In regard to information not specifically made public by law, law enforcement agencies may deny access "except where a court finds that the public interest or the interest of an individual outweighs the reason for denial." In addition, law enforcement agencies may deny access to open law enforcement records that have been placed in an investigative file if a copy of the record is available for public inspection at another public agency or department. Individuals who are the subject of criminal history records have the right to inspect those records under the Open Records Act. However, "record" does not mean nongovernment personal effects or, unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Turnpike Authority obtained in connection with the Authority's electronic toll collection system, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body.

Fee: \$10

Turnaround Time: 24-48 hours

Information Provided: Information regarding convictions and open arrests.

Reporting Requirements: Law enforcement officers are required to submit to the State and Federal Bureaus of Investigation the copies of fingerprints of any arrestee who is charged with a felony; who is believed to be a fugitive from justice; who is in possession of stolen property; who is in possession of burglar's tools; who is in possession of explosives reasonably believed to be intended for unlawful use; who is in possession of an infernal machine or bomb intended for unlawful use; who is carrying a concealed deadly weapon; or who is in possession of materials used in counterfeiting. All arrest information pertaining to any such person must also be forwarded. Okla. Stat. tit. 74 § 150.12.

Deletion of Criminal History Records: Oklahoma statutes provide for a deferred judgement procedure for offenders who previously have not been convicted of a felony. Under the procedure, following a verdict or plea of guilty or a plea of nolo contendere, a court may defer a judgment of guilt and sentence the offender to probation for a term of up to five years. If the offender completes the probation term without violating the conditions of probation, the defendant is discharged without a court judgment of guilt, and the verdict or plea of guilty or plea of nolo contendere is expunged from his record and all charges are dismissed with prejudice. Okla. Stat. 22 § 991c. In addition, statutes authorize the state bureau of investigation to destroy records kept for at least 10 years that are deemed to be no longer of value to the bureau. Okla. Stat. tit. 74 § 150.7.

Criminal Penalties for Violations of CHR Laws: Any public official who willfully violates any provision of the Oklahoma Open Records Act is guilty of a misdemeanor and subject to a fine of up to \$500, up to one

year's imprisonment in a county jail, or both. In addition, other statutes provide that any public officer who commits or permits destruction, larceny, alteration, or falsification of public records is subject to loss of office and up to five years' imprisonment, and any person not a public officer guilty of such an offense is subject to up to five years' imprisonment and a fine of up to \$500. Okla. Stat. tit. 21 §§ 461 and 462.

Civil Remedies for Violations of CHR Laws: Any person denied access to a record of a public body or public official may bring a civil suit for declarative and/or injunctive relief and, if successful, shall be entitled to reasonable attorney's fees. If the public body or official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney's fees. Okla. Stat. tit. 51 § 24A.17.

RHODE ISLAND

CHR Repository: Office of the Attorney General, Criminal Identification Bureau

Dissemination for Non-Criminal Justice Purposes: Rhode Island law authorizes dissemination of CHR to any attorney of record in a criminal action, and any businesses which are required by federal or state law or regulation to conduct CHR screening of potential or prospective employees. R. I. Gen. Laws § 12-1-4. However, records maintained for criminal law enforcement purposes are not considered open to the general public, with the exception of any records reflecting the initial arrest of an adult and any complaint against an adult filed in court by a law enforcement agency. R. I. Gen. Laws § 38-2-2(d)(4). No provisions specifically address the inspection of criminal records by any person who is the subject of such records. However, law enforcement records, with the exception of arrest or complaint information, are exempted from free public access and dissemination of criminal records is restricted. R. I. Gen. Laws §§ 38-2-3, 38-2-2, and 12-1-4.

Process: The attorney general's office is responsible for compiling information on "all persons who shall be or shall have been convicted of felony, or imprisoned for violating any of the military, naval, or criminal laws of the United states or of any state," "of well known and habitual criminals," and any person confined in any state penal institution. R. I. Gen. Laws § 12-1-7.

Fee: \$14

Turnaround Time: Two to four weeks

Information Provided: Conviction records only.

Reporting Requirements: State and local police officials are required to report to the attorney general information concerning all arrestees wanted for serious crimes or who are fugitives from justice. R. I. Gen. Laws § 12-1-10. Whenever an offender has been convicted and sentenced or pleads nolo contendere to an indictable offense, or has been sentenced to imprisonment for six months or more for a non-indictable offense, information regarding that offender must be transmitted to the office of the attorney general. R. I. Gen. Laws § 12-1-11.

Deletion of Criminal History Records:

Conviction Records: Upon motion by a person who is the subject of a criminal history record, a court may in its discretion order the expunction of that person's conviction record if the person was convicted of a misdemeanor and has not committed another offense for the past five years or convicted of a felony and has not committed another offense for the past 10 years, and the person appears to have been rehabilitated to the court's satisfaction. R. I. Gen. Laws § 12-1.3-3. If a person's conviction records have been expunged, that person may state in any application for employment (see exceptions, below), license, or other civil privilege, or any appearance as a witness that he or she has never been so convicted. A person who has had his criminal record expunged may truthfully state that he has never been convicted. However, if the person is an applicant for a law enforcement position, an applicant to the bar or a state, or an applicant for a teaching certificate, a coaching certificate, or an applicant for an early childhood education facility, the person has a duty to disclose the fact of conviction, regardless of expunction. R. I. Gen. Laws § 12-1.3-4.

Non-conviction Records: Provided that the person has not been convicted previously of a felony, any criminal history information regarding an offense for which a person has been

acquitted or otherwise exonerated must be destroyed and any court record must be sealed upon motion within 45 days of the acquittal or other exoneration. No person who has been convicted of a felony will have his/her records sealed. R.I. Gen. Laws §§ 12-1-12, 12-1-12.1.

Criminal Penalties for Violations of CHR Laws: Any person violating provisions regarding the destruction and sealing of records of persons acquitted or otherwise exonerated shall be fined up to \$100. R. I. Gen. Laws § 12-1-2.

Civil Remedies for Violations of CHR Laws: Any person violating provisions regarding the expunction of conviction records "shall be civilly liable." R. I. Gen. Laws § 12-1.3-4.

VIRGINIA

CHR Repository: The Department of State Police's Central Criminal Records Exchange.

Dissemination for Non-Criminal Justice Purposes: Virginia law permits dissemination of CHR in the following instances: Va. Code Ann. § 19.2-389

- **State Agencies:** Agencies of the state may obtain criminal history record information for the purpose of conducting investigations of applicants for public employment, permit, or license whenever, in the interests of public welfare and safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration.
- **Pursuant to State or Federal Statute or Executive Order:** Criminal history record information may be obtained by requesters that require such information to implement a state or federal statute or executive order that expressly refers to exclusions based upon criminal conduct.
- **Pursuant to a Court Order or Court Rule:** Individuals and agencies, where authorized by a court order or a court rule, shall be given access to criminal history record information.

No information concerning the arrest of an individual may be disseminated to a non-criminal justice requester if one year has passed since the arrest, there has been no disposition of the charge recorded, and no active prosecution of the charge is pending. Criminal history record information must be disseminated at his cost to any person requesting a copy of his own criminal history record information. Va. Code Ann. § 19.2-389.

Process: Requesters must provide the exchange with a release, signed by the subject of the request and notarized, authorizing access to the subjects record.

Fee: \$5

Turnaround Time: 72 Hours

Information Provided: Conviction information only.

Reporting Requirements: The clerk of each circuit court and district court must report to the repository any dismissal; indefinite postponement or continuance; charge still pending due to mental incompetency; nolle prosequi, acquittal, or failure of a grand jury to return a true bill; or conviction. Within 72 hours following the receipt of a warrant or capias for the arrest of any person on a charge of a felony, the law-enforcement agency that received the charge shall report the accused's name, date of birth, Social Security number, and other appropriate information required by the Department of State Police.

Deletion of Criminal History Records: There is no requirement to purge conviction data. If a person charged with a crime is acquitted, or if a nolle prosequi is taken or the charge is otherwise dismissed, the person may petition for expunction of the police records and court records relating to the charge. The court will hold a hearing on the petition, and if the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, it must enter an order requiring the expunction. Va. Code Ann. § 19.2-392.2

Auditing Requirements: The state Criminal Justices Services Board is charged with ensuring that annual audits are conducted of a representative sample of state and local criminal justice agencies for compliance with this article and the regulations of the Board. Va. Code Ann. § 9-186.

Criminal Penalties for Violations of CHR Laws: Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information to any agency or person in violation of this article is guilty of a class two misdemeanor and subject to up to six months' imprisonment and a fine of up to \$500. Va. Code Ann. § 9-195.

Civil Remedies for Violations of CHR Laws: Any person may institute a civil action for actual damages resulting from a violation of records access provisions, or to prevent such a violation, or both. Va. Code Ann. § 9-194.

Related Issues:

An employer cannot, in any application, interview, or otherwise, require an applicant for employment to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning an arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged. Va. Code Ann. § 19.2-392.4. People who violate this statute are guilty of a Class 1 misdemeanor for each violation.

WASHINGTON

CHR Repository: Washington State Patrol

Dissemination for Non-Criminal Justice Purposes: Information regarding convictions and current arrests are disseminated without restriction. Specifically, Wash. Rev. Code Ann. § 43.43.815 requires the state patrol to furnish conviction records upon written request by any employer for the purpose of evaluating employees and prospective employees who, in the course of employment, may have access to information affecting money or items of value. Non-conviction information may be disseminated only in the following situations:

- to implement statutes, ordinances, executive orders, or court rulings that expressly direct that non-conviction information be available for a specific purpose. Pursuant to this section, government non-criminal justice agencies and the private sector may be able to gain access to criminal history records containing non-conviction information;
- pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice;
- for research, evaluative, and statistical activities; and
- for individuals who wish to review CHR information on file about themselves for the purpose of challenging any incorrect information. Wash. Rev. Code Ann. § 10.98.080.

Process: Requesters must supply a fingerprint card signed by the subject of the request.

Fee: \$10

Turnaround Time: Two to four weeks

Information Provided: Information regarding current arrest and convictions.

Reporting Requirements: No criminal justice agency may disseminate criminal history record information pertaining to an arrest, detention, indictment, or other formal criminal charge unless the disposition of such charge accompanies the dissemination. Wash. Rev. Code Ann. § 10.97.040.

Deletion of Criminal History Records: Wash. Rev. Code Ann. § 10.97.060. There is no requirement to expunge conviction records. Generally, records containing only non-conviction data must be deleted 2 years after a favorable disposition or three years after an arrest if no conviction has been obtained.

Auditing Requirements: Wash. Rev. Code Ann. § 10.98.100. This section provides for an annual audit of each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal offender record information. This section further provides that a list of all arrests with no accompanying disposition reports nine months after arrest must be sent to each prosecuting attorney, district and municipal court, and originating agency, which shall have 45 days to docket a current disposition report.

Criminal Penalties for Violations of CHR Laws: Persons who willfully acquire, disseminate, or falsify criminal history record information in contravention of state policy and procedure are guilty of a misdemeanor. Wash. Rev. Code Ann. § 43.43.810. If the infraction concerns a state employee divulging investigative information on organized crime, the party is guilty of a felony. Wash. Rev. Code Ann. § 43.43.856.

Civil Remedies for Violations of CHR Laws: Section 10.97.110 allows those damaged by the dissemination of criminal record information to recover actual damages from the guilty party. It also provides for the issuance of an injunction to enjoin further disclosure by that party.

WYOMING

CHR Repository: Wyoming Division of Criminal Investigation, Criminal Justice Information Section, Identification Unit

Dissemination for Non-Criminal Justice Purposes: Wyoming places restrictions on the dissemination of CHR information based on the category of the recipient. Certain non-criminal justice agencies are authorized by statute to gain access to CHR information in the performance of a specific duty. Each agency authorized to access CHR information must take reasonable security precautions to prevent unauthorized access. Wyo. Stat. § 9-1-627 (c).

Process: Each requester must submit fingerprints on a standard, state-supplied applicant fingerprint card. The applicant must sign the card. On the reverse side of the card should be printed a signed, notarized waiver listing to whom CHR information should be disseminated.

Fee: \$10

Turnaround Time: One week

Information Provided: For those who are eligible to receive it, there is no distinction between conviction and non-conviction information.

Reporting Requirements: When an adult is arrested for a felony, high misdemeanor or other misdemeanor determined by the division of criminal investigation, the law enforcement agency responsible for the arrest shall process the person in accordance with the uniform procedures prescribed by the division. The law enforcement agency shall send to the division any information required under the Wyoming Criminal History Record Act, and any additional information requested by the division.

Criminal Penalties for Violations of CHR Laws: Any person who willfully and knowingly violates the Public Records Act is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$100.

Privacy Legislation: Wyo. Stat. § 16-4-203 provides that the custodian of any public records must permit any person to inspect the records except where such inspection would be contrary to any state or federal statute or regulation or is prohibited by rules promulgated by any court of record. Furthermore, any custodian of public records may deny the right to inspect records of investigations conducted by, or the intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, police department, or any investigative files compiled for any other law enforcement agency for prosecution purposes, on the ground that disclosure would be contrary to the public interest.

APPENDIX C

Summary of Proceedings

**March 15, 1990 Conference on
the Potential for State Cooperation in Conducting Background
Checks of Payees for Social Security Administration Programs**

FROM THE
NATIONAL
CRIMINAL
JUSTICE
ASSOCIATION



Summary of Proceedings

The Potential for State Cooperation in Conducting Background Checks of Payees for Social Security Administration Programs

Sponsored by the
National Criminal Justice Association

in cooperation with the

National Governors' Association
Social Security Administration,
U. S. Department of Health
and Human Services

March 15, 1990
Washington, D. C.

THE POTENTIAL FOR STATE COOPERATION IN CONDUCTING BACKGROUND CHECKS OF PAYEES FOR SOCIAL SECURITY ADMINISTRATION PROGRAMS

Introduction

This report provides an overview of proceedings of a meeting convened by the National Criminal Justice Association (NCJA), in cooperation with the National Governors' Association and with funding from the U. S. Department of Health and Human Services' Social Security Administration (SSA), to assess the potential for states to cooperate with the SSA in conducting background checks of SSA "representative payees," or individuals who apply to be designated recipients of federal benefits on behalf of others. A particular focus of the meeting was the use of states' criminal history records as a possible means of determining the reliability and trustworthiness of payee applicants. Brought together at the one-day meeting on Mar. 15, 1990, in Washington, D.C., to examine legal, policy, and operational issues surrounding SSA access to and use of state records for such purposes and to discuss states' interest in and ability to assist the SSA in such an effort were state and local criminal justice officials and information specialists, SSA and other federal agency officials, and representatives of national organizations with an interest in payee programs. This report summarizes meeting presentations and discussion, with a particular emphasis on conclusions drawn regarding the SSA's proposal to conduct a pilot program of payee background checks in several states.

Background

Several million elderly and disabled Americans, as well as spouses and dependent survivors of deceased wage earners, depend upon federal and state entitlement programs as a primary source of financial support. Under many of these entitlement programs, beneficiaries who are unable to manage their own financial affairs because of illness, severe mental or physical disability, or chemical dependency rely on "representative payees" to receive and manage their benefits. In instances where representative payees are necessary, the SSA and other agencies managing entitlement programs generally seek to appoint as payees family members, legal guardians, close friends, caretaking institutions with custody of beneficiaries, or others whose interest in the beneficiaries' welfare makes them preferred candidates for such appointments. However, increases in the numbers of beneficiaries in the SSA's Retirement Survivors and Disability Insurance (RSDI) and Supplemental Security Income (SSI) programs who are destitute and have little or no family support structure have increased the need for the SSA to rely on payee candidates with less clearly defined ties to beneficiaries. In a relatively small proportion of those instances where the SSA must certify such individuals as payees, payees have misappropriated benefits for their own personal gain. In recent years, several well-publicized cases involving victimization of beneficiaries by payees have led to an increased awareness by federal officials and members of Congress of the need for effective methods of determining the trustworthiness of individuals appointed as representative payees for SSA program beneficiaries.

One approach under discussion by SSA officials is the development of a state-based nationwide means of conducting pre-appointment background checks of prospective payees. In light of several recent cases in which SSA-appointed payees were found to have felony conviction records, the SSA has been considering specifically the possibility that state and local criminal history records may be the best available source of information regarding backgrounds of potential representative payees.

To assist the SSA in determining the feasibility of this type of approach, the NCJA received a purchase order from the SSA to convene a meeting of officials from entitlement programs and criminal justice agencies at the federal and state levels, as well as representatives of concerned interest groups, to discuss issues surrounding available state criminal history record information, means of access to that information, and the potential for cooperation between federal and state agencies in obtaining and using such information for background checks of SSA representative payee candidates. The SSA particularly was interested in learning from the states whether they would be willing and able to participate in some form of demonstration program to determine the feasibility of the SSA's using state records for payee background checks.

Taking into account the 10 geographically-based administrative regions designated by the federal government for program administration, as well as the locations of payee misappropriation incidents and the NCJA's working relationship with states in other projects, among other factors, the SSA and the NCJA invited 19 states and the District of Columbia to participate in the meeting. By region, states invited were as follows: Region I, New Hampshire and Rhode Island; Region II, New Jersey and New York; Region III, the District of Columbia and Virginia; Region IV, Florida and North Carolina; Region V, Illinois and Michigan; Region VI, Arkansas and Oklahoma; Region VII, Missouri and Nebraska; Region VIII, Montana and Wyoming; Region IX, California and Hawaii; and Region X, Idaho and Washington. In addition, the SSA and the NCJA asked numerous national organizations with interest in either payee- or criminal history records-related issues to attend the meeting. A list of meeting participants is included in the appendices to this report.

In preparation for the meeting, the NCJA staff conducted research to develop background information on various aspects of the meeting topic. Testimony from several congressional hearings held in 1989 on the payee issue was reviewed, and proposed legislation regarding background checks for SSA representative payees was summarized. The NCJA also conducted legal research on court decisions that have addressed the issue of the scope of the SSA's responsibility for conducting background checks of potential payees and on state statutes affecting dissemination of criminal history record information. In addition, the NCJA reviewed technical reports concerning state-of-the-art technologies that could be applied to coordination of criminal records checks among states and the federal government. The results of these research efforts included summaries of public record, criminal history record, and privacy statutes for the 20 states invited to participate in the meeting; summaries of three recent federal court cases involving representative payees' misappropriation of benefits; status reports on pending federal legislation addressing the problem of misappropriation by representative payees; and compilations of federal statutes and regulations regarding the certification of individuals to be representative payees for SSA entitlement programs. These materials, as provided to meeting participants, are included as appendices to this report.

The meeting was held on Mar. 15, 1990, at the Hall of the States in Washington, D. C. The meeting program included a keynote address; presentations on the SSA's concerns and objectives regarding representative payee background checks, legal and policy issues related to use of state criminal history records information, and the scope and quality of information available from the U. S. Department of Justice's Federal Bureau of Investigation (FBI) and from state records nationwide; and open discussion of issues raised, as well as potential designs of possible information-sharing arrangements between the SSA and individual states that might assist the SSA in a program to use state records for background checks. A copy of the meeting agenda is included in the appendices to this report.

Presentations and discussions highlighted a number of specific issues that the SSA would have to address in order to implement a criminal history records checking system for representative payee applicants. For example, there is substantial variation among states concerning statutory and practical limitations on the availability of records information and the procedures that the SSA might have to adopt in order to obtain information. Specifically, for example, state meeting participants indicated that their states most likely would not be able to work with the SSA unless it adopted procedures for obtaining fingerprints of applicants whose criminal records were to be checked because those states all use fingerprints as the basis for identifying individuals' records. Other issues of concern included what volume of records checks would be conducted; which payee candidates, or categories of candidates, would be subject to records checks; what procedures there are or would be for integrating criminal history information into the payee certification process; and which agencies would assume ultimate responsibility for decisions to certify individuals as representative payees and the accuracy of information supporting those decisions.

Opening Remarks

Sandy Crank, associate commissioner of the SSA's Office of Retirement and Survivors Insurance, delivered prepared remarks on behalf of SSA Commissioner Gwendolyn S. King, who originally planned to open the meeting but was unable to attend. (The text of Commissioner King's remarks is included in the appendices to this report.) Those remarks emphasized the importance of a reemergence of values of personal responsibility in the 1990's and characterized the meeting as a means of underscoring those values by encouraging cooperative development of programs to improve the lives of government program beneficiaries.

Mr. Crank reviewed the history of the use of representative payees in the RSDI and SSI programs, through which the SSA provides benefits to millions of people, primarily the elderly and the disabled, and the recent development of problems involving payees found to have misappropriated benefits payments or otherwise to have been untrustworthy. From the establishment of the payee program in 1939 through the mid-1970's, Mr. Crank explained, the SSA had little difficulty in identifying either individuals, such as family members, close relatives, or friends, or caretaking institutions with custody of beneficiaries to serve as payees. However, Mr. Crank said, finding payees from these groups recently has become more difficult because of such changing social conditions as an increase in the number of beneficiaries who are poor or mentally or emotionally handicapped or who suffer from substance abuse problems, but have no known family or friends able to serve as payees; deinstitutionalization of the less severely mentally ill; and the lack of attention to beneficiaries by families no longer able to cope with their relatives' addictions or disabilities. As a result, the risk has increased that untrustworthy individuals may be appointed as payees.

The SSA has been considering several options to deal with the problem, which so far has affected only a small number of beneficiaries, but could grow to affect many more if not addressed. These options include expanding the number and scope of questions on existing payee application forms regarding felony records, requiring detailed reporting by payees of their allocation of beneficiary payments received, and conducting credit and/or criminal records checks of payee applicants. Mr. Crank acknowledged that although no system can guarantee the "goodness" of a payee candidate, the SSA believes that it is possible to screen out many inappropriate payee candidates through processes such as criminal history records checks. He emphasized the SSA's desire to explore the possibility of screening payees through state records and the SSA's belief that cooperation between the SSA and the states is in the mutual interest and capabilities of both the SSA and the states.

Mr. Crank described current SSA procedures for selecting representative payees. While emphasizing SSA's longstanding statutory directive and agency policy to establish programs designed around the family to ensure disbursement of benefits directly to beneficiaries whenever possible, Mr. Crank noted that the Congress has recognized the need for payees in some cases and therefore has given the SSA broad latitude in setting conditions for payment of benefits. Generally, the SSA's procedures provide for direct payment of benefits to all beneficiaries except minors, the legally incompetent, those incapable of managing their own affairs, and those addicted to alcohol or drugs. In cases where the need for a payee is established, payees are sought from the following groups in the following order: family members with custody, legal guardians, friends, custodial institutions responsible for care and treatment, volunteers, attorneys, and nonprofit organizations.

By federal statute, the SSA is required to "investigate" payee applicants for suitability for appointment. Under current procedures, a payee applicant completes an application form and submits to an interview by the SSA in the SSA local office closest to the applicant. The application asks for information about the applicant's relationship to the beneficiary and, if the applicant is an individual rather than an organization, about the applicant's employment and felony record. (A copy of the application form is included in the appendices to this report.) Decisions regarding payee appointments generally are made at the local offices, after review of information obtained from applications and interviews. Mr. Crank emphasized that, until recently, few problems have been identified in the payee program, but that, regardless of scope, the SSA is anxious to prevent further abuse of the system to the extent possible.

Mr. Crank suggested that states, as well as the federal government, have an interest in ensuring proper payment to beneficiaries because the SSA in some cases administers state benefits that supplement federal payments through payees. Mr. Crank noted that the conclusions reached at the meeting may be applicable to any program, whether at the federal, state, or local level, that pays recurring benefits through individuals who serve in a capacity similar to that of an SSA payee.

Mr. Crank set out several SSA goals in addressing the problem of payee abuse and fraud, some of which the SSA already has begun to address:

- In compliance with statutes governing use and dissemination of public records, obtain accurate information on prospective payees as quickly and efficiently as possible;
- Revise the existing SSA payee application form to include more extensive questions regarding the applicant, particularly the existence and nature of any felony record and the applicant's relationship to the beneficiary and intentions in accepting payee duties.
- Establish a data base of information on individuals who have misappropriated funds as payees or who have been convicted of fraud involving SSA programs.
- Revise SSA beneficiary incapability standards to reduce the number of marginal beneficiaries who currently are required to find payees but actually are able to manage their own affairs.

In concluding, Mr. Crank expressed the SSA's desire to establish pilot efforts to explore whether an SSA program that involved working with states in conducting background checks for SSA payee applicants would be cost-effective, efficient, and applicable to other, similar programs that use payees.

Gwen A. Holden, executive vice president of the NCJA, gave an overview of issues relating to SSA/state cooperation that the NCJA had discovered in its work to date in conceptualizing a possible demonstration program to conduct criminal history record checks of SSA payee applicants. Ms. Holden pointed out that background checks of criminal history records for non-criminal justice purposes is a topic of increasing concern for the states, and noted that, to date, such records checks have been applicable primarily to potential child care workers or teachers. Ms. Holden also noted, however, that several other initiatives are under way that have some bearing on non-criminal justice uses of criminal history records. For example, the federal government and the states are strengthening cooperative efforts in conducting records checks, states may be upgrading their criminal records data bases, and statutes governing non-criminal justice access to certain criminal history records may be amended in some states to permit greater access for non-criminal justice purposes.

Ms. Holden described the meeting as an effort to begin the process of framing and determining the shapes of possible demonstration initiatives and offered several observations on what types of issues participants might consider. For example, for a number of reasons, including the variability of state laws regarding records access and differing levels of data quality and accuracy from state to state, the SSA may want to work with states individually to develop demonstration programs specific to the respective states rather than develop a single model for all of the programs. The approach would have an added benefit in that the demonstration initiatives would result in information and recommendations based on varying circumstances that would be useful in determining the content and expectations of any expanded or nationwide SSA effort in the future, she noted.

Ms. Holden also addressed the issue of states' concerns about what they might gain from participating with the SSA in a pilot program. Considering the problems that many states currently are experiencing in attempting to meet increased criminal justice and non-criminal justice requests for records checks from their own state agencies, an increase in the number of federal agency requests would present an even greater burden. However, the demonstration program might give states a better understanding of how they might handle increases in requests more efficiently and cost effectively, she said. Moreover, working with the SSA would help the states by providing them the opportunity to enhance programs for checking backgrounds of potential payees, employees, or others in their own state programs, Ms. Holden said.

Ms. Holden said that the NCJA has received indications of interest from many of the states initially invited to participate in the meeting, but the types of relationships that may develop between the SSA and the states currently is unclear. Ms. Holden explained that resources available to the states may become an issue, especially if long-term relationships develop that increase the volume of background checks permanently. Ms. Holden suggested that the range of relationships that might develop between the SSA and the states includes:

- No relationship at all in states that decide not to participate with the SSA in a pilot program;
- Adoption of procedures that would entail using FBI records for initial checks of applicants and following up as necessary, in the respective states;
- A relationship wherein a state would conduct initial investigations and forward records reports to the SSA, which would make eligibility decisions; and
- Agreements under which the SSA would contract with states to conduct and complete investigations but retain records reports.

Ms. Holden noted that the SSA also faces several other issues relating to development of a pilot program, including the issues of the manner in which investigations will be initiated—whether by name and date-of-birth searches or by fingerprint cards or other identifiers—and the degree of detail on criminal histories that the SSA would seek.

Ms. Holden concluded with an expression of the NCJA's commitment to helping the SSA and the states begin to address mutual problems surrounding such issues if they decide to go forward with pilot programs.

Presentation Summaries

Meeting presentations and discussion focused on the SSA's use of state criminal history records, as opposed to other types of records or other approaches not tied to state records, because many states currently are reviewing their criminal history records processing capabilities with a view toward using the records data as the basis for state programs and policymaking. Following the opening remarks, meeting participants heard several background presentations designed to give the participants an understanding of state and federal statutes governing criminal history data collection and dissemination, the legal and policy issues surrounding access to and use of criminal history records, the scope and accessibility of the FBI's criminal history records data base, and the scope and conclusions of a recent federal study regarding the feasibility of using criminal history data for background checks of individuals seeking to purchase firearms.

Legal and Policy Issues

Penny Wakefield, NCJA associate general counsel, provided a general overview of legal and policy issues identified in NCJA research to date related to SSA/state cooperation in conducting records checks of payees for SSA programs. Specifically, the NCJA sought to determine the extent to which state laws, policies, or regulations may permit or limit the use of or access to state criminal history records by state or local criminal justice agencies, state or local non-criminal justice agencies, other states' or federal criminal justice or non-criminal justice agencies, or private entities (e.g., investigators). The NCJA also sought to clarify whether any limitations specified in statutes in fact would be applicable to the SSA if it sought information only for purposes of payee background checks. The NCJA's review encompassed state records management statutes covering collection, disposition, deletion, and auditing of records; records inspection by subject individuals; penalties for abuse or denial of access to records; criminal history records provisions regarding both conviction and non-conviction data; state Freedom of Information Acts; and state privacy statutes.

Ms. Wakefield noted that NCJA staff initially reviewed testimony given at several congressional hearings in 1989 on proposed legislation to address the issue of fraud and misappropriation of funds by SSA payees. These hearings explored the operation of the SSA's representative payee program and methods by which SSA could meet its statutory obligation to protect the interests of its beneficiaries. A summary of the proposed legislation is included in the appendices to this report.

Federal court decisions concerning the extent of the SSA's liability, if any, to its beneficiaries for the misappropriation of funds by representative payees also were examined. The courts indicated that the SSA could be held responsible for payees' actions if the agency failed to conduct adequate background checks on potential payees prior to appointment. At least one court stated that this responsibility might be met by screening applicants based on criminal history record checks. A summary of the relevant cases is included in the appendices to this report.

In addition, NCJA staff reviewed technical reports concerning state-of-the-art automated information systems that could be used in an effort to coordinate criminal record checks among states and the federal government and began reviewing existing methodologies for conducting criminal history record checks on prospective payees.

Finally, NCJA staff compiled summaries of state privacy and criminal history record information statutes to determine which states would permit the SSA access to criminal history record information. The summaries indicate the types of restrictions states place on the dissemination of criminal history record information, as well as state-imposed quality control standards and regulations to which the custodian of criminal history records must adhere. State-by-state summaries of statutory provisions and charts comparing state provisions are included in appendices to this report.

Ms. Wakefield said that a review of this research information suggests several conclusions. First, there appears to be a general trend among states to increase access to criminal history record information. It should be noted, however, that states still differ widely in their approach to dissemination; some states restrict public access to criminal history record information as much as possible to protect individuals' privacy, while others make records access as open as possible on the theory that access to records, as a product of the business of government, is in the public interest.

In fact, the policy of most states continues to be to protect the privacy rights of the record subject as much as possible, while allowing for the fullest possible disclosure of criminal history record information to criminal justice agencies for the administration of justice and to non-criminal justice agencies for implementation of specific objectives authorized by law. Even in the more restrictive states, however, the general trend is to loosen the restrictions on the dissemination of criminal history record information in cases where there is a demonstrated need for access. In the states that place limitations on the dissemination of criminal history record information, access to non-conviction information is highly regulated in order to secure the privacy rights of any person who is the subject of a report. Generally, states that limit such dissemination tend to permit disclosure only to criminal justice agencies for criminal justice purposes. In such a state, non-criminal justice agencies' access to criminal history record information must be authorized expressly by statute, executive order, or court decision or rule. Any unauthorized disclosure of criminal history record information usually constitutes a misdemeanor, and statutory civil remedies, including damages and injunctive relief, are available to redress the damage caused by such disclosure. Conviction data, on the other hand, generally are disseminated more freely in such states. Many states place greater restrictions on public access to non-conviction data because of the perceived harm to an individual who may be denied, for example, employment or credit due to the existence of an arrest record that does not indicate case disposition when the case could have resulted in dropped charges, dismissal, or acquittal.

In order to protect the rights of record subjects, Ms. Wakefield said, many states require criminal justice agencies or courts to keep accurate and current case disposition records. Some states adopt a one-year rule, which restricts the dissemination of arrest records more than a year old if they do not contain corresponding disposition reports. In other states, no dissemination of non-conviction information is permitted without information concerning case disposition.

Ms. Wakefield noted that many states provide for open access to chronological arrest records or police blotters within each police precinct. A statewide search through precinct arrest records, however, would be an onerous task. Access to a central state repository, on the other hand, would shorten the time required for searches and might encourage greater accuracy of data in police arrest reports.

Most states require audits of criminal history record information to ensure the accuracy and currency of the information contained in criminal history records, Ms. Wakefield added. For the most part, these audits are required annually based on a random sampling of criminal justice agencies. Whether such audits in fact occur, or whether records corrections occur as a result of audits, is unclear. Ms. Wakefield also noted that all statutory provisions must be considered in the context of policy and practice; the fact that access is authorized, for example, does not necessarily mean that it is gained readily.

In concluding, Ms. Wakefield said that any follow-up research effort by the NCJA would involve obtaining information from other agencies regarding programs similar to the SSA's representative payee program. Examples of such analogous programs are child support enforcement, employment screening for security and child care personnel, screening of prospective gun purchasers, and screening of payees for state benefit programs, some of which are complementary to SSA benefits programs. In addition, the NCJA would research operational procedures implemented by the states to effect their policies regarding dissemination of criminal history record information and evaluate those procedures in the context of their implications for SSA access to state criminal history record information. Finally, the NCJA would continue to monitor federal and state legislation pertinent to the representative payee program. For example, the states of California, Iowa, and Kentucky have considered legislation affecting the operation of the representative payee program in their states in an effort to protect SSA beneficiaries. Summaries of proposed legislation concerning the responsibilities and duties of representative payees in those states are included in the appendices to this report.

FBI Records Access

Melvin D. Mercer, Jr., chief legal counsel for the FBI's Identification Division, briefed meeting participants on the availability of criminal history information through the FBI. Mr. Mercer said that the identification division has fingerprint-based records on roughly 25 million individuals who have been arrested at least once. The records of the approximately 13 million individuals in the files who were born in 1956 or thereafter are automated fully through the National Crime Information Center (NCIC) Interstate Identification Index ("Triple I") system. Mr. Mercer noted, however, that the FBI collects information only on those persons charged with "criterion," or serious, offenses; therefore, the agency generally will not have information about relatively minor offenses that nevertheless may be significant for SSA purposes. Moreover, the FBI's records indicate only which states have reported arresting an indexed individual; for details regarding charges and dispositions, the SSA would have to contact agencies in the states indicated on the Triple I record entry.

Mr. Mercer said that, by statute, the division may share its information with any other federal agency for any purpose authorized by federal law. Although the statutory scheme apparently would allow the SSA to gain access to FBI identification records for payee background checks, FBI policy requires that fingerprint cards be submitted for all individuals about whom records information is sought; the FBI will not conduct records searches and checks based on name and date-of-birth for non-criminal justice purposes. The fee for a fingerprint-based records search for non-criminal justice purposes currently is \$14; the turnaround time on each records check is approximately 15 working days. If a request produces no record based on a fingerprint-based search, the FBI will not keep the fingerprints on file.

Status of State Criminal History Records Systems

In the final informational presentation of the meeting, Bernard E. Shipley, program manager for the justice department's Bureau of Justice Statistics (BJS), and Allen J. Beck, a BJS statistician, described for meeting participants the findings of BJS research into the quality of state criminal history records systems nationwide. The BJS officials explained that, under the Anti-Drug Abuse Act of 1988, the justice department was required to develop a nationwide system for records checks of the estimated six million prospective firearms purchasers each year and was directed to implement such a system. The BJS, charged with investigating system options, concluded that, given existing technologies, it would be impossible to set up a nationwide high-speed records checking system over the short term with the capacity to conduct the number of checks required. In the course of exploring the issue, however, the BJS made numerous findings concerning the quality of criminal history records nationwide.

As a result of a survey of state criminal history records repositories, the BJS estimated that there were approximately 40 million subject files in state systems in 1989. In addition, the BJS found that about four and one-half million new arrest cards are filed in state systems annually, with approximately one-third of those cards representing first arrests.

However, the BJS also found that criminal history record systems, while often required by law to do so, do not provide complete coverage of all arrests and subsequent dispositions. Even in the area of arrest reporting, which is the type of reporting that is most complete overall, the BJS found that not all law enforcement agencies submit the required arrest reports or fingerprint cards to central state repositories or to the FBI. Moreover, the degree of completeness of records varies greatly from state to state. An estimated three quarters of all felony convictions nationwide are reported to records repositories, but the number of misdemeanors reported generally is much lower; the less serious the crime, the less likely it is to be reported.

Nationally, most name-based indexes are automated, the BJS officials said, and most states are using automated fingerprint identification systems. However, these systems require clearer, more readable prints or fingerprint cards than are necessary for manual fingerprint checks. The BJS estimates that between eight and 10 percent of fingerprint cards submitted to the FBI by criminal justice agencies in the states turn out to be unreadable for the FBI's automated fingerprint identification system. The officials speculated that the state repositories may keep the best of the fingerprint cards submitted to them and pass the lower-quality copies on to the FBI. The BJS officials said that up to a fifth of all cards submitted to the FBI for non-criminal justice purposes are unreadable.

The BJS officials suggested that, given the need for individual, good-quality fingerprints to conduct fingerprint-based records checks and the high volume of fingerprint-based checks that the SSA might require, the SSA might consider first running name/date-of-birth based checks, which are much quicker and easier than fingerprint checks, and following up those checks with fingerprint checks if the name checks indicate that a fuller record might exist. They noted that other important procedural factors to consider in establishing any system of records checking would include issues of what individuals process records checks, what data sources are used, who evaluates record information and decides how that information bears on payee certification, and what process exists for individuals to appeal rejections based on faulty identifications or irrelevant information.

Discussion

Following the presentations, meeting participants were invited to provide their observations and recommendations regarding approaches that the SSA might take in developing a program to conduct background checks of representative payee applicants. There was considerable discussion on numerous points, but the group appeared to reach a consensus that a payee check program involving use of state criminal history records systems would be feasible, subject to certain conditions and limitations.

At the outset of the discussion, participants were asked to consider specifically such issues as the following:

- What are states' experiences to date regarding the quality of information from telephone records checks; other records, such as credit checks or driver's license checks; and field investigations?
- What uses could, should, or must be made of fingerprint data?
- How long do different types of checks take?
- What direct costs are associated with various types of checks?
- What are the current demands on criminal justice system agencies for background checks?
- Are states able to take on more work? At what cost (e.g., what limitations, such as travel restrictions, personnel ceilings, or cost-cutting measures, are there on states' ability to conduct background checks)?
- What type of background check would be most feasible in each state and how might it work?
- What benefits or incentives exist or might exist for states to work with the SSA on the demonstration project? On a long-term program involving use of state and local records for background checks?
- What relationship might exist between the SSA and states in carrying out demonstration project on a long-term background check program (e.g., would the state act under contract to the SSA)?
- Should background investigations be conducted by the SSA or, alternatively, by another federal agency? By a state agency?
- If background investigations were to be conducted at the state level, what level of information resulting from the investigation should the state be required to provide to the SSA (e.g., should the state be required to forward to the SSA all information developed in the course of the investigation or, alternatively, required to indicate whether the individual investigated meets the criteria/standards for selection of representative payees)?
- Are there categories of potential payees for whom background checks must be completed prior to appointment? Could be completed after appointment?
- What types of legislation might be necessary or desirable at the state or federal level for the SSA to conduct payee background checks?

Consideration of these types of concerns, as well as points raised in opening presentations, prompted varied, and sometimes conflicting, comments throughout the meeting discussion. The substance of discussion on the major issues covered over the course of the meeting is summarized below.

What statutory authority exists for the SSA's access to and use of federal or state criminal history records?

Although SSA officials reported that they had been advised that no federal statutes specifically grant the SSA access to criminal history record information for the purpose of conducting the representative payee program, the FBI representative stated that Title 28, § 534, of the U. S. Code requires the U. S. attorney general to "exchange [criminal history] records with, and for the official use of, authorized officials of the federal government, the states, cities, and penal and other institutions." State officials noted that states' statutory schemes vary widely in what uses of criminal history record information are permitted; what individuals, agencies, or groups may obtain access to such information; and what methods of access may be used where access is permitted. Thus, participants agreed, the SSA must be prepared to address these differences on a state-by-state basis. Gaining exceptions to such rules may be very difficult, in some states and, in some cases, may even require legislative or high-level administrative action, state officials observed.

Should the SSA focus on federal or state-level criminal records checks? The SSA has two options for sources of criminal history record information on prospective payees: checking through the FBI's criminal records data base or through the states' central repositories of crime data. The SSA officials said that the SSA has chosen to concentrate its efforts on obtaining criminal record information from state repositories rather than from the FBI because certain records, such as those involving petty offenses, are not reported to the FBI's NCIC system. Moreover, in light of the trend among criminal justice agencies toward decentralization of criminal history record-keeping, SSA officials believe that record checks at the state level will yield the most accurate and current criminal offender record information. State officials noted, however, that although central state repositories offer the advantage of containing information regarding, e.g., frequency of arrests of individual, the offenses with which he has been charged, and the disposition of those charges, the FBI's data base contains compilations from all states that have reported at least one arrest for a particular individual. Thus, many state representatives concluded, the SSA may want to consider running checks first with the FBI and then with the states indicated by FBI checks.

How might the SSA control the scope and volume of state record searches to make the program manageable? In designing a criminal records-checking program in any state, the SSA will need to maintain a narrow scope, state officials said. Records checking may be too cumbersome to allow checking of all payee applicants, officials warned; some records repositories may not be able to handle the volume or may not be able to complete records checks quickly enough to facilitate timely certification of payee applicants. They suggested that because the SSA therefore will need to decide what categories of payees present a risk high enough to warrant records checks, they may need to forego checks of payee applicants who are close relations and close friends of beneficiaries in order to concentrate on other types of individuals who volunteer to act as payees.

States also recommended that the SSA communicate clearly to states what volume of records checks it will be seeking. Many additional searches for criminal history record information--or the need for follow-up--will place additional burdens on state repositories in terms of allocation of manpower and increased liability for inadvertent unauthorized disclosures. State officials suggested that, in any pilot program, the SSA may wish to target certain geographic areas within selected states to make the projects manageable.

Some concern was expressed that the SSA might not be taking full advantage of prescreened volunteer payee candidates from community groups such as the American Association of Retired Persons (AARP). The SSA officials said that there are existing cooperative agreements with such groups, but that these groups alone cannot provide the numbers and types of payees that the agency requires.

Will state criminal record checks provide enough information to enhance payee selection? State officials pointed out that many offenses that may be relevant to the representative payee selection process go unreported to state criminal justice agencies. In addition, criminal background checks often do not reveal whether a person currently is under indictment for a relevant offense. Therefore, state officials warned, criminal records checks alone of each applicant will not necessarily ensure that only suitable payees are selected. The SSA officials responded that the SSA recognizes that conducting criminal background checks will not solve all of the problems facing the payee program, but the SSA does believe that establishing a methodology to conduct such searches will help the SSA afford greater protection to beneficiaries receiving their monthly payments through representative payees. The SSA officials also noted that the SSA has developed new interviewing techniques to enhance screening of payee applicants.

State representatives asked whether the SSA has considered conducting credit checks of payee applicants. The SSA officials responded that their inquiries have indicated that such a procedure would be prohibitively expensive.

Some state officials expressed concern about the purpose of checking criminal history records and the way the information discovered might influence decisions about acceptance of payee applicants. Although expressing a willingness to cooperate in efforts to share criminal history information with the SSA, the officials cautioned that the SSA should be keenly aware of the limited usefulness and scope of criminal history records. In fact, one participant said, "Criminal history checks are not 'background' checks" and "do

not tell you everything there is to know about someone." Thus, state representatives warned, criminal histories should not be given excessive weight in making decisions about certification of prospective payees.

Finally, officials noted, variances among states in the classification of similar offenses may result in inconsistencies among states in criminal record information. An act that is treated as a major felony in one state may be classified as a misdemeanor in another. Some states may not even use felony and misdemeanor classifications at all. Thus, the SSA will need to clearly inform states as to what offenses it is searching for in applicants' records.

Who is liable for incorrect information provided about individuals? State officials expressed the views that the criminal justice agency supplying criminal history information, whether fingerprint- or name-based, generally accepts no liability for decisions made based on that information. No identification system is perfect, and records repositories cannot fully guarantee, even in the case of fingerprint-based checks, that a criminal record that has been provided is in fact the record of the individual being checked. Moreover, the organization or agency seeking the information is responsible for making its own careful decision regarding the relevance of information provided and deciding whether the information definitely pertains to the individual whose background is being checked. The decision-making agency therefore may want to consider establishing guidelines for the use of criminal record information and procedures for an applicant to appeal a decision based wholly or partially upon such information, state officials suggested.

How significant is the problem of incomplete criminal history records for SSA's purposes? State officials noted that incomplete reporting of case dispositions is a fact in most states and affects the quality and content of criminal history records. Generally, they observed, arrest data are the most completely reported data in state repositories, incarceration information is the second most completely reported, and case dispositions information is the least fully reported. Some state officials indicated that the lack of disposition reporting often results from heavy court caseloads and from a lack of sufficient resources for court clerks to ensure that dispositions of all cases are reported to central records repositories. In addition, disposition reporting varies directly with the seriousness of offenses and the size of jurisdictions; that is, criminal justice agencies are most likely to make the effort to report dispositions on more serious charges, and larger jurisdictions handling greater volumes of cases are more likely than smaller jurisdictions to have automated disposition reporting systems.

Officials recommended that the SSA take into account in its planning the variances in quality of records among states. In some cases, state officials said, the SSA could find itself relying heavily on bare arrest data without disposition information. Several officials said that if the SSA is considering evaluating patterns of arrests in checking payee applicants' records, SSA officials also should be aware of the limitations of arrest data and take into account the time relevancy of the data. For example, one official stated, patterns of juvenile delinquency arrests in the criminal history of a 40-year-old person may not indicate that the person currently is unfit to serve as a payee. State officials suggested that, in assessing bare arrest data, the SSA follow the "one-year rule," adopted in many states, that requires deletion after one year of any information in a record regarding an arrest for which there is no corresponding information regarding prosecution or other disposition of the case.

It was noted that some states, such as Florida, charge a higher fee for searching out disposition reports and that, as mentioned in an earlier presentation, some states bar the dissemination of criminal history records that do not contain complete disposition information for all charges.

To what extent should the SSA make fingerprint searches a part of its program? Criminal justice system representatives at the meeting generally agreed that fingerprints are the most reliable method of identification. Names, even when coupled with a date of birth, are not unique to individuals. Moreover, because the types of individuals most likely to commit social security fraud generally will use false names, name-based records checks often are unreliable. By contrast, fingerprints are unique to individuals and cannot be changed, and thus are a better form of identification for a records check. For that reason, officials noted, many states, as well as the FBI, require an agency seeking to obtain criminal history records to supply fingerprint cards of the individuals who are the subjects of searches.

At the same time, officials acknowledged that use of fingerprinting presents some difficulties. Taking fingerprints correctly is a technical skill that requires training of employees, and local criminal justice agencies in most cases will not be able to handle the task of fingerprinting for organizations or agencies wishing to obtain fingerprint-based records checks. Furthermore, automated fingerprint identification systems require high quality prints and reject a considerable portion of submitted prints. For example, as noted earlier in the meeting, the FBI Identification Division rejects from 15 to 20 percent of fingerprint cards submitted for non-criminal justice purposes.

Furthermore, some state officials expressed concern that state systems might not be able to handle fingerprint-based records checks for all payee candidates that the SSA wishes to check. Therefore, some officials suggested, at the state level the SSA might want to consider running fingerprint-based checks only on individuals for whom name/date-of-birth-based checks have indicated the possible existence of records. It was noted that state repositories generally will run name/date-of-birth-based records checks for non-criminal justice purposes based on requests by mail or facsimile machine, although not by telephone.

It also was noted that, regardless of method, turnaround time on criminal history checks in the states varies widely. In Florida, for example, it is four to seven days; in Missouri, five days for name-based checks, longer for fingerprints; and in Idaho, two to three days.

Officials agreed that another difficulty associated with fingerprinting is the common perception on the part of many law-abiding individuals that fingerprinting is overly intrusive and that their fingerprints will be kept on file for unknown purposes. Thus, requiring payee applicants to submit fingerprints may deter many trustworthy potential payees from considering assumption of payee responsibilities.

What information from criminal history records would be most relevant for the SSA's purpose of screening payee applicants? It was agreed that the SSA will need to assess which offenses indicate a high risk of payee fraud and misappropriation and develop a system that uses only the most relevant information obtained from criminal history records. For example, the presence or lack of fraud offenses in an individual's record may be a good indication of his suitability to serve as a payee, while his good or bad driving record may not be very relevant. It was suggested that the SSA analyze the backgrounds of payees who have proven unsuitable in order to develop a data base regarding characteristics and offenses that indicate a high risk payee applicant.

Conclusion

At the conclusion of the issues discussion, state participants were asked about the extent of their interest in participating with the SSA in a pilot program to explore the feasibility of using state criminal history records to help make determinations about individuals' suitability for appointment as representative payees for SSA beneficiaries. The state officials attending the meeting said that they anticipated that their respective states would be willing and able to participate in pilot projects, subject to clarification of certain issues and agreement on certain conditions. For example, before approaching other state officials about the project, meeting participants would have to know approximately what numbers of records checks the SSA would be seeking each year, what specific types of information the SSA would be seeking, what aspects of the program the SSA would want the state to carry out, who would cover program costs, and what type of operational arrangement the SSA would request with the state. In addition, statutory authority and other legal issues would have to be clarified for individual states. The state officials encouraged the SSA to proceed to develop a program concept and expressed their interest in and willingness to assist the SSA in every way possible in working further with other state officials to implement pilot projects, if feasible, in their respective states.

**RECOMMENDATIONS AND ISSUES FOR THE SSA'S CONSIDERATION
IN DEVELOPING AN SSA/STATE COOPERATIVE ARRANGEMENT FOR USE OF
STATE CRIMINAL HISTORY RECORDS IN SSA PAYEE BACKGROUND CHECKS**

1. The NCJA recommends that the SSA support the conduct of a 12-month demonstration initiative in five to 10 jurisdictions to test the feasibility of carrying out SSA payee background checks.

- Some states' statutory and regulatory schemes may require legislative or executive action in order to allow the SSA access to criminal history records.
- Depending upon the number of payee applications anticipated in each state in a given year, the SSA may need to consider initiating regional, rather than statewide, programs in some states.

2. The NCJA recommends that state and federal criminal history records be the centerpiece for conducting paper background checks, but that the demonstration project framework be flexible enough to permit testing, to the extent feasible, of the relative usefulness of other sources of information, such as credit checks and field investigations.

- The SSA may want to consider developing procedures that combine use of federal and state data bases, with initial checks run through the Federal Bureau of Investigation (FBI), followed up by checks in states where the possible existence of records is indicated. Although FBI records, unlike state records, generally indicate other states in which an individual has been arrested, FBI records do not include the types of details concerning arrests, charges, and dispositions contained in some state records.

3. The NCJA recommends that, for purposes of conducting the demonstration project, the SSA implement procedures for obtaining fingerprints of payee applicants for use in conducting criminal history record checks of those applicants.

- The SSA must consider the feasibility of taking fingerprints of payee applicants in order to run background checks, as the FBI and many states will run fingerprint-based checks only for non-criminal justice purposes, and fingerprinting is a far more reliable method of identification than names and dates of birth. However, the SSA also would need to address the issues of training employees to take proper, readable fingerprints that would not be rejected by identification systems and of providing time, space, and resources for taking and storing prints if states could not or would not do so.
- Because name/date-of-birth checks generally are less expensive and easier to run than fingerprint checks, the SSA may want to run such checks initially in states where permitted by law and regulation. The SSA then could follow up positive checks with fingerprint-based confirmations.

4. The NCJA recommends that the individual demonstration sites be selected so as to provide an opportunity to test several models for conducting payee background checks.

- Differences among states in statutes regarding records access, levels of data quality, completeness of records, turnaround time, and means of access will require the development of multiple demonstration models specific to the selected jurisdictions rather than development of a single model.

5. The NCJA recommends that, prior to developing project designs, the SSA make decisions concerning the following issues:

- What agency will be responsible for payee certification decisions? States may not be willing or able to accept liability for payee appointment determinations based on faulty information.

- What types of information in criminal history records are most relevant to the issue of payee trustworthiness and to what extent do relevant offenses serve as indicators of likelihood of abuse of a payee position?
- How should the SSA weigh information concerning an arrest for which no record of conviction or acquittal is found? The SSA will need to take into account the fact that much criminal history record information does not contain records of dispositions.
- What classes of payee applicants will be subject to records checks in order to keep the volume of records checks manageable?
- What volume of records checks does the SSA anticipate requesting from each state and what types of information will the SSA be seeking? To facilitate planning, states will need to have this information as soon as possible.
- Should the SSA approve payees pending receipt of records check reports in jurisdictions where turnaround time may be too lengthy to permit timely certification decisions?

6. The NCJA recommends that the SSA make available \$300,000 to support the conduct of the demonstration project and that, from those funds, each state selected as a demonstration site be provided with \$5,000 in incentive funds to support its participation in that project.



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"The Potential for State Cooperation in Conducting Background Checks of Payees for Social Security Administration Programs"

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APPENDIX D

**Federal Statutory Provisions
Relating to Representative Payees under
Social Security Titles II and XVI Benefits Programs**

Title II - Retirement, Survivor and Disability Insurance Program

Social Security Act § 205(j)

[42 U.S.C. 405(j)]

(j) Representative payees

(1) If the Secretary determines that the interest of any individual under this subchapter, would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's "representative payee"). If the Secretary or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1383(a)(2) of this title, the Secretary shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or to the individual.

(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Secretary in regulations).

(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Secretary shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this subchapter or subchapter XVI of this chapter,

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 408 or 1383a of this title, and

(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection or payment of benefits to such person has been terminated pursuant to section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter or subchapter XVI of this chapter.

(ii) The Secretary shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1383(a)(2)(A)(iii) of this title, by reason of misuse of funds paid as benefits under this subchapter or subchapter XVI of this chapter, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 408 or 1383a of this title.

(C)(1) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), or payment of benefits to such person pursuant to section 1383(a)(2)(A)(ii) of this title has previously been terminated as described in section 1383(a)(2)(B)(ii)(IV) of this title, or

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(ii) The Secretary shall prescribe regulations under which the Secretary may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(D)(i) Subject to clause (ii), if the Secretary makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Secretary's determination, legally incompetent or under the age of 15.

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Secretary determines is in the best interest of the individual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a determination by the Secretary to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Secretary to the same extent as is provided in subsection (b) of this section, and to judicial review of the Secretary's final decision as is provided in subsection (g) of this section.

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Secretary shall provide written notice of the Secretary's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3)(A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Secretary may require a report at any time from any person receiving payments on behalf of another, if the Secretary has reason to believe that the person receiving such payments is misusing such payments.

(E) The Secretary shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection or section 1383(a)(2) of this title, and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection or section 1383(a)(2) of this title.

(F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1383(a)(2) of this title and which are located in the area served by such servicing office.

(4)(A) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(i) 10 percent of the monthly benefit involved, or

(ii) \$25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(B) For purposes of this paragraph, the term "qualified organization" means any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee and which, in accordance with any applicable regulations of the Secretary—

(i) regularly provides services as the representative payee, pursuant to this subsection or section 1383(a)(2) of this title, concurrently to 5 or more individuals,

(ii) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual, and

(iii) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with Title 18, or imprisoned not more than 6 months, or both.

(D) This paragraph shall cease to be effective on July 1, 1994.

(5) In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.

(6) The Secretary shall include as a part of the annual report required under section 904 of this title information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.

(k) Payments to incompetents

Any payment made after December 31, 1939, under conditions set forth in subsection (j) of this section, any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Secretary of incompetency prior to certification of payment, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(l) Delegation of powers and duties by Secretary

The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health and Human Services designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of subsection (e) of this section.

(m) Repealed. Aug. 28, 1950, c. 809, Title I, § 101(b)(2), 64 Stat. 488

(n) Joint payments

The Secretary may, in his discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 404(a) of this title with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this subchapter for such month.

(o) Crediting of compensation under Railroad Retirement Act

If there is no person who would be entitled, upon application therefor, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C.A. § 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C.A. § 231e(b)],

Title XVI - Supplemental Security Income Program

Social Security Act § 1631(a) [42 U.S.C. 1383(a)]

PART B—PROCEDURAL AND GENERAL PROVISIONS

§ 1383. Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed \$10).

(2)(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii) Upon a determination by the Secretary that the interest of such individual would be served thereby, or in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's "representative payee") for the use and benefit of the individual or eligible spouse.

(iii) If the Secretary or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) of this title, the Secretary shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse.

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Secretary in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Secretary shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408 or 1383a of this title; and

(IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(IV), or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(IV) of this title; or

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(iv) The Secretary shall prescribe regulations under which the Secretary may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) Subject to clause (viii), if the Secretary makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(viii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (vii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Secretary's determination, legally incompetent, under the age 15 years, or a drug addict or alcoholic referred to in section 1382(e)(3)(A) of this title.

(ix) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Secretary determines is in the best interests of the individual entitled to such benefits.

(x) Any individual who is dissatisfied with a determination by the Secretary to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Secretary, and to judicial review of the Secretary's final decision, to the same extent as is provided in subsection (c) of this section.

(xi) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Secretary shall provide written notice of the Secretary's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xii) Any notice described in clause (xi) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (x) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(C)(i) In any case where payment is made under this subchapter to the representative payee of an individual or spouse, the Secretary shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Secretary shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.

(iii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases, the Secretary shall establish a system of accountability monitoring for institutions in each State.

(iv) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(v) Notwithstanding clauses (i), (ii), (iii), and (iv), the Secretary may require a report at any time from any representative payee, if the Secretary has reason to believe that the representative payee is misusing such payments.

(D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) \$25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

(ii) For purposes of this subparagraph, the term "qualified organization" means any community-based nonprofit social service agency which—

(I) is bonded or licensed in each State in which the agency serves as a representative payee;

(II) in accordance with any applicable regulations of the Secretary—

(aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) of this title concurrently to 5 or more individuals;

(bb) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual; and

(cc) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with Title 18, or imprisoned not more than 6 months, or both.

(iv) This subparagraph shall cease to be effective on July 1, 1994.

(E) Restitution

In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.

(F) The Secretary shall include as a part of the annual report required under section 904 of this title information with respect to the implementation of the preceding provisions of this paragraph, including—

- (i) the number of cases in which the representative payee was changed;
- (ii) the number of cases discovered where there has been a misuse of funds;
- (iii) how any such cases were dealt with by the Secretary;
- (iv) the final disposition of such cases (including any criminal penalties imposed); and
- (v) such other information as the Secretary determines to be appropriate.

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