IMPLEMENTING THE FEDERAL PRIVACY AND SECURITY REGULATIONS

VOL. II: PROBLEM ANALYSIS AND PRACTICAL RESPONSES

METREK Division of The MITRE Corporation, MTR-7704

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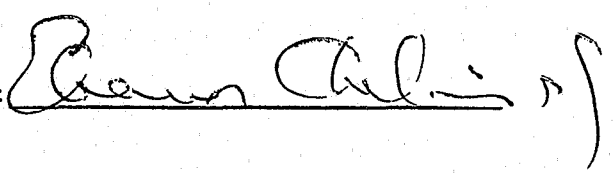
and Project Approval: 

ABSTRACT

This report presents an analysis of problems reported during MITRE/METREK's survey and assessment of the present level of state compliance with the Federal Regulations governing the privacy and security of criminal history record information. The experiences of the 18 states surveyed, as well as the experience of the MITRE staff performing the survey, form the basis of the report. Included are discussions of problems confronting states in their attempts to achieve compliance with the Regulations, successful and/or suggested problem responses and technical assistance recommendations to facilitate future progress toward compliance.

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EXECUTIVE SUMMARY

In the Fall of 1977, a comprehensive survey and assessment of the present level of state compliance with the Federal privacy and security regulations governing criminal history record information (CHRI) was conducted.* The assessment had a three-fold purpose: (1) to assess the current level of state compliance with the Regulations; (2) to project the level of compliance likely to be attainable by the 31 December 1977 compliance deadline; and (3) to identify those common problems hindering compliance progress. Eighteen states comprised the survey sample.

Two sets of problems were identified. One set was comprised of those problems that are external to the Regulations and could perhaps be better characterized as indicative of the environment in which the Regulations were required to be implemented (i.e., political environment, financial capabilities and interagency coordination mechanisms). The second set of problems, those that are internal to the Regulations themselves, is comprised of those problems which have surfaced as individual states have attempted to implement specific requirements of the Regulations. Most of these problems are aspect-specific in nature; that is, they relate to one of the five areas of the Regulations (i.e., completeness and accuracy, individual access and review, limitations on dissemination, audit and security) and were voiced with sufficient regularity by states surveyed to identify them as noteworthy. These internal problems result from ambiguities in language which have caused states difficulties in interpreting the intent thereof, and/or particular stipulations of the Regulations that states have had difficulty implementing.

This report focuses on those problems internal to the Regulations and identifies: (1) the more common problems associated with the Regulations; (2) the most constructive responses to these problems, both from the field and those suggested by the MITRE/METREK experience; and (3) recommended areas of technical assistance. The problems and the successful and/or suggested problem responses are discussed, while a description of the kinds of technical assistance needed to embrace both external and internal problems hampering full compliance with the Regulations concludes this report.

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*Albright, E. J., M. B. Fischel, F. C. Jordan, Jr., and L. A. Otten, "Implementing the Federal Privacy and Security Regulations Volume I: Findings and Recommendations of an Eighteen State Assessment," MTR-7704, The MITRE Corporation/METREK Division, December 1977.

While these discussed responses do not address the requirements in question to the fullest extent possible, they have allowed agencies to comply partially with those stipulations of the Regulations. Other possible responses, suggested by the MITRE/METREK experience are also included. While the problem responses described are related only to internal problems, technical assistance recommendations are aimed at both internal and, to a lesser extent, external problems.

Prior to discussing those internal problems that are aspect-specific, one problem--the generalities in the language of the Regulations--which transcends all aspects of the Regulations, is examined. The remainder of the report focuses on the following aspect-specific problems and related responses. The problems identified within each aspect are:

- Completeness and Accuracy
  - Establishing an arrest and disposition reporting system with a linking capability;
  - Implementing formal delinquent disposition monitoring procedures; and
  - Querying the CSR prior to dissemination.
- Individual Access and Review
  - Establishing statewide procedures for the access and review of CHRI by the subject individual;
  - Promulgating the individual's right to access his/her CHRI; and
  - Establishing appeal procedures.
- Limitations on Dissemination
  - Developing uniform policies and mechanisms for determining eligibility to secure CHRI;
  - Maintaining dissemination logs; and
  - Establishing procedures for the notification to prior recipients of errors found in CHRI.

- Audit

  - The designation of an agency to conduct audits; and

  - The scope/extensiveness of the required audits.

- Security

  - Providing adequate physical security to manual CHRI systems.

As many of the responses do not lead to full compliance, this report recommends a coordinated program of technical assistance to assist states to achieve full compliance. These recommendations fall into three general areas:

- Federally-initiated Actions

  - The development and dissemination of a model comprehensive legislative package and model guidelines and procedures;

  - The establishment of a grants-in-aid program; and

  - The provision of direct and individualized technical assistance to state and local agencies.

- State-initiated Actions

  - Establish a Special Assistance Team to adapt and promulgate model guidelines and procedures; and

  - Appoint an Advisory Commission to coordinate the statewide effort.

- Federal Coordination and Monitoring

  - Establish an information exchange program for Federal, state and local agencies;

  - Coordinate with other Federal efforts concerned with arrest and disposition reporting systems and monitor all related grants; and

  - Monitor state efforts to comply with the privacy and security regulations.

Through a combination of Federally-initiated actions, state-initiated actions and Federal monitoring and coordination, compliance with the Federal Regulations governing the privacy and security of criminal history record information could be greatly facilitated. A comprehensive program of technical assistance involving the components outlined above is essential for achieving full compliance; however, it is obvious that the effectiveness of any assistance is directly proportionate to the level of commitment of all officials responsible.

1.0 INTRODUCTION

The Department of Justice's (DOJ) Regulations on Criminal Justice Information Systems which relate to the privacy and security of criminal history record information (CHRI) were promulgated on 20 May 1975 and amended on 19 March 1976. The Regulations required that all states submit to the Law Enforcement Assistance Administration (LEAA) a privacy and security plan by 16 March 1976. The plan was to describe operational procedures that would be developed to achieve compliance with the five aspects of the Regulations. These aspects are:

- completeness and accuracy;
- individual access and review;
- limitations on dissemination;
- security; and
- audit.

Final implementation of procedures was required by 31 December 1977.

The MITRE Corporation, METREK Division, under contract with the LEAA's National Criminal Justice Information and Statistics Service (NCJISS), conducted a comprehensive survey and assessment of the level of state compliance with the Federal privacy and security regulations and projected, based on the assessment of current status, the level of likely attainable compliance that could be expected by 31 December 1977.[1] The study was also to identify the common problems hindering state compliance that have arisen to date and to provide information on which the LEAA could better make policy decisions regarding future implementation activities and the formulation of future technical assistance needs.

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[1] As a result of this survey, the LEAA subsequently amended the Regulations giving the states an opportunity to request an extension for attaining compliance. See U.S. Federal Register, Vol. 42, No. 234, December 6, 1977, [4410-01], pg. 61595.

A set of 20 states was selected for site visits. These states were to be adequately representative of the nation in terms of a number of basic criteria.[2] Eighteen of the 20 states were actually visited.[3] These states were:

- Arizona
- Arkansas
- California
- Colorado
- Florida
- Iowa
- Kentucky
- Maine
- Massachusetts
- Minnesota
- Missouri
- New York
- Ohio
- Oregon
- Pennsylvania
- Texas
- Washington
- Wyoming

The status of these states vis-a-vis compliance progress was examined by MITRE/METREK staff during the period of 15 August to 2 December 1977. The information and the related assessments are based on reported or demonstrated accomplishments within the 18-state sample as of the time site visits were made.

A major finding of the MITRE/METREK assessment[4] is that a majority (16 of 18) of the states surveyed have criminal history

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[2] For a complete discussion of the selection criteria used, research issues addressed, and field survey approach undertaken, see Michael B. Fischel, Frank C. Jordan, Jr. and Laura A. Otten, "Work Plan: Privacy and Security Survey and Assessment," The MITRE Corporation, WP-12539, August 1977.

[3] Because of logistical and time constraints and in common accord, NCJISS and METREK reluctantly decided to delete 2 states from the original sample of 20.

[4] For a complete discussion of the findings of MITRE/METREK's survey and assessment, see Albright, E. J., et al., "Implementing the Federal Privacy and Security Regulations Volume I: Findings and Recommendations of an Eighteen State Assessment," MTR-7704, The MITRE Corporation/METREK Division, December 1977.

information systems that are in less than substantial compliance with the Regulations, and that--except for those few states with a long history of involvement in the privacy and security area that preceded the promulgation of the Federal Regulations--relatively little was accomplished by the states between plan submission in 1976 and the present time. Through its assessment, MITRE/METREK identified a number of problems that were cited by state and local agencies as having impeded their progress toward compliance. This report examines these problems more closely and discusses possible responses which could be undertaken to foster compliance with the Federal Regulations.

2.0 EXTERNAL AND INTERNAL PROBLEMS ASSOCIATED WITH IMPLEMENTATION

In general, the problems hindering states in complying with the Federal privacy and security regulations appear to be of two kinds: (1) those that are external to the Regulations and could, perhaps, be better characterized as indicative of the environment in which the Regulations were required to be implemented; and (2) those that are internal to the Regulations themselves, that is, problems caused by generalities in language which have caused states difficulties in interpreting the intent thereof and/or particular stipulations of the Regulations that states have had difficulty in implementing.

Those problems categorized as external to the Regulations involve such key factors as the political environment, financial capabilities and interagency coordination mechanisms within a given state. Because these factors are exogenous to the Regulations themselves, there is little about the problems they generate which could be ameliorated by changes in the content of the Regulations.

These external problems are disucssed fully in the report[5] presenting the findings of MITRE/METREK's survey of states' compliance progress. Briefly restated, they are:

- insufficiency of the time period allowed within which states were expected to achieve compliance;
- lack of or imprecise state mandates;
- lack of appropriate legislation;
- lack of sufficient resources;
- local practices which act as barriers to change; and
- tendencies to link compliance with proposed computerized criminal history systems.

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[5] For a complete discussion of the findings of MITRE/METREK's survey and assessment, see Albright, E. J., et al., "Implementing the Federal Privacy and Security Regulations Volume I: Findings and Recommendations of an Eighteen State Assessment," MTR-7704, The MITRE Corporation/METREK Division, December 1977.

While any one of these problems can hinder a state's efforts, it is the combined effect of several of these which has often made it difficult for a state to move its criminal history information systems into compliance. Few, if any, of these problems can be solved by changes in the Regulations per se because they are reflective of the environmental factors cited above. They can, however, be lessened by the application of Federal assistance.

The second set of problems, i.e., those internal to the Regulations themselves, is comprised of those problems which have surfaced as individual states have attempted to implement specific requirements of the Regulations. Most of these problems are aspect-specific in nature, but were voiced with sufficient regularity by states surveyed to identify them as noteworthy.

This report focuses on those problems internal to the Regulations and identifies: (a) common problems associated with the Regulations; (b) constructive responses to these problems, both from the field and those suggested by the MITRE/METREK experience; and (3) recommended areas of technical assistance. The problems and the successful and/or suggested problem responses are discussed, and a description of the kinds of technical assistance needed to embrace both external and internal problems hampering full compliance with the Regulations concludes this report.

2.1 An Overall Problem: Legislation Written in a General Style

As stated previously, most of the identifiable internal problems are aspect-specific and are, therefore, usually unique to one of the five overall areas of the Regulations. There is, however, one overriding problem that has been cited in most of the states visited as impeding implementation progress with all aspects of the Regulations--the lack of specificity in terms both of the meaning

and the intent of parts of the Regulations. The general language of the Regulations may have been intentional to allow states as much latitude and flexibility as possible in their efforts to achieve compliance. Many agencies and jurisdictions surveyed, however, have not shared this positive interpretation of the language and have viewed it as an obstacle to arriving at the "right" interpretation of the Federal Regulations.

The one area that has been most affected by the style in which the Regulations were written is the concept and subsequent development of the central state repository (CSR). The uncertainty as to the CSR concept extends to (a) what its actual role should be--is it a repository only or an overseer/guardian of the activities of its contributing agencies? (b) the content of its CHRI file base--do the Regulations require that all arrest information be retained or may the state be selective? and (c) the extent of the responsibilities of the CSR--should it be the agency responsible for conducting audits of all contributing agencies?

Due to the focal position of the CSR in the full compliance picture, the confusion over its role, responsibilities, and the content of its file base cannot but impede the overall progress a state can make. This confusion has often resulted in a worsening of some of the other internal problems associated with the CSR. For example, as a result of confusion as to what information must be maintained at a CSR, some states, due to an erroneous interpretation of the Regulations, perceive the need to increase their file base, thus exacerbating such already difficult tasks as linking arrests and dispositions and monitoring for delinquent dis-

positions. Therefore, a state mandate for a smaller file base might decrease the problems associated with implementing these and other procedures.

A second problem area attributed by states to a lack of specificity in the language of the Regulations has to do with the nature of the relationship and the pattern of interaction which should develop among state and local agencies in implementing the Regulations. Since the Federal Government does not consider it appropriate to proscribe the lines of authority for implementation within a state, the Regulations leave open the question of who is to take the initiative in compliance activities. This has often resulted in a progress stalemate in many states. In some states, implementors have perceived their responsibilities as being limited principally to state-level activities. Often, local jurisdictions are doing little to achieve compliance, believing they must wait upon state-level implementors for guidelines and procedures. Frequently, when the state does come out with guidelines and procedures, localities have perceived them as not reflective of local needs and practices. In concert with this problem, many officials at both state and local levels have expressed some degree of uncertainty as to the nature and role that locally maintained repositories of criminal history record information should play versus that of a centralized repository at the state level.

Finally, the general style in which the Regulations were written has spawned numerous differences in interpretations of parts of the Regulations by jurisdictions, both intra- and inter-state. For example, it is possible to find, within a given state, as many different statements as to what is considered a "dissemination" of CHRI as agencies visited.

The three problems discussed above are not as easily addressed as those that occur as a result of a particular requirement within an aspect of the Regulations. It appears to us that the best response to these general problems would be a clarification by the Law Enforcement Assistance Administration of the intent of the Regulations, going beyond that presently contained in the Privacy and Security Planning Instructions. Specifically, such elaboration is needed to address the intended role and purpose of the CSR, to delineate lines of responsibility for initiating compliance activities and to provide specific details as to those concepts which still are unclear to state and local agencies.

2.2 Aspect-Specific Problems

In the above section a general problem applying to all aspects of the Regulations was discussed; however, a number of problems have been identified relating to the five specific areas of the Regulations. These are problems that states have had in attempting to comply with particular stipulations within each area of the Regulations. They are discussed below, along with problem responses and technical assistance suggestions.

2.2.1 Completeness and Accuracy

Of the five generic areas of the Regulations, the completeness and accuracy requirement for repositories of CHRI has been the most difficult for states to achieve. The task of implementing all aspects of the completeness and accuracy mandate requires the compilation of a complete chain of information relative to case processing, and the development of a system of checks to assure the accuracy of this information. A state's ability to accomplish these tasks and thus comply with the Regulations, depends upon the availability of resources to change existing systems or to develop new systems. Compliance

further depends upon the ability of a state to develop both commitments and cooperation among the many components of its criminal justice system. These problems, i.e., inadequate resources and insufficient commitment and cooperation among impacted agencies, emanate from the implementation environment in a state wherein compliance must occur. There are, however, particular stipulations within the completeness and accuracy area that agencies have found difficult to implement.

Three basic problem areas have been identified by agencies in their attempts to achieve compliance with the completeness and accuracy requirement of the Regulations. These are:

- an arrest and disposition reporting system with a linking capability;
- formal delinquent disposition monitoring procedures; and
- querying the CSR prior to dissemination.[6]

In this section, as in all subsequent discussions in this report of aspect-specific problems, the problem areas, solutions/responses thereto (based largely on MITRE/METREK field experience) where these are knwon to exist, and methods for addressing the problems through technical assistance are presented. Additionally, in the discussion of each aspect, the responses do not address the requirement in question to the fullest extent possible. Rather, the responses in all cases were either in use at the time of site visits or are comparable responses suggested by the MITRE/METREK experience in performing the survey and assessment of state-level compliance and allow an agency to at least partially comply with a requirement of the Regulations. Finally, the technical assistance

[6]Despite the recent restatement by the LEAA clarifying when queries to a CSR need to be made, it is felt that the problem may remain and that the suggested responses should further ameliorate the situation.

ideas presented are suggested for a comprehensive approach to facilitate compliance with a particular requirement of the Regulations.

The major problem identified by states in their efforts to achieve full compliance with the completeness and accuracy requirement is the lack of efficient and effective systems for reporting the required arrest and disposition information to the central state repository. The development and implementation of such a reporting system is a complex and comprehensive task requiring money, coordination and commitment on the part of all contributors. Because of the time involved and the associated costs, the reporting of arrest and disposition data is not a task that agencies would be expected to assume voluntarily. Moreover, there is little motivation for agencies to collect and store information which they perceive as being of limited value to them in the performance of their routine duties. Thus, it appears that the successful achievement of complete and accurate record systems lies with the implementation of a completely formal process categorized by clearcut designations as to responsibility for participation in the system, initiated and monitored at the state level.

One possible response to this problem which many states have implemented is to reduce the reporting requirement to the CSR. If, for example, a state requires the reporting of selected types of arrest, the subsequent reporting of dispositions and status-change information then becomes a smaller task.[7] Additionally, the scope of the effort could be further reduced by limiting the number of post-arrest events that need to be reported; in such cases, efforts should be made, however, to ensure that all final disposition data and related actions impacting on conviction status are included.

[7] This would not exempt local agencies from protecting the privacy and security of CHRI that is not forwarded to the CSR.

While this does not provide for a complete history of intermediate dispositions, it could, nonetheless, supply sufficient CHRI for most criminal justice purposes.

The two responses discussed above are suggestions for reducing the scope of a reporting system. Neither response addresses the all-important question of how states might go about achieving an acceptable level of arrest and disposition reporting. One alternative to a completely formal system, that is one wherein responsibilities are effectively delegated and routinely enforced, might be the designation of an agency liaison whose sole duty would be to collect dispositions, as these occur, for reporting to the CSR. A person, for example, who represents a law enforcement or probation agency could handle this assignment from the court, manually scanning docket books and recording dispositions at each step of the judicial process as these occur. Such a system would have clearcut disadvantages (e.g., it is time consuming, contains no easy method for linking arrests and dispositions, may produce some dispositions for which no accountable arrests are known, etc.), but would, nonetheless, allow for an adequate level of disposition reporting to the CSR on a routine basis.

Under the completeness and accuracy requirement, there are two other problem areas: (a) implementing delinquent disposition monitoring procedures; and (b) querying the CSR prior to dissemination. Full compliance with these procedures is perceived by most agencies surveyed as both costly and time consuming. Moreoever, the value of these procedures is considered highly questionable when the file base to which they relate is known to be both incomplete and inaccurate. Thus, many agencies surveyed are of the opinion that the costs associated with the implementation and maintenance of such procedures cannot be adequately justified.

Despite the tendency on the part of many agencies surveyed to resist the implementation of the procedures discussed above, it is believed that their implementation could measurably increase the level of completeness and accuracy of state-maintained criminal history file bases, and hence, greatly increase the utility of this information to user agencies. Several alternative responses to these problems appear feasible. In lieu of a completely formal delinquent disposition monitoring system, one viable, not-so-costly response could be a check for missing dispositions immediately prior to dissemination. Although this method would allow for some cases within a given repository's file base to be incomplete, it would ensure that information was checked for completeness and accuracy prior to dissemination while eliminating the need for on-going monitoring procedures. The file base would thus be in the process of being made more complete although, of necessity, over a longer time-frame.

One response to the problem of query prior to dissemination appears to be feasible. In most states surveyed, it was learned that local agencies routinely disseminate only that information contained in their own locally maintained records. As long as this is the case, and records of locally derived actions are complete, it would seem to eliminate the need to query the CSR in these cases. Moreover, indications are that when jurisdictions fail to have complete records of actions occurring locally, comparable information found in a state-maintained file base is rarely complete.

Each of the problems in the completeness and accuracy area of the Regulations could be addressed through the development of model procedures. Model arrest and disposition reporting systems for both manual and automated systems could also be designed. Models for disposition monitoring mechanisms that would be comprehensive as well as for use prior to dissemination could be developed.

2.2.2 Individual Access and Review

The Regulations require that a subject individual be guaranteed the right to access and review his/her CHRI, and that there be a multi-step procedure established that allows for access and review with no undue burden to the requestor. Further, this procedure must allow the individual, upon detection of erroneous information in a record, to challenge the accuracy of that information and, if need be, to appeal any decision which does not lead to the correction of the alleged inaccuracy to an administrative appeal body. This comprehensive procedure was to be in place as of plan submission in March 1976.

Despite the LEAA directive that states be in compliance with this requirement by the time of plan submission in 1976, many states are not presently in full compliance. The three areas causing major problems are:

- statewide procedures for the access and review of CHRI by the subject individual;
- the promulgation of the individual's right to access and review his/her CHRI; and
- appeal procedures.

While the Regulations do not specifically mandate the creation of uniform statewide access and review procedures, they strongly suggest the need for statewide uniformity in the exercise of this right. The need for statewide procedures is underscored by the fact that in those states in the MITRE/METREK survey which lack such statewide procedures, the local jurisdictions exhibited great variety in the procedural steps followed (i.e., when and where access can occur and the required method of identification). Both the information (i.e., local information only versus a state-generated rapsheet) disseminated, and the local practices (i.e., automatic receipt of a copy of the full rapsheet versus receipt of the challenged portion

only) followed, varied from agency to agency within these states. It is this very lack of uniformity in procedures and practices that has caused a number of problems for agencies in those states without statewide requirements.

Due to the lack of statewide procedures, many individual agencies have established their own procedures which have often led to further confusion. Consequently, it would appear that the best response would be the development of model procedures for access and review to be implemented nationwide (with adaptation as needed) in those states where no such procedures presently exist.

Although not specifically required by the Regulations, it can be inferred that the right to access and review CHRI by subject individuals should be promulgated in public places. This need is viewed by many states surveyed as highly problematic due to apprehension about an excessive level of requests that would occur as a direct result of the promulgation. In particular, agency officials surveyed in states where no access and review promulgation has occurred anticipated a very large number of requests both from inmates and individuals on the outside. Because of the belief that their resources were insufficient to respond, these officials have hesitated to promulgate the right. Based upon the experiences of those states where promulgation activities have occurred, this fear appears to be basically unfounded as these states have not received excessive numbers of requests by individuals to review their CHRI.

Two responses to this situation appear feasible. First, all inmates could be shown their records at intake as a routine part of the intake process. At a minimum, this would eliminate the need for writing a formal request and response as part of the access and review requirement, thereby reducing somewhat the costs associated

with these procedures. Second, the frequency of reviews of CHRI by the subject individual could be limited, perhaps allowing access only once during a specified time interval (for example, every three months) or when new information has been added.

Since some states have promulgated the right to access and review CHRI and have not been innundated with requests beyond their capabilities, appropriate technical assistance could involve the review of promulgation and response mechanisms currently in use, and a prioritization of preferred options.

The final problem area posed by the individual access and review section of the Regulations is the need for appeal procedures that extend beyond the criminal justice agency originating the information being challenged. Once again, it appears that the problem is a result of the perceived value of establishing formal procedures, and in particular the criterion of an appeal body, versus the actual number of challenges that any one agency or state has had. The number of challenges that have actually been completed have been so few that to most states and agencies the difficulty of creating an appeal body and the related procedures is seen as vastly disproportionate to its actual use.

In the appeals area, it appears that at least two response alternatives are feasible. At the local level, an existing agency which as part of its regular duties hears appeals (e.g., a local Civil Service Commission or a County Administrative Board) could be designated as the appeal forum for subject individuals challenging CHRI. At the state level, the state administrative body which normally handles appeals and its related appellate process could be used. By using either of these proposed routes, agencies would not be faced with the burden of creating both an appeal body and the

attendant procedures, but need only make use of an already existing mechanism. As a technical assistance response, model techniques could be developed for the handling of such appeals.

2.2.3 Limitations on Dissemination

The limitations on dissemination section of the Regulations is probably the most controversial of the five areas, causing lengthy intrastate discussions on what limits should or sould not be imposed. While this controversy itself has been the cause of many problems, particularly as regards the development and implementation of a statewide dissemination policy, there are some specific mandates within this section of the Regulations that have also caused problems for agencies attempting to comply.

There are three major problems stemming from the specific requirements of the limitations on dissemination section. The identified problems are:

- the need for statewide uniform policies/mechanisms for determining eligibility to secure CHRI;
- dissemination logs; and
- procedures for the notification of errors found in CHRI.

If the dissemination of non-conviction data is not regulated by existing state law, court rule or executive order, such disseminations must be restricted as specified by the Regulations. Although controversy has in some cases hampered the development of statewide policies, indications are that in general, non-criminal justice agencies must have a statutory, court order or equivalent authority base to receive information. While the Federal Regulations are concerned only with non-conviction data, state policies often cover all CHRI, both conviction and non-conviction data. Thus, this discussion is concerned with all CHRI, and does not differentiate as to type. In most states

uniform mechanisms for assessing the legitimacy of non-criminal justice agency requests to receive such CHRI are lacking. Moreover, the task of determining whether a requesting agency has a statutory mandate to receive information may often be a time-consuming and cumbersome process. As a result, it is not a task readily assumed by local agencies and thus a less than rigorous assessment of an agency's right to receive CHRI often occurs. The task of determining in advance those agencies which should be granted access to CHRI by statute or court order may be equally cumbersome and time consuming. Because of the difficulties associated with determining eligibility, great care may not be exercised in validating the legitimacy of the requestor, or dissemination to non-criminal justice agencies may be severely restricted or halted altogether.

Due to the burden that the determination of eligibility to receive CHRI seems to place on agencies at both the state and local levels, a logical response would be to shift the burden of proof on to the requesting agency or individual to establish his/her right to receive CHRI via a statute or court order or equivalent authority base. The proof required could be clearly stipulated, including citation of authority base, information authorized, and intended use. A disseminating agency would have to be cognizant of those statutes or court orders which constitute a valid authority base to receive CHRI, but this would appear to be more workable than is the current process.

It is required by the Regulations that a log be kept of all disseminations of CHRI. For many agencies surveyed, this requirement has been perceived as a time-consuming and troublesome process, and as a result, often no such logs are routinely maintained. Again, the resistance to implement this process appears to be a question of costs versus perceived value: the potential use of dissemination

logs (i.e., for notification of errors) is viewed as disproportionate to the resources that would be required to maintain the logs.

Two viable responses to the requirement to maintain dissemination logs are suggested. First, to lessen the size of the task, one approach would be to record only disseminations to non-criminal justice agencies. This would markedly reduce the size of the task since fewer requests come from non-criminal justice agencies than from criminal justice agencies. Second, local agencies could record all disseminations of CHRI in the individual's file as opposed to maintaining a separate cumulative log. Notation in this manner is seen as more efficient since it could occur as part of the process of retrieving the requested CHRI.

The final problem in the limitations on dissemination section of the Regulations is caused by the need to have procedures for notifying recipients of CHRI of errors found therein. To a large extent, this capability is dependent upon the maintenance of dissemination logs; if logs are not kept, there is no valid way of knowing who has received CHRI. Further, the actual process of notifying each prior recipient is viewed as a time-consuming and costly process by most jurisdictions surveyed.

We note two possible solutions/responses to the problem of having to notify recipients of CHRI that errors were contained therein. First, all disseminations of CHRI could be stamped as being valid and accurate for a very limited time period from the date of dissemination. Second, for a communications network, an all-points bulletin could be issued indicating the error and correction. The drawback to this last method, however, is that notification of errors would be to all users whether or not they have received the information previously,

while notification would not be received by prior recipients of the data who are not part of the communications system.

Each of the problems in the limitations on dissemination area could be addressed through the development of specific mechanisms to facilitate compliance. Federal aid could be provided to assist states in developing a formal dissemination policy and uniform mechanisms to carry out this policy. For the other two problem areas, maintenance of dissemination logs and the establishment of formal procedures for notification of errors, mechanisms could be developed at the federal level and recommended to state and local agencies.

2.2.4 Audit

Two major problems faced by states in their attempts to comply with the audit requirement are:

- the designation of any agency to conduct audits; and
- the scope/extensiveness of the required audits.

It is required by the Regulations that in each state an agency be designated to conduct audits of all impacted agencies. One problem faced by many states in the survey was designating one agency with the authority to cross agency and jurisdictional lines for conducting audits of all the components of the criminal justice system. For example, while a CSR may by its enabling authorization have either comprehensive or limited capability to audit law enforcement agencies, this authority does not necessarily extend to the other agencies in the criminal justice system. Moreover, even where such authorization exists, it may not be strong enough to overcome the objections of some agencies to having their information system audited by an agency with no direct line of authority to its own organization. Thus, the designation of one agency to audit the entire criminal justice system has been hampered by the conflict of authority versus agency autonomy.

One possible solution to the aforestated problem would be to designate more than one agency to perform audits. For example, field service representatives, generally found in state police and highway patrol agencies, could be designated as responsible for privacy and security audits of law enforcement agencies. Comparable staff representing other system components could be designated to audit their respective agencies. Technical assistance in this area could address itself to recommending the optimum agency(s) designation given the particular organizational set up in a state for conducting audits.

The second problem facing states in complying with the audit requirement of the Regulations is the scope/extensiveness of the audit required. In those cases where states have designated an agency as auditor, or have been relying on field services staff to perform audits, the staff and resources available have not been adequate to perform as comprehensive an audit as the Regulations require. Consequently, it may be feasible to perform a privacy and security audit in conjunction with another regularly scheduled visit to a given agency--for example, a troubleshooting mission or a Uniform Crime Reports (UCR) audit. While such an audit may not be as comprehensive or occur as frequently as the Regulations intended, it would, nonetheless, assure the occurrence of limited audits. Technical assistance could center on the development of audit plans that incorporate multipurpose audits, such as coupling privacy and security and UCR.

2.2.5 Security

The Regulations require that criminal history information stored in both manual and automated systems be secured to protect both the privacy and integrity of the information. Despite the lack, in most instances, of statewide standards governing the security of automated systems, procedures in place appear to be at least minimally adequate.

This appears to be the result of routinely incorporating software security packages and hardware security devices for automated systems. Additionally, all participants in the National Crime Information Center (NCIC) system must meet its standards for automated security.

For manual record systems, the situation is less clear in determining whether states are implementing adequate physical security techniques. The problem in this area arises from the general confusion as to what is specifically required to secure manual systems. Agency officials surveyed do not have available to them any currently developed model procedures for manual systems (as NCIC's are for automated systems). Hence, there exists no yardstick by which to measure the security level of their respective agencies. Further, there appears to be a less urgent sense that manual systems (versus automated systems) need to be secured beyond the physical presence of some personnel during systems use. Finally, the availability of resources appears to influence a state's ability to comply with this area of the Regulations more so than for any of the other areas. The relationship between improved physical security of manual information systems and available resources is so direct that even partial solutions to the problem are not readily apparent.

The nature of the security requirement is such that the problems associated with it are more concrete than those relating to the other requirements. As a result, the technical assistance for addressing this problem is more easily definable. Physical security options for manual information systems that can be adjusted to reflect the size, function and needs of an agency should be developed, and agencies should then be aided in adopting and implementing these standards.

3.0 RECOMMENDATIONS

Numerous problems have been identified that have impeded states in complying with the Federal Regulations governing the privacy and security of criminal history record information. These problems are defined as being essentially of two kinds--those that are external to the Regulations and are indicative of the overall environment in which the Regulations were to be implemented, and those that are internal to the Regulations and are caused by the language or specific requirements of the Regulations themselves. Many states have implemented partial solutions to the problems, and these may be valuable in the interim pending full compliance. Technical assistance, either expanding on current practices or initiating compliance activities, can aid each state to achieve full compliance.

It is being recommended that general technical assistance take the form of:

- Federally-initiated actions;
- State-initiated actions; and
- Federal coordination and monitoring.

Each of these areas of technical assistance is in response to both the external and internal problems the 18 states surveyed have faced in their attempts to implement the Regulations. Three Federally-initiated actions are recommended. These are:

- the development and dissemination of a model comprehensive legislative package and model guidelines and procedures;
- the establishment of a grants-in-aid program; and
- the provision of direct and individualized technical assistance to state and local agencies.

General technical assistance would be available to all agencies comprising the criminal justice system and would include both model legislative packages addressing in toto the requirements of the Regulations and model guidelines and procedures for implementing the mandates of each of the five generic areas of the Regulations. These packages, which could form the core of privacy and security legislation, would include, but need not be limited to, suggestions as to the state-level agency or agencies best suited to perform implementation and monitoring functions and details of the specific duties, responsibilities and needed authority base for both the central state repository and the implementing/monitoring agency. The model packages would facilitate adequate organization and assumption of responsibility needed at the state level in order to achieve an optimum level of compliance. Model guidelines and procedures for facilitating aspect-specific compliance would provide state and local agency officials with suggested mechanisms for achieving compliance.

The individualized Federally-initiated assistance provided to state and local agencies needs to be both financial and technical in nature. While the development of model packages would enhance a state's technical abilities, the grants-in-aid program would boost its resources, thus jointly aiding compliance progress. For example, grants-in-aid could be utilized to implement or improve an information reporting system or to incorporate physical security devices for manual information systems.

The final Federally-initiated assistance response suggested is direct and invidualized technical assistance provided by phone, letter or on-site visits. Such assistance would focus on areas which have caused agencies the most difficulty in complying with the Federal Regulations.

The second recommendation for facilitating compliance is state-initiated actions. Two actions are suggested:

- establish a Special Assistance Team to adapt and promulgate model guidelines and procedures; and
- appoint an Advisory Commission to coordinate the statewide effort.

The Special Assistance Team would be responsible for ensuring that the state put forth a continuous implementation effort to comply with the Regulations. In the past, such an effort has often been missing in many states, causing a slow rate of compliance progress. The team, which could function independently or in association with either the implementing/monitoring agency or the central state repository, would provide a vehicle for interpreting and adapting model Federal guidelines and procedures for state and local use. Envisioned as the driving force behind a state's compliance effort, the team could pursue legislation and interagency cooperation, promulgate compliance requirements to agencies throughout the state and provide input and guidance in the development of state policies.

The Advisory Commission would provide an additional mechanism for achieving the coordination and cooperation necessary for compliance progress. Composed of criminal justice and other interested agency representatives, state legislators, academicians, the press and the public, the Advisory Commission would provide a forum for the exchange of ideas and information. The Commission would be designed to include representatives with various levels of involvement and participation, and would serve both as a policy review board and as a means for generating widescale support for a state's compliance activities. With a multi-tier arrangement of committees/groups, the Advisory Commission would provide the legislative and executive cooperation and multi-agency coordination essential to successful compliance.

Together, the Special Assistance Team and the Advisory Commission would provide the continuity, coordination, and support required if a state is to comply with the Federal Regulations.

The final recommendation is increased Federal coordination and monitoring which would:

- establish an information exchange program for Federal, state, and local agencies;
- coordinate with other Federal efforts concerned with arrest and disposition reporting systems and monitor all related grants; and
- monitor state efforts to comply with the privacy and security regulations.

Increased Federal coordination and monitoring would not only provide additional assistance to states in their compliance efforts, but would provide a means of ensuring compliance by state and local agencies.

The information exchange program would serve as a vehicle for funnelling specific implementation strategies and compliance procedures and policies to impacted agencies and providing a forum for state and local agencies to share their experiences. Additionally, the exchange program could be the vehicle for the promulgation of Federally developed guidelines and procedures (described under Federally-initiated actions above) and for the provision of individual assistance to state and local agencies.

The second suggestion for Federal coordination and monitoring is aimed at coordinating Federally funded grants for criminal information systems, so that the award of such grants and the monitoring thereof can be aligned with privacy and security concerns. Since many states are waiting for the full implementation of Offender Based Transaction Statistics/Computerized Criminal History (OBTS/CCH) and

other automated systems in order to comply with the Federal Regulations, the extent to which compliance could be facilitated through such grants should be analyzed, and interim mechanisms developed. Another Federally sponsored program which may encourage compliance is the Uniform Crime Reports (UCR) program whose reporting and audit requirements could be expanded. Privacy and security matters could be coordinated with other relevant Federally sponsored programs, such as the State Judicial Information Systems (SJIS). This coordination should facilitate compliance progress and ease the burden on state and local agencies. Finally, the Federal Government should have a program to monitor effectively the compliance efforts of the state. This program should be developed to be helpful, as well as watchful.

Thus, through a combination of Federally-initiated actions, state-initiated actions and Federal monitoring and coordination, compliance with the Federal Regulations governing the privacy and security of criminal history record information could be greatly facilitated. A comprehensive program of technical assistance involving the components as outlined above is essential for achieving full compliance; however, the effectiveness of any assistance is directly proportionate to the level of commitment of all officials responsible.

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