

STATE OF TENNESSEE

SECURITY AND PRIVACY PLAN

FOR

CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

76-88-99-6007

NCJRS

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ACQUISITION 13

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SECURITY AND PRIVACY PLAN - TENNESSEE

INTRODUCTION

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

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

To implement this provision, on May 20, 1975, the United States Department of Justice issued regulations on the collection, storage, and dissemination of criminal history record information. These regulations, as amended December 16, 1975, require each state to submit a plan to the Law Enforcement Assistance Administration indicating how the regulations are being complied with and what steps, if any, must be taken to bring the state into full compliance by December 31, 1977.

On July 24, 1975, Governor Ray Blanton designated the Tennessee Law Enforcement Planning Agency as the agency of state government having primary responsibility for the development and submission of this plan. The agency worked closely with the Department of Safety, which has the primary responsibility for the development and maintenance of the criminal justice information system within the state.

The Tennessee Plan has set forth operational procedures on completeness and accuracy, limitations on dissemination, general policies on use and dissemination relating to non-criminal justice purposes, juvenile records, audit, and access and review. The plan follows this format.

ABBREVIATIONS USED

CJIS Criminal Justice Information System
FBI Federal Bureau of Investigation
NCIC National Crime Information Center
TBI Tennessee Bureau of (Criminal) Identification
T.C.A. Tennessee Code Annotated
TLEPC Tennessee Law Enforcement Planning Commission

COMPLETENESS AND ACCURACY

Section 524 (b) of the Safe Streets Act requires that criminal history record information be kept current and that disposition data be included with arrest data to the maximum extent feasible. Clearly, the most effective, efficient, and economical way of satisfying both of these requirements is through the establishment of a central state repository. The Tennessee Code establishes the department of safety as the agency to establish a system of intrastate communication of criminal statistics.

Section 38-1201

The commissioner of the Tennessee department of safety shall establish a system of intrastate communication of vital statistics and information relating to crime, criminals, and criminal activity.

(Public Acts 1973, chapter 159, sec. 2.)

Furthermore, pursuant to the growing concern over the security and confidentiality of criminal justice information, Governor Ray Blanton's Executive Order Number 9 designates the department of safety as the state department responsible for the development, coordination, and management of the Criminal Justice Information System for the state of Tennessee, thus implicitly establishing the department of safety as the central state repository.

The Tennessee Criminal Justice Information System is an inter-related and coordinated structure of report forms, files, computers, and communication terminals designed to provide operational support and increase the effectiveness of all of the criminal justice agencies in Tennessee. Starting from the report of a crime to a local police or

sheriff's department, the Tennessee CJIS follows the offender through all police, judicial, and correctional processes. The practice of maintaining complete and accurate agency files and concurrently indexing them on the local or state CJIS computer is the foundation of the entire system. At the present time there is not an automated CJIS system in existence at the state level. The state does have a system that supports interface via message switch system into NCIC, NLETS, and into local files containing driver and vehicle information.

The Tennessee Code also requires that criminal justice agencies (as defined in the federal regulations) shall report criminal statistics to the department of safety:

Section 38-1202

All state, county, and municipal law enforcement and correctional agencies, and courts, shall submit to the commissioner of the Tennessee department of safety reports setting forth their activities in connection with law enforcement and criminal justice, including uniform crime reports.

(Public Acts 1973, chapter 159, sec. 2.)

The weaknesses inherent in this law are: (1) there are no sanctions for agencies that do not report, (2) the law does not specify disposition reporting, and (3) there are no time constraints for the criminal justice agencies to make their reports. In other words, Tennessee does not have legislation requiring mandatory reporting of dispositions. The federal regulations mandate further that:

To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations.

The word "disposition" is defined in section 20.3(e) to mean "information disclosing that criminal proceedings have been concluded" or, to paraphrase, everything of a final nature which could happen to a defendant following his arrest is a disposition.

A resolution seeking legislation on mandatory reporting of dispositions was introduced to the state house of representatives on February 9, 1975. The resolution calls for a special committee to develop and draft procedures for state courts of criminal jurisdiction to submit dispositions to the Tennessee Bureau of Identification (a division of the department of safety) within 90 days after the disposition has occurred for inclusion into CJIS, and that draft legislation, where deemed appropriate, be submitted to the governor by October 15, 1976.

Current Disposition Reporting

The following is a brief narrative of procedures now in use for supplying disposition data to TBI.

A. Police

When an arrest is made for a misdemeanor or felony, the defendant's fingerprints are taken in triplicate. One set of prints stays with the arresting agency; two go to TBI which, in turn, forwards one to the FBI. The fingerprint card on which the fingerprints are taken provides all arrest data elements required under federal law and also meets the needs of the arrest segment of the Offender Based Tracking System and of the CCH program of the National Crime Information Center (NCIC). The three forms contain a pre-printed Originating Case Agency Number used as a tracking device. TBI also assigns the State Identification Number to

the card, and there is a place on the card for the FBI to assign a number.

State law forbids the fingerprinting of juveniles without the permission of the court:

Section 37-253

- (a) No child shall be fingerprinted or photographed in the investigation of delinquent acts without the permission of the court.
- (b) Fingerprint files of children may be inspected by law enforcement officers when necessary for the discharge of their official duties. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.

(Public Acts 1970, chapter 600, section 53.)

Juvenile fingerprints are not forwarded to the FBI, as the FBI does not keep a file on juveniles.

B. Prosecution

Presently there is no disposition reporting from district attorneys to TBI.

C. Courts

The police booking docket starts the cycle of the court calendar docketing process in which one court can bind over or remand the case to the next higher or lower court. After booking, the warrant goes to the court clerk's office. The clerk assigns a docket number and a trial date. The docket number becomes the tracking number for courts and prosecution. If there is insufficient cause to bind over to the grand jury, then the charge is dismissed. The judge will fill out the warrant with such notation, and the court clerk records the disposition in his docket. Theoretically, the court clerk sends the disposition to TBI. Presently, of 380,000 arrest records, the court has supplied

dispositions on only 20 per cent.

D. Corrections, Probation, Parole

The Tennessee Code requires that: "Each person hereafter received at the state penitentiary shall be fingerprinted and a copy thereof furnished to the bureau." (T.C.A. Section 38-503) Within twenty days of a prisoner's arrival at a state or local correctional institution, TBI receives a fingerprint card which indicates the name of the institution, the date and period of commitment, and the inmate's identification number. All such data are posted to the individual's criminal history record.

Proposed Modifications to Disposition Reporting

The need to obtain further legislation and court rules to clarify the responsibilities of the courts to report criminal dispositions promptly has already been noted. Beyond legislation and court rules, however, the current system for reporting dispositions can be improved. The Tennessee Law Enforcement Planning Commission, which by state law has as one of its duties:

Section 38-1003

- (d) Advise and assist the governor in establishing a clearing house for crime and delinquency prevention program, methods, and techniques

(Public Acts 1969, chapter 254, section 3),
has set as a number one priority for implementation in 1977 the following: "All criminal offender record information must be stored in a computer dedicated solely to and controlled by criminal justice agencies." The term "criminal offender record information" is here used synonymously with "criminal record history information."

In addition, the Tennessee Law Enforcement Planning Commission has adopted an action program to develop and implement a statewide offender tracking system which will follow each arrested person through all police, judicial, and correctional processes. This action program has been assigned priority 3 in the five-year plan to complete the Tennessee Criminal Justice Information System.

The objectives of the Tennessee Offender Tracking System are several:

- to provide operational support to individual agencies
- to provide interagency communication between agencies which need to know the offender's status and schedule
- to provide advance notification of workloads (arrests, trials, sentences) to better enable agencies to anticipate and schedule their resources
- to eliminate the need for the multiplicity of index files maintained by almost all agencies
- to increase the timeliness, completeness, and accuracy of the detailed criminal history records exchanged between Tennessee and other states
- to reduce delays caused by scheduling conflicts experienced by lawyers representing two or more defendants within and among several circuits

Exact identification by means of fingerprint identification of all persons entered in the Offender Tracking System is a basic requirement, as is the subsequent verification of the identity of individuals by thumbprint comparison at least at sentencing, entry into corrections, and at the time of final release.

The TBI will develop and maintain the criminal history systems and the automated fingerprint identification system; the department of corrections will develop the correctional tracking system to serve all

of the local, non-urban correctional agencies in addition to the state institutions and probation agencies; the executive secretary of the Supreme Court will provide court docketing, jail lists, prosecutor management control systems, and inmate location and status to all other courts in Tennessee.

The federal regulations mandate that "procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used." Since most of the arrest data at TBI do not have current dispositions, a query of the repository would not assure the most up-to-date disposition. The automation of the 5-year action plan as approved by the TLEPC, would bring the state manual system up to date. Implementation of the plan would take six to eighteen months' time.

A major component of the offender tracking system is the automated fingerprint identification system maintained and used by the TBI. Only through the use of fingerprint identification at the time of arrest and at the subsequent points of processing (sentencing, intake, final release) can an accurate and reliable history system be maintained. In the planned approach, two computerized index files--name and NCIC fingerprint classification--will point to a microfilm file containing high quality images of all fingerprint cards received by the TBI. The fingerprint technician will have a complete copy of the file along with a computer terminal and microfilm display unit. In addition to the digital record updating, the TBI will microfilm all documents received (the microfilm images are indexed by the history file), date stamp each

original document, and return it to the submitting agency to provide it with a positive response to the fact that the record was received and processed. The microfilm images will provide substantiation of the digital information and will also provide a base level backup to the digital file records.

To insure that inaccurate information of a material nature which might have been disseminated to other criminal justice agencies has been corrected, TBI uses a "Request for Name Check" form. This form indicates the name of the person to be checked, the state identification number, the agency making the request, the date of the request, and the information which is furnished. The names of agencies furnished with criminal history information are kept in the individual's file as well as on a daily log. If there is a correction to be made on the record, all criminal justice agencies which have received inaccurate information are notified. The form which is used is Appendix A.

LIMITS ON DISSEMINATION

At the present time only criminal justice agencies have direct access to criminal history record information. Dissemination is further limited to criminal justice agencies through a User's Agreement (Appendix B). The federal regulations on security and privacy are attached to and become a part of the agreement.

State law allows the commissioner of personnel to reject for employment purposes applicants who have been convicted of a crime:

Section 8-3205

The commissioner may, however, reject the application of any person for admission to a test or may strike the name of

any person from a list or refuse to certify the name of any person on a list for a position, if he finds that such person lacks any of the required qualifications, or is physically unfit to perform effectively the duties of the position in which he seeks employment, or is addicted to the habitual excessive use of drugs or intoxicating liquor, or has been convicted of a crime or been guilty of any notoriously disgraceful conduct, or has been dismissed from the public service for delinquency, or has made a false statement of a material fact, or has practiced or attempted to practice any fraud or deception in his application or test or in attempting to secure appointment.

(Public Acts 1939, chapter 221, section 17; impl. am. Acts 1961, ch. 97, sec. 4.)

The TLEPC has ruled that researchers may not have access to criminal history records. Since the federal regulations restrict dissemination to individuals and agencies for the purpose of research but does not mandate such dissemination, the TLEPC ruling does not violate the regulations.

State law limits the dissemination of juvenile records.

Section 37-251

Except in cases arising under 37-245*, all files and records of the court in a proceeding under this chapter are open to inspection only by:

- (1) the judge, officers, and professional staff of the court;
- (2) the parties to the proceeding and their counsel and representatives;
- (3) a public or private agency or institution providing supervision or having custody of the child under order of the court;
- (4) a court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court;
- (5) with permission of the court any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

(Public Acts 1970, chapter 600, section 51.)

*Refers to traffic offenses

AUDIT REVIEW PROCEDURES

TBI will audit state and local agencies that maintain criminal history information records by using a random number generation computer program. Two hundred random state identification numbers will be generated on a semi-annual basis. TBI will track these random numbers from the time the arrest was made through the time TBI receives the information. Three field persons will be used to check 400 records annually.

Any time TBI finds, as a result of a record challenge, that there was negligence on the part of a local agency, the local agency will be audited for procedures. The audit will note the method by which the local agency classifies the fingerprints and transposes the arrest data to the original criminal history file.

ACCESS AND REVIEW PROCEDURES

Sets forth requirements and procedures whereby an individual may obtain a copy of his or her arrest record consisting only of arrests in the State of Tennessee, as may be maintained by the Identification Section, Tennessee Bureau of Criminal Identification.

This order provides that an individual may present his request in person, during regular office hours to the TBCI Identification Section, Andrew Jackson State Office Building, Nashville, Tennessee. A fee of \$7.00 will be required in cash, certified check or money order, payable to the Tennessee Bureau of Criminal Identification.

For satisfactory proof of identity, the individual making the request in person shall be fingerprinted by a member of the TBCI Identification Section.

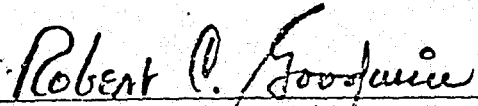
This order provides that a person may obtain a copy of his arrest record by submitting a written request, by the United States mails, to the Tennessee Bureau of Criminal Identification, Identification Section, 1206 Andrew Jackson State Office Building, Nashville, Tennessee, 37219, accompanied by satisfactory proof of identity, and a certified check or money order in the amount of \$7.00, payable to the Tennessee Bureau of Criminal Identification. Satisfactory proof of identity shall consist of name, date and place of birth, and a set of legible rolled-inked fingerprint impressions recorded on fingerprint cards, commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

The individual requesting to review or to obtain a copy of his record is responsible for complying with the necessary procedures. Arrest records will be produced only to the individual of the record. A person who believes his identification record is incomplete, or otherwise incorrect, must apply directly to the contributor of the questioned information for desired or necessary changes. The TBCI Identification Section will, upon receipt of an official communication from the originating contributing agency, make any changes necessary in accordance with the information supplied by the agency.

This order further requires that an Identification Review Board shall this date be established. This board shall consist of three members, to include the agent supervisor, or his designee, of the TBCI Identification Section, a member of the TBCI Criminal Justice Section and a member of the Tennessee Department of Safety, as appointed by the Director, TBCI, or by the Commissioner of the Tennessee Department of Safety.

The primary function and duties of the members of this board shall be to arbitrate any dispute, between the individual requesting a correction of his identification arrest record and the arresting contributing agency, which has not been resolved.

The individual of record and the contributing agency of arrest must supply the board with any required information requested concerning the dispute. The board shall notify the complainant within a period of 60 days after the date of the complaint to appear before the board for its findings.


Robert C. Goodwin, Director, TBCI
July 1, 1975

Order amended January 27, 1976
to include mailed requests.

REQUEST FOR NAME CHECK

SID # _____

TIME/DATE
CALLED _____

TIME/DATE
ANSWERED _____

**NAM/ _____

AKA/ _____ SEX/RAC _____

**DOB/ _____ SOC/ _____

FBI/ _____ MNU/ _____

AGENCY/ _____ OFFICER/ _____

FURNISHED:

CRIMINAL HISTORY _____ WANTS _____

FINGERPRINTS _____ POST WANT _____

PHOTOGRAPH _____ NCIC ONLY _____

PHYSICAL _____ OTHER _____

COMMENTS:

**--REQUIRED INFORMATION

HANDLED BY: _____

REQUEST FOR NAME CHECK FORM

Appendix A

Appendix B
USERS AGREEMENT

TENNESSEE DEPARTMENT OF SAFETY

The Tennessee Department of Safety, T.B.I. Criminal Justice Section, agrees to furnish to _____, a criminal justice agency serving as a terminal outlet on the TIES System, Criminal History Information, National Crime Information Center Files, Driver's License Files, Motor Vehicle Registration Files, subject to the following provisions.

_____ agrees to abide by all present rules, policies, and procedures promulgated by the Tennessee Department of Safety, N.C.I.C. Policy Advisory Board, and the U.S. Department of Justice, Title 28, Chapter 1, Part 20 which are attached, as well as any rules, policies, and procedures hereinafter approved by the Tennessee Department of Safety, the N.C.I.C. Policy Advisory Board, and the U.S. Department of Justice. The Tennessee Department of Safety, T.B.I. Criminal Justice Section, reserves the right to immediately suspend furnishing criminal history data, N.C.I.C. files, driver's license files, motor vehicle registration files to _____ when either the security or dissemination requirements previously listed are violated, the Tennessee Department of Safety, T.B.I. Criminal Justice Section, may reinstate the furnishing of criminal history data, N.C.I.C. Files, driver's license data, and motor vehicle registration data in such instances upon receipt of satisfactory assurances that such violations have been corrected.

Either the Tennessee Department of Safety, T.B.I. Criminal Justice Section, or _____, may discontinue service upon giving the other party thirty days notice, in writing.

_____ agrees to indemnify and save harmless the Tennessee Department of Safety, the Federal Bureau of Investigation, its Commissioner and Director, and employees from and against any and all claims, demands, actions, suits, and proceedings by others; against all liability to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment or any cause of action whatsoever, and against any loss, cost expense, and damage resulting therein arising out of or involving any negligence upon the part of _____ in the exercise or enjoyment of this agreement.

This agreement will become effective on _____.

In WITNESS WHEREOF, the parties hereto caused this agreement to be executed by the proper officers and officials.

TENNESSEE DEPARTMENT OF SAFETY

BY _____

TITLE _____

DATE _____

LOCAL CRIMINAL JUSTICE AGENCY

BY _____

TITLE _____

DATE _____

END