

U.S. Department of Justice
Bureau of Justice Statistics



Bureau of Justice Statistics Special Report

Crime Control and Criminal Records

Effective crime control measures depend heavily on the accuracy of criminal records. Programs aimed at serious, recidivistic offenders require the capability to identify dangerous offenders at key decision points in the criminal justice system, such as pretrial release and sentencing. Design and implementation of such programs as mandatory and determinate sentencing, pretrial detention, and selective incapacitation thus must rely on the accuracy, completeness, and availability of adult and juvenile criminal history and other criminal records.

These programs are designed primarily to increase the effectiveness of criminal justice by targeting resources on offenders who are considered most likely to recidivate and whose detention is considered most likely to have an incapacitative or deterrent effect (such as selective incapacitation, pretrial detention, and career criminal programs). The new strategies also seek maximum deterrent impact on correctional decisions by increasing the certainty of sentence-length and time-served requirements (such as mandatory and determinate sentencing programs). New programs have also been developed to respond to the specialized needs in particular types of cases (such as rape crisis centers and child abuse programs) and to provide services and restitution to criminal justice victims and witnesses.

Newly proposed crime control initiatives almost always involve significant consequences for criminal justice information records and systems. These take the form of--

In 1982 the Bureau of Justice Statistics and SEARCH Group, Inc., jointly sponsored a conference on the information impact of new crime control strategies. That conference was the first large-scale effort to identify criminal justice information needs and analyze the impact of information on crime control strategies; the proceedings, Information Policy and Crime Control Strategies, were published in July of 1984.

This special report, an extension of that effort, is especially timely. Last October Congress passed, and the President signed into law, historic, comprehensive anticrime legislation, the Comprehensive Crime Control Act of 1984, Public Law 98-473. That legislation includes several new crime control strategies aimed at dangerous, frequent offenders, including bail reform to permit Federal judges to detain dangerous offenders before trial; sentencing guidelines; and

- demands for data with which to design the initiative,
- demands for data in order to implement the initiative, and
- demands for data necessary to evaluate the initiative's success.¹

¹Benjamin H. Renshaw, "Information Needs in Federal Program Formulation," Information Policy and Crime Control Strategies, (July 1984, NCJ-93926), at p. 54 (hereafter "Renshaw").

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enhanced sentences for certain firearms offenders. The 1984 legislation also includes programs aimed at providing benefits to victims in the form of direct monetary assistance and aid for State victim assistance programs.

All of these crime control measures are information-intensive. Their design and implementation depend on obtaining information from juvenile, criminal history and other criminal justice and non-criminal-justice records. In turn, implementing these strategies seems sure to affect the nature and amount of criminal and non-criminal-justice information that is collected, retained, and disseminated.

Consequently, this special report sheds light on the relationship between these strategies and criminal justice records, information systems and statistics.

Steven R. Schlesinger
Director

A national conference to highlight these issues was sponsored jointly by the Bureau of Justice Statistics and SEARCH Group, Inc. in the fall of 1982.² This special report describes

²The conference was chaired by Dr. Alan F. Westin, and speakers included James Q. Wilson, Frank E. Zimring, Robert B. Bradley, Albert J. Reiss, Robert R. Belair, Benjamin H. Renshaw, Richard W. Velde, Jonathan C. Rose, Richard N. Harris, Gary R. Cooper, Alfred Blumstein, Charles M. Friel, Hunter Hurst, and Marlene A. Young.

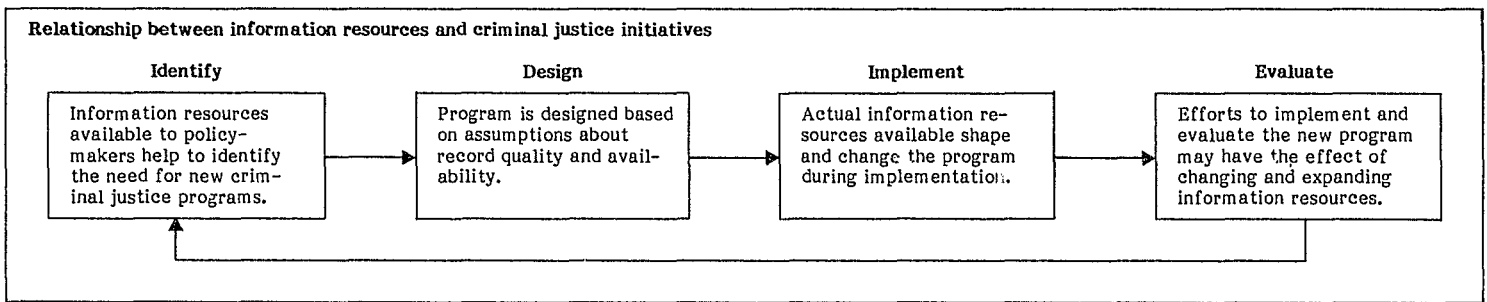


Figure 1

major issues raised at that conference and is intended to explain the relationship between criminal justice records and crime control efforts to legislators, criminal justice administrators, and policymakers at all levels of government.

Criminal justice initiatives, data resources, and information policy

The relationship between information resources, criminal justice initiatives and criminal justice policies is displayed in figure 1. The development of criminal justice initiatives depends upon the nature and quality of available information resources, both at the design and implementation stages. In turn, the development of new information policies and data resources—both statistical and administrative—reflects the requirements of new criminal justice initiatives.

In evaluating new criminal justice strategies, policymakers must consider both the nature of existing resources and the programs' anticipated impact on future policy and resource development.

Specifically, information resources must be analyzed to determine whether—

- research and statistical data are available to formulate and test program theories and if not, whether such data can be developed;
- available data will permit future evaluation of new programs and if not, whether program designs can be modified to permit such evaluation;
- data required for decisionmaking in new programs are collected with regularity and are accurate, complete and relevant and if not, whether reasonable steps can be undertaken to improve data quality to acceptable levels;
- data required for program implementation can be delivered within applicable time limits and if not, whether technical modifications can be made to speed the delivery of necessary information to program administrators;

- fiscal and labor costs of data collection and analysis have been identified and provided for, and whether these fiscal costs are consistent with overall budgets for data management;
- existing Federal, State, and local policies permit the collection and exchange of data required for program implementation and if not, whether such policies can or should be modified to support program implementation.

Analysis of these issues is not simple. Experience suggests, however, that where policymakers formulate crime control strategies without identifying and evaluating their information implications, both policy and practical problems are exacerbated.³

Recent crime control strategies

In recent years a variety of crime control initiatives have been designed that are aimed at improving prosecution, adjudication, and corrections functions. Many of these initiatives are aimed at identifying, prosecuting, and incapacitating dangerous offenders. Such programs include, for example, career criminal prosecution units, selective incapacitation programs, mandatory sentencing, and pretrial detention requirements. Determinate sentencing programs, although not targeted specifically on violent offenders, also require that decisions be based on offender characteristics.

Other new criminal justice initiatives are aimed at providing services to various classes of victims and witnesses, who previously were neglected components of the criminal justice system. These include family violence, child abuse, and rape crisis programs, as well as victim/witness assistance programs generally.

Each of these groups of programs requires special kinds of data for implementation and has a set of long-term impacts on the criminal justice system (tables 1 and 2).

³Renshaw, at p. 54.

Glossary of crime control strategies and programs

Pretrial detention—a statutory program authorizing detention of an offender prior to trial where specific findings are made at a public hearing regarding nature of the charged offense and the prior criminal, drug, and related history of the alleged offender.

Career criminal programs—a prosecution program designed to identify repeat offenders and to flag such cases for expeditious processing by specialized units or with intensive procedures.

Determinate sentencing—a sentencing strategy under which parole may not be granted prior to expiration of a statutorily established period of confinement (minus "good time").

Mandatory sentencing—a sentencing system, established by statute, requiring that a prison term always be imposed on conviction for specified offenses or involving offenders with particular criminal backgrounds.

Selective incapacitation—a sentencing strategy in which individual sentences are based on factors that predict future criminality, and which are used to identify and confine, for an extended period, those offenders who represent the most serious risk to the community.

The new programs frequently require that substantial data be available to distinguish among offenders. The programs also focus on data collected outside the adult criminal justice system and, accordingly, may require establishing new record systems, developing new linkages between differing record systems, and reviewing relevant policies in this area. Since decisions made in programs such as selective incapacitation may be judicially reviewable, particular emphasis is placed on the quality of the data used

Similarly, the time limits within which many adult criminal justice decisions must be made would require that technical procedures for adult/juvenile data linkage be developed and that such procedures be consistent with legislative and regulatory policy.

New initiatives might also require that other types of non-criminal-justice data such as drug use data or employment history information, be included within criminal justice records or otherwise made available to program administrators on a regular and timely basis.

Systems for evaluating the reliability of this data would also be required as

Copies of the full proceedings of the 1982 conference, Information Policy and Crime Control Strategies: Proceedings of a BJS/SEARCH conference (NCJ-93926), are available from the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850 (800-732-3277).

would protocols for the release of such frequently nonautomated data files. Moreover, standards for retaining and sharing this data would also have to be established.

Taken together, the changes described above may result in a significant reshaping of criminal justice, juvenile justice, and non-criminal-justice record practices. Such changes can be expected to raise policy issues concerning the impact of such practices on privacy and due-process values.

Conclusion

The criminal justice process, and particularly the law enforcement and adjudicative components of that process, are extraordinarily information-dependent. Information resources have much to do with determining the success of a crime control program and, in turn, crime control programs have much to do with determining the character of criminal justice information resources. The development of accurate, complete and high quality data, therefore, is a key factor in the success

of new program strategies for crime control.

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for both development of program criteria (generally statistical records) and program implementation (generally administrative records).

Data requirements: Limitations of data sources

Current crime control strategies require complete, accurate, and timely criminal justice, juvenile and non-criminal-justice records. A key issue, then, is the quality of such records.

Criminal justice records

The quality of criminal justice record systems has increased substantially during the past 10 years. Enormous strides have been made in the development of law and policy; Federal regulations as well as State law in almost all States now impose requirements (such as arrest and disposition reporting, regular audits) designed to improve data quality.⁴

Of equal importance, recent surveys indicate that all 50 States and two of the three territories have established centralized repositories for criminal history record information that are designed to gather information about offenders from law enforcement, prosecution, courts and corrections agencies.⁵ (A full criminal history file ideally includes personal identifiers, arrest and subsequent charges, intermediate and final dispositions by charge, and, where pertinent, sentencing and commitment data).

The establishment of central repositories has made it possible to create records describing the offender's complete involvement in the criminal justice system.⁶ Centralization of criminal justice information in a single State agency has also permitted better coordination and accountability for record activity. In addition, repositories, out of fiscal necessity, have pioneered in the use of information technology to collect, retain and

Table 1. Offender-targeted criminal justice initiatives

Program initiatives	<ul style="list-style-type: none"> ● Pretrial detention programs. ● Career criminal and repeat offender programs. ● Mandatory and determinate sentencing programs. ● Selective incapacitation programs.
Program characteristics	<ul style="list-style-type: none"> ● Programs designed to identify high risk offenders. ● Programs based on statistical findings that: (a) limited number of offenders cause a disproportionate level of crime, particularly violent crime; and (b) criteria reflecting prior history (both criminal and noncriminal) can identify high-risk offenders. ● Programs assume availability of data to enable practitioners to apply criteria for decision making. ● Program criteria rely heavily on juvenile record data and also emphasize noncriminal justice data (e.g., drug records, employment history); current criminal justice status (e.g., bail violations, pending charges); and nature of offense (particularly level of violence).
Statistical information that may be needed for program design	<ul style="list-style-type: none"> ● Cohort crime rates (the rate at which individuals with particular characteristics or prior behavior commit crimes). ● Anticipated prison capacity over time. ● Deterrent impact of enhanced penalties for dangerous offenders. ● Anticipated manpower costs or savings associated with new procedural requirements (e.g., pretrial detention hearings; specialized career criminal units).
Record information that may be needed for program implementation	<ul style="list-style-type: none"> ● Current criminal history status (charges pending, bail, probation). ● Prior criminal history record (data required to be accurate, complete and timely and to include out-of-State events). ● Juvenile record (data required to be descriptive, accurate, complete and timely). ● Drug history (including alcohol or type of substance abuse). ● Employment history and community stability. ● Educational history.
Potential long-term systems impact	<ul style="list-style-type: none"> ● Improved statistical data about cohort crime rates and improved reliability of statistical data for predictive purposes. ● Upgraded quality of criminal history records (both arrest and disposition reporting). ● Expanded interstate access to criminal history data. ● Upgraded quality of juvenile justice and non-criminal-justice records. ● Expanded availability of juvenile justice and non-criminal-justice records.

Note: All of the items listed as program characteristics, statistical information, record information, and systems impact do not necessarily apply to each of the program initiatives.

⁴Robert R. Belair, "Legal Rules and Policy Initiatives in the Use of Criminal Justice Information," *Information Policy and Crime Control Strategies*, at pp. 47-48.

⁵SEARCH Group, Inc. *Compendium of State Legislation, 1984 Update: An Overview, Privacy and Security of Criminal History Information*, October 1985, NCJ-98077

⁶Gary R. Cooper, "New Initiatives and the Criminal Justice Environment: A Case Study of the Interstate Identification Index," *Information Policy and Crime Control Strategies*, at pp. 66-67; and Richard W. Velde, "Project SEARCH: An Information Bridge between Federal and State Criminal Justice Programs," *Information Policy and Crime Control Strategies*, at pp. 57-58.

process vast amounts of criminal history data, thus providing the basis for both increased data quality and more effective data communications.⁷

⁷Albert J. Reiss, "Trends in Collecting and Using Crime Data," *Information Policy and Crime Control Strategies*, at pp. 24, 26; and Alfred Blumstein, "Violent and Career Offender Programs," *Information Policy and Crime Control Strategies*, at p. 81.

Substantial work remains, however, to ensure that sufficiently high quality data are available to support statistical and operational needs of the new programs. Specifically, it is generally agreed that the quality of criminal history records varies significantly from State to State and from system to system; thus requests for information

Table 2. Victim-targeted criminal justice initiatives

Program initiatives	<ul style="list-style-type: none"> ● Victim/witness assistance programs. ● Family violence programs. ● Rape crisis programs. ● Child abuse programs. ● Elderly abuse programs.
Program characteristics	<ul style="list-style-type: none"> ● Programs designed to provide specialized services to discrete classes of victims. ● Nature of program services goes beyond traditional law enforcement, prosecution, correction activity (e.g., victim stabilization services; legal services; medical and psychological services; financial services; and various information services). ● Implementation of programs relies heavily on non-criminal-justice data sources.
Statistical information that may be needed for program design	<ul style="list-style-type: none"> ● Crime rates against particular classes of victims. ● Nature of harm to victims. ● Victim/offender relationship. ● Availability of non-criminal-justice resources (public health, social services).
Record information that may be needed for program implementation	<ul style="list-style-type: none"> ● Incident report information or other information providing the name, address, age and sex of victim; relationship, if any, of victim to offender; and description of harm to victim. ● Similar data regarding available witnesses. ● Victim record information indicating whether victim was prior victim and, if so, the circumstances and other background information about prior victimization. ● Social service information, including family circumstances of victim, relevant victim employment and financial information. ● Victim medical record information.
Potential long-term systems impact	<ul style="list-style-type: none"> ● Upgraded statistical data about crime rates against particular classes of victims and effects of those crimes. ● Upgraded statistical data about the remedial effects of victim assistance programs. ● Upgraded incident reports and similar reports to provide appropriate victim information. ● Revision of existing systems to permit access to criminal history and incident reports based on victim/witness identifiers. ● Improved collection, retention and use of victim/witness information obtained from non-criminal-justice sources.

Note: All of the items listed as program characteristics, statistical information, record information, and systems impact do not necessarily apply to each of the program initiatives.

about multistate offenders may be compromised by reliance on data from low quality systems.

Moreover, problems remain even in relatively advanced systems:

- descriptions of arrest charges are not as likely to be retained as are descriptions of formal charges;
- disposition information cannot always be linked to either arrest or formal charges; and

- data may not be available promptly enough to be used in initial decisions such as those involving police investigation, prosecutors' charging, and judges' bail determinations.

These problems largely reflect insufficient intergovernmental coordination, inadequate financial support, gaps in automation, and failure to implement programs (such as disposition monitoring) that improve data quality.

Juvenile records

The newly developed initiatives frequently identify juvenile history as a key criterion to be applied in adult criminal justice decisions. The reliance on juvenile data reflects a change in philosophy regarding juvenile transgressions and puts special emphasis on the status and availability of juvenile records.

The problems associated with using juvenile justice records to enhance adult criminal justice records relate primarily to deficiencies in the quality of juvenile records and their unavailability both as a matter of law and practice.

Specifically, research indicates that:

- Juvenile "arrest" charges may not be recorded where charges against juveniles are "informally adjusted" and formal charges of delinquency are therefore not filed.
- The seriousness and number of arrest charges may not be reflected on the juvenile criminal history record (that is, they may be replaced and masked by comprehensive and relatively unhelpful charge designations such as "delinquency.")
- Adjudicative data may not be included on the record (that is, where juvenile cases are "continued" in contemplation of eventual dismissal if the juvenile meets the conditions of his probation).⁸
- Juvenile justice record information is often sealed or purged, and is therefore, as a matter of law, unavailable to prosecutors or adult courts.⁹
- Administrative hurdles often mean that legally available records are not in fact available.¹⁰
- Absence of positive (fingerprint) identification on juvenile records precludes linkage with adult records.
- Lack of automation limits transfer of juvenile data within legal time requirements.

⁸ Frank E. Zimring, "Research Agendas, Information Policies and Program Outcomes," *Information Policy and Crime Control Strategies*, at p. 12.

⁹ SEARCH, *Criminal Justice Information Policy: Privacy and Juvenile Justice Records*, BJS (Jan. 1983, NCJ-84152), Part Three, Chapter 1, *Sealing and Purging of Juvenile Records*, (hereafter "Juvenile Justice Records").

¹⁰ *Privacy and Juvenile Justice Records*, Part Three, Chapter 3, "Sharing of Juvenile Justice Records within the Adult Justice System."

Researchers cite several factors to explain inadequacies in juvenile justice record information systems.¹¹ In general these factors focus on the policies underlying the juvenile justice system—that is, whether juveniles should be held to the same standards of criminal culpability for their behavior as adults, or whether, in hopes of rehabilitating juvenile offenders, records of juvenile activity should be treated differently from adult records.

Applying the latter principle to issues of information policy has resulted in determinations that the juvenile justice system should minimize formal and detailed documentation of juvenile crimes, limit formal identification of subjects, and be reluctant to share such documentation, even when it is recorded and retained.¹² Supporters of this view argue that child protective policies and other limits on criminal justice agency access to juvenile data are desirable and, indeed, essential in a democratic society.¹³

Recent findings concerning the age of offenders, the extent and violence of juvenile crime, and the possible linkage between juvenile acts and adult criminal careers have challenged the basic acceptance of such philosophic principles and raised questions regarding the value of rehabilitation programs.

Increasingly, evidence suggests that the public is growing more inclined to hold juveniles criminally culpable. There are also signs that the public is becoming much less optimistic about prospects for juvenile offender rehabilitation. Many States have also recently strengthened statutes that permit juvenile offenders to be tried as adults in certain circumstances.¹⁴ Nevertheless, child protective policies can be expected to change slowly, and until they do, there are likely to be limits on the adequacy and availability of juvenile justice data.¹⁵

¹¹Zimring, at pp. 14-15, citing Mark H. Moore, Susan R. Estrich and Daniel McGillis, Report of the Project on Public Danger, Dangerous Offenders and the Criminal Justice System — Volume I: The Final Report, (1981), ch. 8, at p. 2-12. See also Mark H. Moore, Susan R. Estrich, Daniel McGillis and William Spelman, Dangerous Offenders: The Elusive Target of Justice, Howard University Press (1984), particularly Chapter 8, Criminal Justice Records.

¹²Juvenile Justice Records, Part One, Chapter 1, "The History and Philosophy of the Juvenile Justice System."

¹³Westin, at p. 46.

¹⁴Robert J. Bradley, "Trends in State Crime Control Legislation," Information Policy and Crime Control Strategies, at p. 20.

¹⁵Privacy and Juvenile Justice Records, at pp. 25-26.

Non-criminal-justice records

The new initiatives have also increased demands for data not now maintained in criminal justice systems (such as drug abuse history, employment records, and medical history). These data are viewed as essential for decisions about processing and sentencing offenders and providing more comprehensive services to victims and witnesses.

Availability and quality of such non-criminal-justice data present major problems:

- absent an arrest or charge involving the use or sale of drugs, drug use information will not normally appear in standard criminal history records;
- where maintained by the police, data on drug use, medical history, employment, and community ties will generally be included in police incident reports or other types of investigative reports not routinely exchanged within the criminal justice system;
- organizational priorities within law enforcement agencies often work to minimize the quality and quantity of data collected in investigative records;¹⁶
- availability of data is limited because records frequently are not retrievable by offender identifiers;
- the quality of "investigative" records may not be sufficiently reliable for use in final decisions concerning individual offenders;
- where non-criminal-justice data are maintained outside the criminal justice system, no protocol exists for courts, prosecutors, or law enforcement officials to obtain such data;
- no standards exist to identify where such data, once acquired, should be maintained within the criminal justice system (for instance, would data be included in automated files or remain in manual investigative files, with limited accessibility);
- no organizations have been identified as official sources of non-criminal-justice data, raising administrative, technical, and data-quality issues;

¹⁶SEARCH, Criminal Justice Information Policy: Intelligence and Investigative Records, BJS (1985) at pp. 43-44. See also James Q. Wilson, "Problems in the Creation of Adequate Criminal Justice Information Systems," Information Policy and Crime Control Strategies, at p. 8.

• no evidence exists to ensure that originators of employment record or health record information would cooperate in making data available to criminal justice agencies, or, in the absence of cooperation, that such data could be obtained routinely.

Impact on criminal justice record resources and information policy

Crime control strategies, when implemented, are likely to have a significant effect on future development of criminal justice, juvenile, and other information resources.

Programs requiring the use of criminal history records for judicially reviewable decisions, for example, require that data resources be reliably accurate and complete and that, where necessary, efforts be undertaken to improve the quality of such data. Implementation of such programs may have substantial fiscal implications and will clearly increase the significance of efforts to coordinate the interstate exchange of criminal history data.

More specifically, it appears likely that programs which emphasize particular data elements (such as arrest data), might result in a gradual restructuring of data collection priorities. Such shifts in recordkeeping practices might have a significant impact on policies now set forth in Federal and State legislation or regulations (for example, legislation currently emphasizes "disposition" as opposed to merely "arrest" reporting).

Additionally, the increased use of criminal justice records for criminal justice purposes is likely to increase fiscal and manpower demands on criminal record systems and might require imposing restrictions (or fees) for non-criminal-justice access to criminal history data—a development related to increasing legislative interest in required pre-employment criminal record checks for non-criminal-justice positions.

Requirements that decisions affecting adults be based, in part, on juvenile records would also be likely to encourage the collection and storage of juvenile data on adult criminal history records.

Use of juvenile records as a basis for judicially reviewable adult criminal justice decisions would also increase the need for greater accuracy and completeness of records found in juvenile systems and require greater formalization of fact-finding in juvenile proceedings.