

Department of Justice

§ 20.3

(3) Inserted in any envelope and/or publication the contents of which may be construed to be inappropriate for association with the Missing Children Penalty Mail Program.

(e) Each component shall provide the General Services Staff, Justice Management Division, with the name(s), telephone number(s) and mailing address(es) of each designated Missing Children Program Coordinator within 30 days of the effective date of this regulation.

(f) Each component shall submit a quarterly report to the General Services Staff, Justice Management Division, within 5 days after the close of each Fiscal Year quarter providing the specific information identified in §19.5 concerning implementation and participation in the program.

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

Subpart A—General Provisions

Sec.

- 20.1 Purpose.
- 20.2 Authority.
- 20.3 Definitions.

Subpart B—State and Local Criminal History Record Information Systems

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

Subpart C—Federal Systems and Exchange of Criminal History Record Information

- 20.30 Applicability.
- 20.31 Responsibilities.
- 20.32 Includable offenses.
- 20.33 Dissemination of criminal history record information.
- 20.34 Individual's right to access criminal history record information.
- 20.35 Criminal Justice Information Services Advisory Policy Board.
- 20.36 Participation in the Interstate Identification Index System.
- 20.37 Responsibility for accuracy, completeness, currency, and integrity.
- 20.38 Sanction for noncompliance.

APPENDIX TO PART 20—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

AUTHORITY: 28 U.S.C. 534; Pub. L. 92-544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*; Pub. L. 99-169, 99 Stat. 1002, 1008-1011, as amended by Pub. L. 99-569, 100 Stat. 3190, 3196; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

SOURCE: Order No. 601-75, 40 FR 22114, May 20, 1975, unless otherwise noted.

Subpart A—General Provisions

SOURCE: 41 FR 11714, Mar. 19, 1976, unless otherwise noted.

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.

[Order No. 2258-99, 64 FR 52226, Sept. 28, 1999]

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Public Law 93-83, 87 Stat. 197, 42 U.S.C. 3701, *et seq.* (Act), 28 U.S.C. 534, and Public Law 92-544, 86 Stat. 1115.

§ 20.3 Definitions.

As used in these regulations:

(a) *Act* means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, *et seq.*, as amended.

(b) *Administration of criminal justice* means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(c) *Control Terminal Agency* means a duly authorized state, foreign, or international criminal justice agency with

direct access to the National Crime Information Center telecommunications network providing statewide (or equivalent) service to its criminal justice users with respect to the various systems managed by the FBI CJIS Division.

(d) *Criminal history record information* means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.

(e) *Criminal history record information system* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

(f) *Criminal history record repository* means the state agency designated by the governor or other appropriate executive official or the legislature to perform centralized recordkeeping functions for criminal history records and services in the state.

(g) *Criminal justice agency* means:

(1) Courts; and

(2) A governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included.

(h) *Direct access* means having the authority to access systems managed by the FBI CJIS Division, whether by manual or automated methods, not requiring the assistance of or intervention by any other party or agency.

(i) *Disposition* means information disclosing that criminal proceedings have been concluded and the nature of the termination, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to

commence criminal proceedings; or disclosing that proceedings have been indefinitely postponed and the reason for such postponement. Dispositions shall include, but shall not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(j) *Executive order* means an order of the President of the United States or the Chief Executive of a state that has the force of law and that is published in a manner permitting regular public access.

(k) *Federal Service Coordinator* means a non-Control Terminal Agency that has a direct telecommunications line to the National Crime Information Center network.

(l) *Fingerprint Identification Records System* or "FIRS" means the following FBI records: Criminal fingerprints and/or related criminal justice information submitted by authorized agencies having criminal justice responsibilities; civil fingerprints submitted by federal agencies and civil fingerprints submitted by persons desiring to have their fingerprints placed on record for personal identification purposes; identification records, sometimes referred to as "rap sheets," which are compilations of criminal history record information pertaining to individuals who have criminal fingerprints maintained in the FIRS; and a name index pertaining to all individuals whose fingerprints are maintained in the FIRS. See the FIRS Privacy Act System Notice periodically published in the FEDERAL REGISTER for further details.

Department of Justice

§ 20.20

(m) *Interstate Identification Index System* or “III System” means the cooperative federal-state system for the exchange of criminal history records, and includes the National Identification Index, the National Fingerprint File, and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(n) *National Crime Information Center* or “NCIC” means the computerized information system, which includes telecommunications lines and any message switching facilities that are authorized by law, regulation, or policy approved by the Attorney General of the United States to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. The NCIC includes, but is not limited to, information in the III System. See the NCIC Privacy Act System Notice periodically published in the FEDERAL REGISTER for further details.

(o) *National Fingerprint File* or “NFF” means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(p) *National Identification Index* or “NII” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(q) *Nonconviction data* means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; information disclosing that the police have elected not to refer a matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed; and information that there has been an acquittal or a dismissal.

(r) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(s) *Statute* means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

[Order No. 2258-99, 64 FR 52226, Sept. 28, 1999]

Subpart B—State and Local Criminal History Record Information Systems

SOURCE: 41 FR 11715, Mar. 19, 1976, unless otherwise noted.

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to title I of the Act. Use of information obtained from the FBI Identification Division or the FBI/NCIC system shall also be subject to limitations contained in subpart C.

(b) The regulations in this subpart shall not apply to criminal history record information contained in:

(1) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(2) Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long standing custom to be made public, if such records are organized on a chronological basis;

(3) Court records of public judicial proceedings;

(4) Published court or administrative opinions or public judicial, administrative or legislative proceedings;

(5) Records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses;

(6) Announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section. The regulations do not prohibit the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship.

§ 20.21 Preparation and submission of a Criminal History Record Information Plan.

A plan shall be submitted to OJARS by each State on March 16, 1976, to set forth all operational procedures, except those portions relating to dissemination and security. A supplemental plan covering these portions shall be submitted no later than 90 days after promulgation of these amended regulations. The plan shall set forth operational procedures to—

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information unless it can be assured that the most up-to-date disposition data is being used. In-

quiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

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

(b) *Limitations on dissemination.* Insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of the Act and any regulations implementing section

Department of Justice

§ 20.21

524(a), and provide sanctions for the violation thereof. These dissemination limitations do not apply to conviction data.

(c) *General policies on use and dissemination.* (1) Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.

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

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

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

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

(f) *Security.* Wherever criminal history record information is collected, stored, or disseminated, each State shall insure that the following requirements are satisfied by security stand-

ards established by State legislation, or in the absence of such legislation, by regulations approved or issued by the Governor of the State.

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

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

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

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

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

(c) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

(d) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file.

(e) The programs specified in paragraphs (f)(3)(i) (b) and (d) of this section are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) are kept continuously under maximum security conditions.

§ 20.22

28 CFR Ch. I (7-1-09 Edition)

(f) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for (1) the physical security of criminal history record information under its control or in its custody and (2) the protection of such information from unauthorized access, disclosure or dissemination.

(g) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

(ii) A criminal justice agency shall have the right to audit, monitor and inspect procedures established above.

(4) The criminal justice agency will:

(i) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(ii) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(iii) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for

(a) The physical security of criminal history record information under its control or in its custody and

(b) The protection of such information from unauthorized access, disclosure, or dissemination.

(iv) Institute procedures, where computer processing is not utilized, to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

(v) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations.

(g) *Access and review.* Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that—

(1) Any individual shall, upon satisfactory verification of his identity, be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;

(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;

(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;

(4) Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to whom the data has been given;

(5) The correcting agency shall notify all criminal justice recipients of corrected information; and

(6) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by §20.3(b).

[41 FR 11715, Mar. 19, 1976, as amended at 42 FR 61595, Dec. 6, 1977]

§ 20.22 Certification of compliance.

(a) Each State to which these regulations are applicable shall with the submission of its plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be

Department of Justice

§ 20.25

taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.

(b) The certification shall include—

(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under § 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;

(3) A description of the steps taken to overcome any fiscal, technical, and administrative barriers to the development of complete and accurate criminal history record information;

(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and

(5) A listing setting forth categories of non-criminal justice dissemination. See § 20.21(b).

§ 20.23 Documentation: Approval by OJARS.

Within 90 days of the receipt of the plan, OJARS shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by OJARS will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by March 1, 1978. A final certification shall be submitted on March 1, 1978.

Where a State finds it is unable to provide final certification that all required procedures as set forth in § 20.21 will be operational by March 1, 1978, a further extension of the deadline will be granted by OJARS upon a showing that the State has made a good faith effort to implement these regulations to the maximum extent feasible. Documentation justifying the request for the extension including a proposed timetable for full compliance must be submitted to OJARS by March 1, 1978.

Where a State submits a request for an extension, the implementation date will be extended an additional 90 days while OJARS reviews the documentation for approval or disapproval. To be approved, such revised schedule must be consistent with the timetable and procedures set out below:

(a) July 31, 1978—Submission of certificate of compliance with:

(1) Individual access, challenge, and review requirements;

(2) Administrative security;

(3) Physical security to the maximum extent feasible.

(b) Thirty days after the end of a State's next legislative session—Submission to OJARS of a description of State policy on dissemination of criminal history record information.

(c) Six months after the end of a State's legislative session—Submission to OJARS of a brief and concise description of standards and operating procedures to be followed by all criminal justice agencies covered by OJARS regulations in complying with the State policy on dissemination.

(d) Eighteen months after the end of a State's legislative session—Submission to OJARS of a certificate attesting to the conduct of an audit of the State central repository and of a random number of other criminal justice agencies in compliance with OJARS regulations.

[41 FR 11715, Mar. 19, 1976, as amended at 42 FR 61596, Dec. 6, 1977]

§ 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

§ 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a civil penalty not to exceed \$10,000 for a violation occurring before September 29, 1999, and not to exceed \$11,000 for a violation occurring on or after September 29, 1999. In addition,

§ 20.30

OJARS may initiate fund cut-off procedures against recipients of OJARS assistance.

[41 FR 11715, Mar. 19, 1976, as amended by Order No. 2249-99, 64 FR 47102, Aug. 30, 1999]

Subpart C—Federal Systems and Exchange of Criminal History Record Information

SOURCE: Order No. 2258-99, 64 FR 52227, Sept. 28, 1999, unless otherwise noted.

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to the III System and the FIRS, and to duly authorized local, state, tribal, federal, foreign, and international criminal justice agencies to the extent that they utilize the services of the III System or the FIRS. This subpart is applicable to both manual and automated criminal history records.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall manage the NCIC.

(b) The FBI shall manage the FIRS to support identification and criminal history record information functions for local, state, tribal, and federal criminal justice agencies, and for non-criminal justice agencies and other entities where authorized by federal statute, state statute pursuant to Public Law 92-544, 86 Stat. 1115, Presidential executive order, or regulation or order of the Attorney General of the United States.

(c) The FBI CJIS Division may manage or utilize additional telecommunication facilities for the exchange of fingerprints, criminal history record related information, and other criminal justice information.

(d) The FBI CJIS Division shall maintain the master fingerprint files on all offenders included in the III System and the FIRS for the purposes of determining first offender status; to identify those offenders who are unknown in states where they become criminally active but are known in other states through prior criminal history records; and to provide identification assistance in disasters and for other humanitarian purposes.

28 CFR Ch. I (7-1-09 Edition)

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in the III System and the FIRS shall include serious and/or significant adult and juvenile offenses.

(b) The FIRS excludes arrests and court actions concerning nonserious offenses, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run), when unaccompanied by a § 20.32(a) offense. These exclusions may not be applicable to criminal history records maintained in state criminal history record repositories, including those states participating in the NFF.

(c) The exclusions enumerated above shall not apply to federal manual criminal history record information collected, maintained, and compiled by the FBI prior to the effective date of this subpart.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies;

(2) To federal agencies authorized to receive it pursuant to federal statute or Executive order;

(3) For use in connection with licensing or employment, pursuant to Public Law 92-544, 86 Stat. 1115, or other federal legislation, and for other uses for which dissemination is authorized by federal law. Refer to § 50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph;

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses;

(5) To criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS);

Department of Justice

§ 20.36

(6) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/ information services for criminal justice agencies; and

(7) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments, related agencies, or service providers identified in paragraphs (a)(6) and (a)(7) of this section.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

(d) Criminal history records received from the III System or the FIRS shall be used only for the purpose requested and a current record should be requested when needed for a subsequent authorized use.

§ 20.34 Individual's right to access criminal history record information.

The procedures by which an individual may obtain a copy of his or her identification record from the FBI to

review and request any change, correction, or update are set forth in §§ 16.30–16.34 of this chapter. The procedures by which an individual may obtain a copy of his or her identification record from a state or local criminal justice agency are set forth in § 20.34 of the appendix to this part.

§ 20.35 Criminal Justice Information Services Advisory Policy Board.

(a) There is established a CJIS Advisory Policy Board, the purpose of which is to recommend to the FBI Director general policy with respect to the philosophy, concept, and operational principles of various criminal justice information systems managed by the FBI's CJIS Division.

(b) The Board includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations.

(c) All members of the Board will be appointed by the FBI Director.

(d) The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.

§ 20.36 Participation in the Interstate Identification Index System.

(a) In order to acquire and retain direct access to the III System, each Control Terminal Agency and Federal Service Coordinator shall execute a CJIS User Agreement (or its functional equivalent) with the Assistant Director in Charge of the CJIS Division, FBI, to abide by all present rules, policies, and procedures of the NCIC, as well as any rules, policies, and procedures hereinafter recommended by the CJIS Advisory Policy Board and adopted by the FBI Director.

(b) Entry or updating of criminal history record information in the III System will be accepted only from state or federal agencies authorized by the FBI. Terminal devices in other agencies will be limited to inquiries.

§ 20.37

§ 20.37 Responsibility for accuracy, completeness, currency, and integrity.

It shall be the responsibility of each criminal justice agency contributing data to the III System and the FIRS to assure that information on individuals is kept complete, accurate, and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

Access to systems managed or maintained by the FBI is subject to cancellation in regard to any agency or entity that fails to comply with the provisions of subpart C of this part.

APPENDIX TO PART 20—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

Subpart A—§20.3(d). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/III System (OBTS/III) data elements. If notations of an arrest, disposition, or other formal criminal justice transaction occurs in records other than the traditional “rap sheet,” such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, and ownership of property and vehicles) is not included in the definition of criminal history information.

§20.3(g). The definitions of criminal justice agency and administration of criminal justice in §20.3(b) of this part must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies, as well as subunits of noncriminal justice agencies that perform the administration of criminal justice pursuant to a federal or state statute or executive order and allocate a substantial portion of their budgets to the administration of criminal justice. The above subunits of non-criminal justice agencies would include, for example, the Office of Investigation of the Food and Drug Administration, which has as its principal function the detection and ap-

28 CFR Ch. I (7–1–09 Edition)

prehension of persons violating criminal provisions of the Federal Food, Drug and Cosmetic Act. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services, such as New York’s Division of Criminal Justice Services.

§20.3(i). Disposition is a key concept in section 524(b) of the Act and in §§20.21(a)(1) and 20.21(b) of this part. It therefore is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other, unspecified transactions concluding criminal proceedings within a particular agency.

§20.3(q). The different kinds of acquittals and dismissals delineated in §20.3(i) are all considered examples of nonconviction data.

Subpart B—§20.20(a). These regulations apply to criminal justice agencies receiving funds under the Omnibus Crime Control and Safe Streets Act for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA’s authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulation of manual systems, therefore, is authorized by section 524(b) when coupled with section 501 of the Act which authorizes the Administration to establish rules and regulations “necessary to the exercise of its functions * * *.”

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

Limitations as contained in subpart C also apply to information obtained from the FBI Identification Division or the FBI/NCIC System.

§20.20 (b) and (c). Section 20.20 (b) and (c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public’s right to know. Court records of public judicial proceedings are also exempt from the provisions of the regulations.

Section 20.20(b)(2) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person’s arrests. Such files create a partial criminal history data

bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus, announcements of arrest, convictions, new developments in the course of an investigation may be made. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1975" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal justice agency may respond to the inquiry. Conviction data as stated in §20.21(b) may be disseminated without limitation.

§20.21. The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor. The State has 90 days from the publication of these revised regulations to submit the portion of the plan covering §§20.21(b) and 20.21(f).

§20.21(a)(1). Section 524(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

It is, however, economically and administratively impractical to maintain complete criminal histories at the local level. Arrangements for local police departments to keep track of dispositions by agencies outside of the local jurisdictions generally do not exist. It would, moreover, be bad public policy to encourage such arrangements since it would result in an expensive duplication of files.

The alternatives to locally kept criminal histories are records maintained by a central State repository. A central State repository is a State agency having the function pursuant to a statute or executive order of maintaining comprehensive statewide criminal history record information files. Ultimately, through automatic data processing the State level will have the capability to handle all requests for in-State criminal history information.

Section 20.20(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at the State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most noncriminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

§20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the "privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes." The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

The regulations distinguish between conviction and nonconviction information insofar as dissemination is concerned. Conviction information is currently made available without limitation in many jurisdictions. Under these regulations, conviction data and pending charges could continue to be disseminated routinely. No statute, ordinance, executive order, or court rule is necessary in order to authorize dissemination of conviction data. However, nothing in the regulations shall be construed to negate a State law limiting such dissemination.

After December 31, 1977, dissemination of nonconviction data would be allowed, if authorized by a statute, ordinance, executive order, or court rule, decision, or order. The December 31, 1977, deadline allows the States time to review and determine the kinds of dissemination for non-criminal justice purposes to be authorized. When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State. It is possible for a public record law which has been construed by the State to authorize access to the public of all State records, including criminal history record information, to be considered as statutory authority under this subsection. Federal legislation and executive orders can also authorize dissemination and would be relevant authority.

For example, Civil Service suitability investigations are conducted under Executive Order 10450. This is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

§20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

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

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

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

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

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

§20.21(c)(2). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an indi-

vidual could obtain a court order permitting such a certification.

§20.21(c)(3). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in §20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished. The State could, on the other hand, enact laws authorizing any member of the private sector to have access to non-conviction data.

§20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language of a statute or court order, rule, or court decision specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§20.21(e) Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies. Although this subsection requires that there be records kept with the names of all persons or agencies to whom information is disseminated, criminal justice agencies are not required to maintain dissemination logs for "no record" responses.

§20.21(f). Requirements are set forth which the States must meet in order to assure that criminal history record information is adequately protected. Automated systems may operate in shared environments and the regulations require certain minimum assurances.

§20.21(g)(1). A "challenge" under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge.

The drafters of the subsection expressly rejected a suggestion that would have called for a satisfactory verification of identity by fingerprint comparison. It was felt that States ought to be free to determine other means of identity verification.

§20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under 20.21(e) must be kept so that notification can be made.

§20.21(g)(6). This section emphasizes that the right to access and review extends only to criminal history record information and does not include other information such as intelligence or treatment data.

§20.22(a). The purpose for the certification requirement is to indicate the extent of compliance with these regulations. The term "maximum extent feasible" acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Reports No. 2 and No. 13; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum No. 3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum No. 4.

Subpart C—§20.31. This section defines the criminal history record information system managed by the Federal Bureau of Investigation. Each state having a record in the III System must have fingerprints on file in the FBI CJIS Division to support the III System record concerning the individual.

Paragraph (b) is not intended to limit the identification services presently performed by the FBI for local, state, tribal, and federal agencies.

§20.32. The grandfather clause contained in paragraph (c) of this section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses that were stored prior to February, 1973. In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will also appear in the arrest segment of the III System record.

§20.33(a)(3). This paragraph incorporates provisions cited in 28 CFR 50.12 regarding dissemination of identification records outside the federal government for noncriminal justice purposes.

§20.33(a)(6). Noncriminal justice governmental agencies are sometimes tasked to perform criminal justice dispatching functions or data processing/information services for criminal justice agencies as part, albeit not a principal part, of their responsibilities. Although such inter-governmental delegated tasks involve the administration of criminal justice, performance of those tasks does not convert an otherwise non-criminal justice agency to a criminal justice agency. This regulation authorizes this type of delegation if it is effected pursuant to executive order,

statute, regulation, or interagency agreement. In this context, the noncriminal justice agency is servicing the criminal justice agency by performing an administration of criminal justice function and is permitted access to criminal history record information to accomplish that limited function. An example of such delegation would be the Pennsylvania Department of Administration's Bureau of Consolidated Computer Services, which performs data processing for several state agencies, including the Pennsylvania State Police. Privatization of the data processing/information services or dispatching function by the noncriminal justice governmental agency can be accomplished pursuant to §20.33(a)(7) of this part.

§20.34. The procedures by which an individual may obtain a copy of his manual identification record are set forth in 28 CFR 16.30-16.34.

The procedures by which an individual may obtain a copy of his III System record are as follows: If an individual has a criminal record supported by fingerprints and that record has been entered in the III System, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and federal administrative and statutory regulations. Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of the record through a law enforcement agency which has access to the III System. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry through NCIC to obtain his III System record or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Clarksburg, West Virginia, by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the state's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency,

court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§20.36. This section refers to the requirements for obtaining direct access to the III System.

§20.37. The 120-day requirement in this section allows 30 days more than the similar provision in subpart B in order to allow for processing time that may be needed by the states before forwarding the disposition to the FBI.

[Order No. 662-76, 41 FR 34949, Aug. 18, 1976, as amended by Order No. 1438-90, 55 FR 32075, Aug. 7, 1990; Order No. 2258-99, 64 FR 52229, Sept. 28, 1999]

PART 21—WITNESS FEES

Sec.

21.1 Definitions.

21.2 Employees of the United States serving as witnesses.

21.3 Aliens.

21.4 Fees and allowances of fact witnesses.

21.5 Use of table of distances.

21.6 Proceedings *in forma pauperis*.

21.7 Certification of witness attendance.

AUTHORITY: 28 U.S.C. 509, 510, 1821-1825, 5 U.S.C. 301.

SOURCE: 51 FR 16171, May 1, 1986, unless otherwise noted.

§21.1 Definitions.

(a) *Agency proceeding*. An agency process as defined by 5 U.S.C. 551 (5), (7) and (9).

(b) *Alien*. Any person who is not a citizen or national of the United States.

(c) *Judicial proceeding*. Any action or suit, including any condemnation, preliminary, informational or other proceeding of a judicial nature. Examples of the latter include, but are not limited to, hearings and conferences before a committing court, magistrate, or commission, grand jury proceedings, pre-trial conferences, depositions, and coroners' inquests. It does not include information or investigative proceedings conducted by a prosecuting attorney for the purpose of determining whether an information or charge should be made in a particular case. The judicial proceeding may be in the District of Columbia, a State, or a territory or possession of the United States including the Commonwealth of Puerto Rico or the Trust Territory of the Pacific Islands.

(d) *Pre-trial conference*. A conference between the Government Attorney and a witness to discuss the witness' testimony. The conference must take place after a trial, hearing or grand jury proceeding has been scheduled but prior to the witness' actual appearance at the proceeding.

(e) *Residence*. The term *residence* is not limited to the legal residence, but includes any place at which the witness is actually residing and at which the subpoena or summons is served. If the residence of the witness at the time of appearance is different from the place of subpoena or summons, the new place of residence shall be considered the witness' residence for computation of the transportation allowance; but, if the witness is on a business or vacation trip at the time of appearance, the witness shall be paid for travel from the place of service if this does not result in the witness being paid for more travel than is actually performed.

(f) *Summons*. An official request, invitation or call, evidenced by an official writing of the court, authority, or party responsible for the conduct of the proceeding.

§21.2 Employees of the United States serving as witnesses.

(a) *Applicability*. This section applies to employees of the United States as defined by 5 U.S.C. 2105, except those whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(b) *Entitlement to travel expenses*—(1) *Official capacity*. An employee is entitled to travel expenses (in accordance with §21.2(c)) in connection with any judicial or agency proceeding with respect to which the employee is summoned (and is authorized by the employee's agency to respond to such summons), or is assigned by his or her agency:

(i) To testify or produce official records on behalf of the United States, or

(ii) To testify in his or her official capacity or produce official records on behalf of a party other than the United States.

The witness appropriation of the Department of Justice is not available for