

**Challenges and Opportunities Facing National Efforts  
to Improve Criminal History Records**

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Good morning. I am delighted once again to be able to address this SEARCH membership meeting. My congratulations to the Board of Directors, Ron Hawley and the SEARCH staff on putting together another excellent agenda for your members and guests. Acting BJS Director Maureen Henneberg sends along her best wishes for another productive and enjoyable meeting.

I hope you are all familiar with the work of BJS as the statistics arm of the Justice Department – for anyone seeking detailed information about our research and data collections, I encourage you to visit the BJS web site at <http://www.ojp.usdoj.gov/bjs>.

Representing BJS's efforts around the National Criminal Improvement Program, I wanted to take this opportunity to share some information and thoughts with you regarding our joint efforts – our continuing partnership with SEARCH, the States, the FBI and others - to improve our Nation's criminal history records.

I'm sure many of you are aware that last Tuesday (January 17<sup>th</sup>) marked the 300<sup>th</sup> anniversary of the birth of Benjamin Franklin one of this country's most important founding fathers. All of us can think back to our school days and remember what we told about the accomplishments of this truly remarkable man from his invention of bifocals, the wisdom contained in his *Poor Richard's Almanac*, and his experiments with kites and electrical storms that led to his inventing lightning rods. I still remember a history teacher telling my class that Ben Franklin was surely the most knowledgeable person of his time and was probably the last person in the world's history who knew everything there was to know.

You may also know that Franklin was also one of our country's first political cartoonists. In 1754, he ran a famous cartoon in his newspaper, *The Pennsylvania Gazette*. The cartoon was entitled simply, "Join, or Die." It was an image of a snake cut into eight sections – the sections represented the individual colonies and the curves of the snake were to suggest the coastline. It played off of a common superstition of the time that a snake cut into pieces could come back to life if you joined the sections together before sunset. The cartoon was meant to be a plea for unity in defending the colonies during the French and Indian War, and, of course, about ten years later, it became a symbol of national identity as the Colonists rallied together to fight for their independence from Great Britain.

Despite the vastly different times and circumstances as we sit here some 250 years later, there's an enduring lesson in Franklin's message for us today. And that is, partnerships, like the one represented by SEARCH's membership, are critical in the face of ever-changing demands of political and public forces. And in the area of criminal history record information we are certainly in the midst of historic times in terms of demands for services and the technological revolution that we are witnessing on a daily basis. Simply put, we must continue and support our partnerships and collaborations or suffer the consequences.

In terms of the nation's criminal records, the accomplishments of this ongoing partnership are many and the progress has been remarkable. Consider just a few:

- The latest SEARCH/BJS Survey of Criminal History Information Systems estimates that the States and the FBI maintain criminal history records on nearly 68 million individuals.

Of these, over 50 million records (75%) were immediately available for interstate background checks.

- During the last decade, the number of criminal history records in the U.S. increased 35%. Over this same period, the number of records available in III nearly doubled (increased by nearly 97%).
- As we begin 2006, 48 States are members of III - in 1989 only 20 States were members.
- In 2005, four (4) more States ratified the National Crime Prevention and Privacy Compact bringing the total to twenty-five (25) States. Nine (9) other States and two (2) territories have signed memoranda of understanding to implement provisions of the Compact.
- Obviously, we've seen tremendous growth in the use of AFIS and Livescan technology and the promise for further expansion and dramatic improvements in this and other biometric technology is apparent.
- The NICS System is now supporting about 8 million firearm purchaser checks annually. Through 2004, nearly 62 million applications for firearm transfers were subject to background checks. Approximately 1.2 million, or 2.0% of these applications, were rejected, primarily for the presence of a prior felony conviction history but also, in a growing proportion of checks, for one of the nonfelony prohibiting background factors enumerated in the Gun Control Act, such as a qualifying protection order.
- At the end of 2005, all 50 States and most territories were contributing data to the National Sex Offender Registry file which held more than 407,000 records; and, 46 States had submitted data to the Protection Order File which now includes nearly 1 million (944,000+) records of protection orders.
- As I reported last January, BJS's RQI - a composite of different outcome and process measures - has shown remarkable improvements. The latest data - which will be released shortly - shows consistent improvement through 2003.

In summary, it's clear that improvement strategies supported with BJA & BJS grants, & state funds have had the very positive, measurable results. But there's a flipside to some of the statistics. Despite the tremendous progress made, several significant shortcomings remain, including:

- The fact that, while the vast majority of States have joined III, we still don't have full participation. Maine, Vermont, the District of Columbia, and the territories of Guam, American Samoa, the U.S. Virgin Islands, Puerto Rico, and the Northern Mariana Islands are not yet fully III compliant.
- Most arrest records available through III still are missing case outcome information in the FBI's Criminal History file. The FBI reports that as of October 2004, dispositions were

available for only about 43% of the arrest records. The technology used for getting State information to the FBI files desperately needs upgrading.

- Several States and territories are not yet submitting records to the Protection Order file, including Mississippi, Nevada, New Jersey, Utah, Hawaii, Guam, Puerto Rico, American Samoa, and the Northern Mariana Islands; and, the FBI reports continued problems with the flagging of protection orders regarding the prohibition for firearm purchases.
- And very few States and territories submit records to any of the files contained in the NICS Index, including the Denied Persons File or the file of persons adjudicated as “mental defectives.”

So there remain some challenges. Unfortunately, on the NCHIP side, we’re also faced with a continuing reduction of available funds. Congress appropriated only \$10 million for NCHIP in FY 2006. \$2.9 million was appropriated for efforts specifically targeted to improve the availability of restraining/protection orders, and/or domestic violence misdemeanor convictions. These appropriations will be reduced by mandatory rescissions and set-asides. The bottom-line is that the total amount available for NCHIP grants this year will be less than half of last year’s appropriation of \$25 million.

Consequently, we’ll be making some significant changes in the upcoming NCHIP program announcement. First, and probably most notably, we’ll be targeting fewer priorities. Specifically four “core” priority areas for funding will be identified:

1. Updating and automating dispositions from courts and prosecutors in State records and the FBI’s Criminal History file and we’ll continue to stress the involvement of the courts in record improvement efforts.
2. Automating access at the State and/or federal levels, to information concerning persons prohibited from possessing or receiving a firearm, including persons who:
  - a. Have been committed to a mental institution;
  - b. Are unlawful users of or addicted to any controlled substance;
  - c. Are the subject of protection or restraining orders; and/or
  - d. Have been convicted of a misdemeanor crime of domestic violence.
3. Full participation in the Interstate Identification Index (III).
4. Transmitting relevant State records to:
  - a. files in the NICS Index including, especially, the Denied Persons file;
  - b. The NCIC’s Protection Order file; and/or
  - c. The NCIC’s National Sex Offender Registry file.

We will be looking to fund projects that result in a measurable improvement in the number of automated State records and/or the number of those records that are contributed to national files.

Rather than spread the \$10 million appropriation thinly across the States and territories, and thereby diluting its potential impact, the NCHIP grants will be made on a competitive basis this year. In other words, we will not be providing a target budget figure in advance. The program announcement, which we hope to publish in February, will contain detailed guidance for the applications.

The funding decision will be based on our evaluation of several criteria, including:

1. whether it addresses one or more of the priorities;
2. the extent to which the State has fulfilled goals of previous NCHIP awards, including a consideration of the total funds already awarded and expended funds from previous awards, as well as the State's cooperation with BJS-sponsored NCHIP evaluation efforts such as the SEARCH survey and the RQI data collection;
3. we'll also look at the extent to which proposed project(s) will have a significant impact on availability of records;
4. and we'll consider the technical feasibility of the proposal, the reasonableness of the budget, and other factors, including of course, available funds.

Our challenge is to try to address needs while not losing any ground or halting the progress made to date. Despite the vastly reduced amount of funds available for such efforts, we are hopeful they can and will result in continued significant achievements.

In addition to Congressional budget actions, our partnership is challenged with ever-increasing demands for our criminal record information services. Consider just a couple of indicators:

- The FBI recently reported that during FY 2005 it processed about 9.8 million fingerprint cards for civil background checks and about 10.3 million fingerprint-based criminal checks – over 20 million fp checks.
- 80% of employers surveyed by the Society of Human Resource Management reported conducting criminal background checks on prospective employees in 2004 – up from 51% in 1996.
- On January 6, 2006, NCIC reported it had established a new one-day processing record processing over 5.6 million transactions. In its first year of operation, NCIC handled 2 million transactions; during FY 2005 NCIC processed over 1.6 billion transactions which equates to a daily average of 4.5 million transactions – it is also about an 18% increase in volume compared to FY 2004.

The latest repository survey indicates significant growth in the States as well. These increased public demands for services come at a time when expectations are changing I think at least in

some way because of the growing number of CJ-themed “reality” television shows – the CSIs, Law & Orders, Cold Case Files, Without a Trace, the New Detectives, and many others – that, I think we’d all agree, present many very unrealistic images of the work of criminal justice agencies. If we walked across the street to Universal Studios we might see, for example,

- Defendants’ confessions that are obtained in a few minutes;
- computers flashing “match” as the result of DNA or fingerprint comparisons;
- crime scene technicians using lasers to trace the path of bullets; and
- entire VERY COLD cases wrapped up nice and neatly in a 60-minute package.

The result of these unrealistic images – together with the technological advances we see in our day-to-day lives - encourage the public and state and federal legislative leaders to be increasingly impatient with the operation of the criminal justice system. I think many people assume that all agencies are already well-equipped; that State and federal record systems are already thoroughly integrated and the records they contain – especially arrest and conviction records - are entirely complete and accurate, and are instantly available in living color in every squad car on road patrol.

And so while we continue to address record quality and completeness issues, I think there’s a growing urgency to do so as a result of these increasing demands and expectations.

Therefore, in addition to focusing NCHIP funds on the priorities I just mentioned – there are some additional efforts that should be considered to improve the utility of the nation’s criminal history records:

1. Support should be sought for an aggressive, ongoing national research agenda examining criminal history records and how they are used. Among the areas that merit study are: the relationship between the nature and extent of a person’s criminal history and job performance; the ability of criminal history records to accurately predict future criminal behavior; and the use of criminal history records as risk assessment tools. Continued research can suggest new improvement strategies.
2. At BJS, we want to expand our statistical data collection program tracking NICS firearm transactions to include information about all criminal record checks so that we can monitor trends in terms of:
  - a. the number of criminal record checks conducted;
  - b. the purposes for which these checks are conducted;
  - c. the results of checks;
  - d. the number of challenges to the accuracy and completeness of checks;
  - e. record check processing time;
  - f. fees charged and collected;
  - g. the infrastructure supporting these checks and its cost; and,
  - h. other relevant issues.

3. We should continue to examine the quality of records. SEARCH and BJS are in the exploratory planning stages for a comparative analysis of the quality of criminal checks of governmental versus non-governmental information sources. Such a study would inform the debate on the relative completeness and accuracy of these sources of criminal record information.
4. Finally, it may also be time to revisit the voluntary standards for improving the quality of criminal history records which were first developed by the FBI, SEARCH and BJS back in 1991. Our surveys continue to indicate wide variability among the States in the data quality improvement activities and strategies they engage in. It's probably time for the 14-year old standards to be re-evaluated, especially in light of new technological capabilities and the expectations of current users of criminal history records. Perhaps a process for revising those standards and identifying best practices could be incorporated into a broader effort facilitated by SEARCH with participation from its members, the Compact Council, the FBI, and others, (and perhaps guided by the American National Standards Institute) to establish criminal history record handling standards and a compliance assessment program that goes beyond quality improvement activities.

So the challenges we face can represent significant opportunities as well.

In conclusion, in the face of the pressures we feel from dwindling resources, increasing service demands and public expectations, I think of Franklin's cartoon and its message that we must stay "joined" as partners in criminal history record improvement efforts or suffer the consequences; that we have opportunities to lead rather than be led by or pushed and pulled by these outside forces. The tradition of collaboration between SEARCH, its members, BJS, and the FBI in this area has proven to be a very good thing for our nation's safety and security and I, again, applaud your efforts in making it work. I am confident we'll continue to make progress in the future.

Thank you.