#4: A Closer Look at Reporting Interim Dispositions

By Becki Goggins, Mark Perbix and Karen Lissy

This is the fourth in a series of blogs that explore findings from the Survey of State Criminal History Information Systems, 2018, published by the U.S. Department of Justice Bureau of Justice Statistics (BJS). This biennial national survey represents the most current and detailed snapshot of the data, trends, policies, practices, and operations of criminal history records repositories nationwide. SEARCH, with the support of BJS, has conducted these surveys since 1989. This blog explores state practices in reporting interim dispositions.

The criminal justice system is a loosely connected network of government and non-governmental agencies and processes designed to control crime and administer justice. Major decisions resulting from the criminal justice process (especially formal arrests and case dispositions) are collected in a common location in each state: the state’s criminal history repository, also known as a Computerized Criminal History (CCH) record system. Information contained in state criminal history repositories is relied upon throughout the criminal justice process to track an individual’s known history of criminal behavior. Increasingly, it is also used to help assess an individual’s fitness and eligibility for a variety of professional, volunteer and licensing activities and for making firearms purchasing decisions. For these reasons, it is critical that CCH repositories maintain accurate, complete, and current information about the status of charges and cases.

As depicted in the Criminal Justice System Flowchart (Figure 1),\(^1\) criminal cases have many decision points between when an individual is arrested for a crime (light blue color) and when an individual is convicted (purple) and/or sentenced (orange). The lag time between arrest (light blue) and conviction/sentencing (purple/orange) can be considerable, sometimes lasting years. During the interval between when an individual has been arrested and a final outcome or disposition

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Editor’s Note:
Learn more about the biennial national survey of state criminal history information systems, conducted by SEARCH and published by BJS

See our blog announcing the release of the 2018 survey

Access the 2018 survey

See other blogs in this series, which highlight critical trends and metrics

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\(^1\) This graphic is the most recent (1997) update of the Criminal Justice System Flowchart published by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice at [https://www.bjs.gov/content/largechart.cfm](https://www.bjs.gov/content/largechart.cfm). This flowchart was adapted from pp. 8–9 of The Challenge of Crime in a Free Society: [https://www.ncjrs.gov/pdffiles1/nij/42.pdf](https://www.ncjrs.gov/pdffiles1/nij/42.pdf).
is determined, an **interim disposition** may be reported to CCH, which indicates the status of the case and provides important information to those reliant upon the criminal history record. This blog examines the use — and, in many instances, the lack of use — of interim dispositions in state CCH record systems:

- **When** they are used
- **How they are being reported** by the states, and
- **How states can work to close the gaps in reporting** this important information.

**What is an Interim Disposition?**

**Interim dispositions** indicate the status of an arrest or charges that have not reached a final outcome. The most common final outcomes are **adjudications** (convictions or acquittals) or **dismissals**. During the course of a criminal prosecution, other processing events or provisional outcomes can occur, and these are termed “interim dispositions.”

There are a variety of interim dispositions, but most fall into three broad categories:

- **Charges filed or indictments.** The first and most common interim disposition event is when a felony case is filed with the court for prosecution. This occurs as the result of a
prosecutor filing a criminal case through a felony complaint or information, or the issuance of an indictment by a grand jury.

- **Deferred Prosecution.** Prosecutors may offer alternatives to prosecution, which are typically referred to as “diversion programs.” These may be offered to first-time or low-level juvenile and adult offenders prior to filing the case or immediately after filing the case. The focus of these programs is on rehabilitation rather than punishment, and if the individual successfully completes the program, the case is declined or dismissed. Since these programs can run for 6 months or longer, it is important to note that the individual is still actively involved in the justice process, although a final disposition has not yet been reached. The alternative is an “open” arrest record on the criminal history, with no indication of the status for the corresponding criminal case.

- **Adjudication deferred or withheld.** Some states allow the defendant to enter a guilty plea for a felony, but final judgment is withheld until the terms of probation are satisfied. Under this scenario (which may be also be called a “conditional discharge” or “consent decree”), the person is considered guilty while on probation, which is an interim status during which time the conviction counts just like any other conviction. A deferred or withheld entry of judgment for a felony would disqualify someone from purchasing a firearm, as they would still be considered as having an active felony charge pending until the case is concluded. Upon successful completion of the probationary period, the court would allow the defendant to withdraw their guilty plea and have the case dismissed, making the final disposition a dismissal.

**Interim Disposition Reporting Practices**

Interim disposition reporting practices vary considerably across the United States, the District of Columbia, and Guam (Figure 2 and Table 1). According to the recent 2018 SEARCH/BJS survey of criminal history repositories, just over one-half of states post interim dispositions and about one-third of states and Guam incorporate criminal case filings in their criminal history records. These low reporting percentages indicate that there are large gaps in reporting interim dispositions by the states.

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2 In some states, “adjudication withheld” is not a firearms prohibitor, as the defendant has not agreed to plead guilty or participate in probation. It simply means that the court has withheld making a final determination or adjudication on the case.

### Table 1. Interim Disposition and Indictment/Active Case Reporting

<table>
<thead>
<tr>
<th>Practice</th>
<th>States</th>
<th># of States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Dispositions (including felony case filings/indictments)</td>
<td>Arizona, Colorado, Delaware, Georgia, Hawaii, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, Oklahoma</td>
<td>13</td>
</tr>
<tr>
<td>Other Interim Dispositions (not including felony case filings/indictments)</td>
<td>Arkansas, Florida, Illinois, Kansas, Maine, Nebraska, New Jersey, New York, North Dakota, Rhode Island, South Dakota, Texas, Utah, Vermont, Wisconsin</td>
<td>15</td>
</tr>
<tr>
<td>Only indictments are reported as Interim Dispositions</td>
<td>Alabama, Ohio, South Carolina</td>
<td>3 and Guam</td>
</tr>
</tbody>
</table>

**Figure 2.** Interim Disposition and Indictment Reporting, 2018
Importance of Interim Dispositions

Posting interim dispositions to criminal history records provides considerable value to all consumers of this information. Within the criminal justice community, law enforcement, prosecutors, and community supervision officials rely on interim disposition information to fulfill their roles and responsibilities within the justice process. For non-criminal justice consumers, this information allows them to make suitability determinations for employment, professional licensing, firearms transactions, and other authorized purposes (such as certain volunteer positions) based on the current status of a person following an arrest event. When criminal history record information is missing, additional labor-intensive research is often required to determine the current status of the arrest.

Examiners in Point-of-contact (POC) states and the FBI National Instant Criminal Background Check System (NICS) Section use criminal histories daily to authorize Federal Firearms Licensees (FFL) to proceed with firearms transactions. If a felony arrest or misdemeanor domestic violence charge is present without a disposition, the NICS transaction is placed on hold for up to 72 hours to allow staff to conduct additional research. Missing dispositions create an enormous burden for states and the FBI who are required to track them down—often involving multiple calls to local law enforcement and courts. If a missing disposition cannot be located within 72 hours, then a default proceed notification is issued to the FFL and the firearms transfer is allowed to proceed. If an interim disposition is posted, then a Proceed or Deny transaction notice is often issued to the FFL immediately without the need for additional research.

Consider the example of an individual who wants to purchase a firearm. Federal law states that he/she is categorically disqualified from purchasing any firearm if they have a felony conviction, a conviction for a qualified misdemeanor crime of domestic violence or an active indictment for a crime punishable by imprisonment of greater than one year. If the applicant’s interim disposition of “case or charges filed” or “under indictment” is absent from the CCH, then no clear determination can be made to disqualify the applicant based on an underlying felony arrest charge, which could allow a person who should be disqualified to purchase a firearm. Conversely, an applicant who is legally allowed to purchase a firearm may be unjustly denied the right to do so based on missing

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4 18 U.S. Code Section 922 (g)(1) states that it shall be unlawful to sell or otherwise transfer a firearm or ammunition to any person who has been convicted of any crime punishable by a term of imprisonment for more than one year. This is commonly called the “felony” prohibitor. Section 18 U.S. Code Section 922 (g)(9) defines which relationships qualify under the Misdemeanor Crime of Domestic Violence (MCDV) prohibitor. The qualifying relationships include: current or former spouse; parent, stepparent, or guardian of victim; child in common with victim; person who is cohabitating (or has cohabitated) as spouse, parent or guardian of victim; or a person similarly situated to a spouse, parent or guardian of the victim. Note that some states include additional relationships as a state MCDV prohibitor — e.g., dating relationship. 18 U.S. Code Section 922 (n) states that it shall be unlawful to sell or transfer a firearm to any person who is under indictment for any crime punishable by a term of imprisonment for more than one year. (18 U.S. Code Section 922)
disposition information. Missing dispositions — both interim and final — significantly inhibit the ability to determine if a person is currently disqualified from purchasing a firearm and obfuscates whether they are qualified to make the purchase.

Closing the Interim Disposition Reporting Gap

As noted earlier, there is a significant gap in reporting interim disposition information to criminal history repositories. Over one-third of states and the District of Columbia do not receive any interim dispositions from courts or prosecutors. In these states, consumers have to conduct additional research to determine the current status of open arrest events. The work of consumers of criminal history information would be more efficient if interim dispositions and indictments were routinely reported to the criminal history records repository.

— Interim Disposition Reporting by Prosecutors

There are two key interim dispositions that prosecutors should report: 1) case filings and 2) when an individual is referred to a diversion program. These interim dispositions are important, as is the need to report a final disposition of a declination to prosecute.

Case Filings. When a prosecutor files a case, this interim disposition may be reported by either the prosecutor or the court. Best practices suggest that one or the other (prosecutor or court) should assume responsibility for reporting this information to the repository. An argument can be made that the court should be responsible for reporting a filed case since this is, strictly speaking, within the authority of the court. In addition, there are many times when the first entry of court case information occurs prior to the involvement of a prosecutor, most commonly when an individual is placed in detention upon arrest and the court is required to provide an appearance before a judicial officer. In this scenario, the court must create the court case record before the prosecutor is required to file charges. In states where courts are not reporting case filings as interim dispositions, having prosecutors report case filings is a suitable alternative method of filling this gap.

Diversion Program Referrals. The second key interim disposition pertains to the referral of individuals to diversion programs run by the prosecutor’s office. As previously noted, these diversion programs allow an individual to avoid criminal charges as long as they participate in rehabilitation or education programs as a condition of their agreement with the prosecutor’s office, make restitution, and remain free of conflict with the criminal justice system.5 Once a prosecutor refers an individual to a diversion program in lieu of filing charges, the prosecutor should report the referral to the state criminal repository as an interim disposition, pending final outcome. A prosecutor should report a final disposition of “prosecution declined” if the individual successfully completes the program, or report a “case filing” interim disposition if the individual fails the program and the prosecutor proceeds with prosecuting the case.

State repositories should reach out to prosecutors when there is a known gap in reporting interim dispositions to see if they would be willing to fill the void in case filings and diversion referrals. Ideally, states would create an electronic interface between the prosecutors’ case management system(s) [CMS] and the CCH repository to facilitate automatic reporting of interim dispositions. In jurisdictions where eFiling systems are already in place between prosecutors and the courts, electronic reporting by prosecutors might be as simple as adding a route to the repository at these decision points.  

### Electronic Prosecutor Repository Interface: An Arizona Success Story

Unlike most states, Arizona county attorneys (who are responsible for prosecuting felony cases) share a centralized CMS that electronically sends criminal history data to the state CCH repository. The prosecutor CMS features an electronic exchange interface with the state repository, which provides a notification of “no complaint filed” to the CCH system when a prosecutor declines a case. While prosecutors are not required to report decisions for all cases reviewed (including all cases filed with the courts or cases that are deferred), the electronic interface ensures that declinations to prosecute are reliably reported by county prosecutors and gives them the opportunity to report interim dispositions.

Beginning in 2007, the Arizona Department of Public Safety (AZDPS) has also made it possible for municipal attorneys (who prosecute misdemeanor and other lower-level offenses) to make records available to the state criminal history repository even without a shared CMS. The Arizona Disposition Reporting System (ADRS), which allows individual law enforcement agencies, courts, and prosecutors’ offices to find arrests without dispositions and update them within the CCH system, has provided an effective way for smaller agencies to contribute records to the state repository. Historically, most prosecutors’ offices did not report declinations to prosecute or interim dispositions, but AZDPS has made municipal prosecutors aware that the ADRS portal is available to update the CCH repository. Given the relatively small number of reportable offenses prosecuted at the municipal court level, ADRS is a very good solution for municipal prosecutors to report interim dispositions and other outcomes as it does not create a heavy data entry burden for prosecution staff.

### Interim Disposition Reporting by Courts

In addition to the case filing decision, courts should report two other key interim dispositions: deferred and withheld adjudications.

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6 eFiling is when prosecutors electronically transfer filing data and charging documents to the courts from their case management systems, as opposed to generating paper or PDF documents for manual submission to the courts.
As previously noted, many courts have established programs to enable defendants to avoid a conviction by participating in programs similar to the deferred prosecution programs offered by prosecutors, known as \textit{deferred} or \textit{withheld adjudications}. Both programs effectively offer the defendant the opportunity to participate in the rehabilitation-oriented program and, if successful, have their case dismissed. Even if a case is still "pending" (e.g., a guilty plea is being held in abeyance), it is still an ongoing case where charges have been filed. Since these programs can extend over a significant period of time (up to one year or more), it is important that the court report this interim disposition to the repository.

At the conclusion of the individual’s case, the court can report the final disposition — the three common final dispositions are conviction, acquittal or dismissal. State repositories should work with courts to expand disposition reporting, which in most states has been automated, to include these interim dispositions.

\textit{Ideally, state criminal history repositories should develop electronic interfaces to the courts which capture and transmit ALL dispositions to the repository on a real-time or near real-time basis.} In the next blog in the Survey Insights series, we will explore how courts and prosecutors submit final dispositions to state repositories and successful strategies to ensure that all dispositions are captured.

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\textbf{About the Authors}
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Ms. Becki Goggins is Director of Law and Policy at SEARCH. She oversees our work in the areas of criminal history records, development of laws and policies concerning the use of justice information and protection of privacy, implementation of evidence-based practices, and the use of technology to improve justice information sharing. As an organization, SEARCH was originally founded to facilitate the exchange of criminal history record information (CHRI) between the states.

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Learn more about SEARCH’s work with criminal history records and the surveys we conduct on CHRI issues.