#5: 2018 Survey Gauges Level of Disposition Reporting by Courts and Local Prosecutors

By Becki Goggins and Mark Perbix

This is the fifth 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 receiving and processing final disposition information from courts and prosecutors.

As a part of the Survey of State Criminal History Information Systems, 2018, SEARCH queried states about how they receive and process “disposition” information from courts and prosecutors, and how they incorporate this information into the criminal history record. While blog #4 in this series focused on “interim dispositions,” this blog examines how “final dispositions” are reported.

Final disposition means the ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal, or a finding of guilt. Within the criminal justice community, law enforcement, prosecutors, and community supervision officials rely on disposition information to fulfill their roles and responsibilities within the justice process. For noncriminal 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). When disposition information is missing, additional labor-intensive research is often required to determine the outcome of an arrest.

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
For firearms purchases, 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 person attempting to purchase a firearm has a record with a felony or misdemeanor arrest for a domestic violence charge, and there is no final disposition recorded, 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 seeking information. If a missing disposition cannot be located within 72 hours, then a default “Proceed” 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.

Disposition Reporting by Courts

Courts are the primary source of final dispositions for criminal history records. Courts dispose the vast majority of criminal cases through one of two primary methods: the entry of a judgment or adjudication (conviction or acquittal), or a dismissal. These are general categories that aggregate a variety of more state-specific judicial outcomes or findings—either a person is convicted, or they are not.

Examples of non-conviction terminology:

- **Dismissed with prejudice** – This is a final court order dismissing the case that means the case cannot be tried again.
- **Dismissed without prejudice** – This is a court order dismissing the case that means the case may be tried again.
- **Nolle prosequi** – Following the filing of charges, a prosecutor may determine that the defendant should not or cannot be prosecuted. That decision may be triggered by a determination of the innocence of the defendant, the inability to secure sufficient evidence to prove guilt at trial, or some other fatal flaw in the prosecution’s claim. The prosecutor can make an entry of “nolle prosequi,” which is Latin for “we shall no longer prosecute,” at any time after charges are brought and before a verdict is returned or a plea entered. (While prosecutors may also report nolle prosequi decisions, they are most commonly reported by the courts.)

Examples of conviction terminology:

- **No contest/nolo contendere** – This is a plea by the defendant that he or she will not dispute the charge, but it is treated the same as a conviction.
- **Suspended sentence** – This means that there has been a finding of guilt by the court, but the imposition or execution of the sentence has been deferred.
In their survey responses, 49 states, the District of Columbia, and Guam indicate that more than 15 million final dispositions were reported in 2018—a 9% increase from 2016.\(^1\) Jurisdictions report an average of 68% of all arrests in state databases, and 71% percent of felony arrests have a final case disposition,\(^2\) which is consistent with findings from 2016.\(^3\) The unfortunate corollary is that nearly one-third of arrests are missing dispositions.

**Normal Case Workflow.** Cases take time to process, from arrest through charging, arraignment, plea negotiation or trial, and final disposition. The general workflow documented in the Criminal Justice Systems Flowchart\(^4\) illustrates the array of decision points throughout the whole of the justice enterprise. The National Center for State Courts (NCSC) recently estimated that the average (mean) time to disposition for felony cases was 256 days (the median was 153 days) and 193 days for misdemeanors. The report observed that courts resolve 83 percent of felonies within 365 days of initiation.\(^5\) While the study findings represent a snapshot in time, it does suggest that many arrests will not have a final disposition for a substantial period of time due to normal court processing workflow.

The normal workflow dynamics of criminal cases as they process through the justice enterprise entail delays in final disposition reporting. Courts are responsible for managing limited resources (e.g., crowded dockets, limited courtrooms, aging facilities, statutory time limits) and complicated, time-sensitive legal filings and procedures. Regular reporting of interim dispositions enables decisionmakers to monitor the status of open arrests and potentially help to identify reporting anomalies. Given the growing demand for timely, accurate, and complete criminal history records for an expanding array of both civil and criminal purposes, regular and careful monitoring of disposition reporting metrics will contribute to data quality improvement efforts.

To ensure that courts have not simply failed to report disposition information, it is critical for repository staff to monitor the reporting performance of individual courts and to engage in regular outreach and communication to ensure continuity of disposition reporting. Repositories can do this informally, through meetings and conferences with the courts, or by establishing a “quality assurance review” or audit program where repository staff periodically compare records maintained by the courts to those in the repository and report information about discrepancies.

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\(^2\) For more information, see Table 1 of the 2018 Survey.


\(^4\) The Criminal Justice System Flowchart, published in 1997 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), 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).

back to the courts for corrective action. Many states report that these programs promote active communication with the courts and can dramatically improve the accuracy, timeliness, and completeness of disposition reporting. A future blog will provide additional insights into how states have established successful auditing and quality assurance programs.

**Incomplete/Inaccurate Disposition Data.** Another more common cause of missing dispositions is when disposition data reported by the courts is incomplete or inaccurate and cannot be matched to an arrest. In 2018, a total of 13 states reported that 25 percent or more of all dispositions they received could not be linked to a specific arrest record. One of the most common reasons for this inability to link records is the fact that courts do not incorporate the state identification number (SID) in their records. The SID provides a unique, biometrically-based identifier for an individual that can enable the repository to link the court case disposition with its associated arrest event. As a consequence, the repository must try to match a court disposition based on a name, date of birth, and other biographic information, which can be challenging if a person has a common name or there are errors or misspellings in the court record. Some state repositories will not attempt to match a disposition without a biometrically-based unique person and/or arrest identifier. To address this problem, many states have worked with courts to ensure that the courts’ case management system (CMS) includes a unique arrest event identifier, often referred to as a “process control number (PCN)” or “transaction control number (TCN)” assigned at the time of fingerprinting, in the disposition record sent to the repository. Adoption of this best practice would significantly improve the ability to match court dispositions to arrest records. In 2018, a total of 28 states reported matching court dispositions to arrest records based on the inclusion of a unique arrest event identifier in the court record.

**Cite and Release**

There are situations where a disposition cannot be matched to an arrest because the arrest was not previously submitted to the criminal history repository by the arresting agency. This most commonly occurs as a result of cite-and-release events when an officer issues a court summons in lieu of a custodial arrest (which involves taking an individual into physical custody and fingerprinting). For more information, see the third blog in this series: [State Cite and Release Practices and Statewide Citation Files](https://www.search.org).

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7 For more information, see Table 7a of the 2018 survey.
8 The terms “Process Control Number” and “Transaction Control Number” are vendor-specific terms used by different AFIS vendors to describe the arrest event identifier produced as a result of the fingerprinting process.
9 For more information, see Table 7 of the 2018 survey.
Linking Arrest Identifiers to Statewide Systems: A Colorado Success Story

Beginning in 1998, Colorado created an electronic arrest reporting and disposition reporting system to link the arrest identifiers to the prosecutor's statewide CMS (Action) run by the Colorado District Attorneys Council (CDAC) and the court's statewide CMS (Integrated Colorado Online Network, or ICON). This enables both the prosecutor and courts to share and report dispositions using the biometric identifiers generated during the fingerprinting/arrest process. When an arrest is processed through the state Automated Fingerprint Identification System (AFIS), the PCN is automatically routed from the arresting agency to both the prosecutor system and the courts' ICON system to ensure that when the charges are filed by the DA, they are attached to the correct arrest cycle. This allows disposition and sentencing information to be automatically connected to the appropriate arrest and prosecution charges as soon as it becomes available. As a result of this project and other efforts to improve disposition reporting, Colorado consistently has a disposition match rate of over 95 percent. For more information, see WDM Toolkit: EDisposition System Profile - Colorado.

Missing Arrest Records. Another cause for unmatched court disposition is the inverse scenario, where a court disposition is reported to the repository, but no related record of arrest can be found. Arrest records may be missing for any of a variety of reasons, including failure to submit by the arresting agency, rejection of the arrest report owing to errors in data submission, or unreadable fingerprints. This scenario may also be the unintended consequence of "cite and release" practices, where law enforcement officers are not required to fingerprint or "book" an offender as a result of an arrest and release them with a citation or summons to appear in court at a future date. The result is that no record of the "arrest" exists in the criminal history for that event. This is a growing practice nationally as legislatures recognize the adverse impacts of pretrial detention for offenders who do not pose a significant public safety risk and do not warrant detention.

One solution to this problem is to implement fingerprint technologies that enable law enforcement officials to capture fingerprints in the field as part of the cite-and-release process. Another solution is to capture fingerprints of defendants when they appear in court, although this option requires the introduction of technology in or near courtrooms and changes in business practices to identify cases where fingerprints are needed and staff assignments (court staff or local law enforcement) to capture and record the prints. Twelve states and Guam report using livescan devices in courtrooms to record the fingerprints of subjects whose fingerprints were not taken at the time of arrest or when they were issued a citation in lieu of arrest.¹⁰

¹⁰ For additional information, see Table 12 of the 2018 survey.
In response to SEARCH’s 2018 query, 13 jurisdictions report that 203 livescan devices are used within courthouses to link positive identifications to dispositions (Figure 1).\textsuperscript{11} This represents a 69% increase in the number of livescan devices placed in courtrooms from 2016 (from 120 devices to 203).\textsuperscript{12}

Data Entry Backlogs. Finally, dispositions may be missing from the repository due to data entry backlogs. In 2018, a total of 20 states reported having a backlog of over 2 million court dispositions that have been submitted to the repository but have not been recorded in their criminal history database (i.e., not entered within 48 hours of receipt at the repository).\textsuperscript{13} The most effective and efficient way to eliminate backlogs is through automation, which enables dispositions to be electronically transmitted to the repository once it is posted in the courts’ CMS. As the map (Figure 2) illustrates:

- Forty-two state repositories and the District of Columbia receive some court disposition data by automated means (both \textit{final} and \textit{interim} dispositions).
- Of these, 27 states and the District of Columbia report that 90% or more of all court dispositions are reported to repositories by automated means (Figure 2).

\textsuperscript{11} For more information, see Table 12 of the 2018 survey. The number of livescan devices in courtrooms reported in 2018 was later augmented by 8 (to 211), based on follow-up research with representatives from Colorado.

\textsuperscript{12} For more information, see Table 13 of the 2016 survey.

\textsuperscript{13} For more information, see Table 12 of the 2018 survey.
In the 28 jurisdictions where 90–100 percent of court dispositions are reported electronically to state repositories, felony dispositions are typically reported within 24 hours of adjudication and/or sentencing. In turn, those electronic dispositions are recorded by the repository in the state criminal history database within 24 hours.14

**Prosecutor Disposition Reporting**

Prosecutors are another key source of dispositions for state criminal history record repositories.15 While courts are the authoritative source for records of judicial adjudications, prosecutors can also formally dispose of cases by declining prosecution or diverting cases to alternative treatment programs that, consequently, never result in a case being filed or adjudicated in court.

The most familiar scenario in which a prosecutor renders a final disposition is when they decline to file a case. In this case, the prosecutor may be the only source of information about this final outcome because no charges were ever filed with the court.16 Prosecutors must report declinations

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14 For more information, see Tables 7 and 7b of the 2018 survey.


16 A declination is distinguished from a *nolle prosequi* where a case has already been filed with the court before the decision not to prosecute is made.
so that repositories can include dispositions on the criminal history record for the related arrest.

The increasing use of pre-filing diversion programs is another potential source of final dispositions by prosecutors. According to a recent survey by the Center for Court Innovation, 55 percent of prosecutors in their national survey indicated that their agency offers some type of diversion program:17

- 15 percent of these programs are strictly “pre-filing” models, where no charges are filed with the court unless an offender fails to complete program requirements, which may include community service, substance abuse treatment or education, group or individual counseling, and employment readiness/job placement services.

- 32 percent of prosecutor diversion programs represent a “mix,” where the determination whether to file charges prior to allowing an individual to participate is made on a case-by-case basis. In these cases, courts may not know about charges depending on how the prosecutor decides to proceed with the diversion.

In pre-filing scenarios, it is vitally important that prosecutors report when charges are dismissed because courts would never become aware of the diversion unless the individual fails to meet the conditions of participation and charges are subsequently filed. The successful completion of a pre-filing diversion program is a final disposition equivalent to a “decline to prosecute” and the prosecutor is the only source of information disposing the related open arrest.

To ensure accurate and complete criminal history records, state repositories should work closely with prosecutors to facilitate timely reporting of disposition information. In 2018, 34 states reported receiving dispositions from prosecutors either electronically or through paper-based submission (or a mix of the two).18

As with courts, electronic data submissions result in the timeliest entry of records into the state criminal history repository, as illustrated in Figure 3:

- Six states reported receiving dispositions from local prosecutors via automated means through a centralized (statewide) prosecutor case management system (CMS).

- Five states receive automated dispositions from local prosecutors via a local jurisdiction’s CMS.

- Two states receive automated dispositions from both centralized and local CMSs.

- Six states receive automated dispositions from local prosecutors, but did not specify how they are received.

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18 For more information, see Table 6c in the 2018 survey.
Criminal History Improvement Efforts

Because criminal history records are a central factor in so many criminal justice and noncriminal justice background checks, SEARCH continues to work with states to ensure that all case dispositions are made available to state criminal history repositories. To facilitate improvements in this regard, SEARCH staff works with the nation’s criminal justice community to provide technical and operational assistance to interested record holders and contributors.

One of the ways that SEARCH provides assistance is through the Quality Assurance Program (QAP) within SEARCH’s Law and Policy Program. Created in 2013, the QAP is a set of voluntary performance standards for the information maintenance and reporting requirements of state criminal history repositories which encourage data quality and information integrity. The agency itself can conduct the QAP check with remote access to assistance from SEARCH, or the agency can request that SEARCH conduct the QAP on site. SEARCH encourages participation by all units within the criminal history repository, along with contributing agencies during the site visit, as often staff do not routinely meet to review the overall roles and responsibilities of the repository.

Past QAP participants have repeatedly noted that the multidisciplinary communication that occurs during the completion of the checklist and the on-site meetings is extremely beneficial to understanding the overall complexity of repository operations. Following each QAP engagement, SEARCH provides the repository with a detailed report of findings and recommendations based on
the review of the QAP responses and discussions held during the site visit. To date, 32 states have participated in the QAP process (Figure 4).

![Quality Assurance Program (QAP) Participants](image)

Figure 4

In addition to the QAP program, since 2018, SEARCH has worked with BJS, NCSC and the FBI to host regional workshops aimed at improving criminal history records. While the COVID-19 pandemic postponed the workshops that were slated for 2020, SEARCH anticipates that we will continue to host one to two of these workshops per year moving forward. SEARCH has been able to reimburse travel expenses for QAP workshop attendees through NCHIP funds, and we hope to continue this practice once travel restrictions are eased and in-person workshops resume. SEARCH will continue to coordinate these workshops through the SEARCH Membership Group.
Criminal History Improvement Workshops

In partnership with the Bureau of Justice Statistics (BJS), FBI and National Center for State Courts, SEARCH is conducting a series of regional workshops to bring state and local practitioners together for identifying strategies to enhance our nation’s criminal history records. Thus far, Criminal History Record Improvement Workshops have been held in Little Rock, Arkansas (May 2018) and Albuquerque, New Mexico (April 2019), and representatives from 16 states attended.

The purpose of the workshops is to bring together multidisciplinary teams from the broad spectrum of agencies that contribute records to state criminal history record repositories to discuss their challenges and solutions relative to making criminal records available nationally. Specific agenda items include:

✓ How criminal history records are created and maintained
✓ How criminal history records are used for both criminal and noncriminal justice purposes
✓ Respective roles of law enforcement, prosecutors, courts, jails, prisons, and community supervision agencies in contributing data to the criminal history record
✓ **Challenges and promising practices for disposition reporting**
✓ State and federal disqualifiers for purchasing firearms
✓ The FBI’s National Instant Criminal Background Check System (NICS)
✓ Funding opportunities to support criminal history records improvement projects
✓ Identification and discussion of grant application areas of interest and requirements

SEARCH is working with BJS to plan two additional workshops during 2021. Due to the COVID-19 pandemic, the exact dates and locations have not yet been determined. SEARCH will provide further updates on the workshops as information becomes available.

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**About the Authors**

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.

Mr. Mark Perbix is Director of SEARCH’s Information Sharing Program. He oversees SEARCH’s initiatives to support justice and public safety information sharing nationwide, including providing direct assistance to federal, state, local, and tribal organizations to improve their use of technology, information sharing, and communications interoperability in mission-critical projects.

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

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*SEARCH staff continue to analyze the results of the 2018 Survey with the intention of making the data more accessible by drafting blogs to explain and provide context for the survey findings. If you have suggestions for topics you would like to see highlighted, or if you have specific questions about survey findings, please contact Becki Goggins (becki@search.org) or Mark Perbix (mark@search.org).*