Challenges and Promising Practices for Disposition Reporting

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Introduction

SEARCH, The National Consortium for Justice Information and Statistics, held its 2017 Winter Membership Group Meeting at the Sheraton Crescent Hotel in Phoenix, Arizona, on January 24–26, 2017. During the meeting, SEARCH staff facilitated a roundtable discussion followed by a breakout session devoted to including dispositions in criminal history records. Staff also reported the major findings from the breakout session to the SEARCH Membership Group. In total, SEARCH Members spent approximately four hours discussing challenges and successful strategies for disposition reporting. Because of the importance of this topic and the time allotted on the meeting agenda, the SEARCH Board asked staff to document the findings during the meeting for future consideration.

Disposition Roundtable: Key Findings

Every two years and since 1989, SEARCH conducts a Survey of State Criminal History Information Systems on behalf of the Bureau of Justice Statistics (BJS).[1] In the survey, SEARCH asks criminal history repository directors to respond to the following question: "What percentage of arrests in the criminal history database have final dispositions recorded?" The survey asks for percentages for arrests entered within the past five years, arrests in the entire database, and arrests for felony charges. Based on the conversation during the disposition roundtable, most SEARCH Members base their responses on arrest cycles versus individual charges. This means if a single final disposition is reported for an arrest with multiple charges, then the arrest

is considered to have a final disposition. In this scenario, the number of <u>arrests</u> is the denominator in calculating the percentage. In other states, each individual charge is counted as an "arrest" due to the way dispositions are processed, wherein the repository seeks to match each individual charge with a disposition. In this scenario, the number of <u>charges</u> is the denominator. This means that states relying on charge matching instead of cycle matching may have relatively low percentages of reported dispositions, depending on how they elect to count arrests.

The Membership agreed that it would be preferable to have a single reporting methodology. However, due to the way individual databases are structured, it would be difficult or impossible for many state criminal history programs to change their methodology. To make this issue more transparent to consumers of the survey, SEARCH staff will start adding explanatory notes regarding each state's methodology to the particular survey table that displays disposition reporting percentages.

Several SEARCH Members indicated that auditing contributing agencies helps improve disposition reporting. Typically, repositories provide audit findings to the agencies, which are then able to identify deficiencies. In many cases, these findings assist agencies in making business process improvements to support disposition reporting. Some states post all audit findings on a public website that allows both contributing agencies and the public to compare the accuracy and completeness of records submitted to the criminal history repository. Since anyone can compare each agency's statistics, making audit findings transparent creates another incentive to tackle any identified shortcomings.

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[1] See http://www.search.org/resources/surveys/

Members also noted that constant communication between repositories and contributing agencies promotes better disposition reporting. Many states conduct routine meetings with law enforcement agencies, courts, prosecutors, and other contributing agencies to explain everyone's role in providing information to the state repository. By increasing awareness of the importance of criminal history records and the need for cooperation among agencies, state repositories can often improve the quality of their records simply through education and outreach. Members also noted that there is constant turnover among contributing agency staff, so repositories need to make sure they have a strategy for sustaining outreach efforts for new employees.

Disposition Breakout Session: Key Findings

During the disposition breakout session, SEARCH staff asked Members to discuss challenges and strategies for success in receiving arrests and dispositions from each of the following: law enforcement, courts, prosecutors, corrections, and community supervision entities. This report contains a summary of these discussions.

LAW ENFORCEMENT

Challenges

SEARCH Members identified cite and release policies — where a subject is charged, but not fingerprinted at a booking facility — as the number one problem relative to receiving law enforcement records. Since state repositories rely on fingerprints to create a criminal history record entry, arrests not supported by fingerprints do not become a part of the record. If a person who was cited and

released appears in court, the judge may or may not order him or her to be fingerprinted following adjudication. If no fingerprint-based arrest segment is created, the court disposition will remain "orphaned" and not attached to the criminal history record. The FBI reported that "arrest not on file" is the most common reason that dispositions are rejected, and their representative noted this is most likely due to cite and release policies.

Members reported that law enforcement agencies frequently do not understand that collecting fingerprints is vital to establishing a criminal history record. While they realize that fingerprints are necessary to establishing a positive identity, they may not understand that they are essential for establishing a criminal history record entry.

Members reported that poor fingerprint quality continues to be an issue for repositories — especially when agencies submit hard-copy images. Agencies submitting via livescan tend to have better overall fingerprint quality; however, livescan operators have the option to override poor images. While overrides are necessary — e.g., people in certain occupations, such as masonry or brick-laying, may have unusable prints — operators should receive better training as to when overrides are appropriate.

Members reported that a lack of legislative authority to require collection and submission of fingerprints is an issue for state criminal history repositories. Specifically, they identified the following problems:

- **Timely submission of fingerprints** – If agencies are not required to submit fingerprints within a pre-determined

timeframe, then there can be significant delays in submitting them to the state repository. This is especially true for hard-copy prints, which are typically submitted by mail.

- **Inability to collect fingerprints unless a defendant is convicted** – Increasingly, many states are passing laws that do not allow fingerprints to be collected unless a defendant is convicted. Since many courts do not understand that the fingerprint submission is the basis for establishing a criminal history record, they do not order persons to submit fingerprints post-adjudication. The practice of not fingerprinting prior to conviction is especially prevalent among "low-level" offenses, including drug offenses. Since illegal substance use is a federal disqualifier for firearms transfers, several SEARCH Members were especially concerned about the failure to document drug-related convictions.

Strategies for Success

As with each reporting category, SEARCH Members reported that outreach and education aimed at law enforcement agencies is the most important key to success in ensuring appropriate records are submitted to the state criminal history repository. Once personnel understand the critical importance of collecting fingerprints and submitting arrest and disposition information, they are more likely to ensure information is forwarded to the state repository. Several states reported that livescan training is provided by the hardware vendor, repository staff, and/or a combination of both. Fingerprint technician certification programs also improve image quality.

SEARCH Members also advised that charge/arrest tracking control numbers (TCNs) assigned at the time of arrest are vital to successfully linking arrests with subsequent dispositions. Downstream agencies (prosecutors, courts, corrections) that routinely consume or place TCNs in their databases are far more likely to have matched dispositions.

SEARCH Members also noted that auditing law enforcement agencies for the quality and timeliness of fingerprint submissions is also successful in improving criminal history records quality. Audits also allow repository staff to identify gaps in disposition reporting and agency-specific issues to target for remediation through training and/or technology upgrades.

One state (Montana) noted that their new computerized criminal history (CCH) system allows creation of a disposition entry without a fingerprint. The CCH retains the information until a fingerprint is received, which avoids the need to continuously flag and re-visit records placed in suspense files at the repository.

COURTS

Challenges

Several states and SEARCH Member court participants noted that courts are often unaware of the importance of submitting dispositions to the state criminal history repository. Several states indicated a need to bring together court and repository personnel to discuss the importance of complete criminal history records for criminal and noncriminal background checks. They also emphasized how accurate and complete criminal history records help ensure the safety of law enforcement officers and citizens. These states indicated that continued outreach and education

efforts aimed at the courts helps increase the number of dispositions made available through the state repository.

Several states noted that dispositions provided by courts do not include arrest TCNs, which are critical to matching court and arrest records. Sometimes clerks simply do not realize the importance of entering these numbers in their electronic case management system (CMS). In other cases, the prosecutors (or law enforcement officials) do not provide the courts with these tracking numbers. Establishing policies that encourage courts to enter TCNs can dramatically improve the disposition matching process.

Other common challenges include:

- **Non-unified judicial systems**, in which courts do not share a common CMS (makes it difficult to build electronic interfaces with the state criminal history repository);

- **Reporting "non-fingerprintable" offenses or direct indictments** where the defendant was not booked into a jail facility prior to trial; and

- **Reporting post-disposition activities**, such as clemencies, sealed records, and expungements.

Strategies for Success

Once again, the most successful strategy for improving court dispositions available to the state criminal history repository is outreach and education. Courts need assurance that this is a "community" problem — not just a problem limited to law enforcement, prosecutors, or judges. Selling the importance of this to all actors is the key, because states need everyone working together to fix the issue. Both the FBI and SEARCH staff reported that they are

available to assist with these outreach and education efforts, either on-site or by providing educational materials.

Also, legislation requiring disposition reporting is helpful. Sanctions — either through law or policy — are also often effective in helping repositories obtain records.

Several states reported that their judges have implemented procedures to capture fingerprints any time they have a case in which the defendant was not previously fingerprinted for the charge. Prior to a hearing, either a bailiff or other officer of the court will review the docket to make sure fingerprints are on file for each case. If there are no fingerprints associated with a charge, the judge is notified and he or she will order the defendant to report to a pre-established location to submit fingerprints. Usually the fingerprints are taken at a nearby law enforcement location; however, some courts now have livescan devices in the courtroom where bailiffs can take the fingerprints on-site. In recognizing the importance of confirming the identity of defendants, many courts fingerprint everyone prior to their court appearance to verify their identity.

Several states suggested that courts, prosecutors, and criminal history repositories need to work more closely when considering or planning for information technology (IT) projects. One of the primary reasons for the lack of dispositions available to state repositories is the "silo" nature of the various systems that contain the different records. Improving communication — whether informally or through a joint technology committee — may help avoid building "stove-piped"

systems as criminal justice agencies deploy new IT systems.

PROSECUTORS

Challenges

Several states indicated that prosecutors are reluctant to report decisions not to prosecute. Prosecutors may fear that election opponents may use these decisions to portray them as "soft on crime." Also, prosecutors routinely dismiss or reduce certain charges in exchange for a plea deal. Unless the court clerk specifically notes which charges were dropped or changed, it is often difficult for repositories to know which dispositions need to be associated with a specific arrest charge. Prosecutors also may be reluctant to report dropped or reduced charges for the same reason cited above.

States also noted that many prosecutors lack (or have very antiquated) CMSs. This makes it difficult to electronically exchange dispositions with repositories. Also, most states lack a centralized CMS for prosecutors, which creates challenges related to connecting disparate systems to the state repository.

Some states also reported that their prosecutors still rely solely on paper-based records.

Strategies for Success

One key way states can improve disposition reporting is to first improve automation among prosecutors. However, states view outreach and educational efforts to inform prosecutors about their role in contributing to the criminal history record as the most important strategy for success. For instance, prosecutors need to be reassured that it is acceptable to report dismissed or reduced charges in the sense that they have

an obligation to settle cases in the most timely and cost-effective manner. Prosecutors need to be part of any outreach and education efforts designed to engage various contributors of criminal history information. Where governance committees for sharing criminal history information exist, prosecutors should be included as members. Additionally, several states recommended that prosecutors be invited to participate in national criminal justice organizations and forums, along with courts and criminal history repository staff.

CORRECTIONS

Challenges

Corrections agencies may lack livescans or be unaware that it is important to submit admission and release information — including charging and sentencing information — to the state criminal history repository.

Strategies for Success

States indicated that installing livescans with connectivity to repositories helps ensure that incarceration information is made available on criminal history records. States also indicated the need for outreach and education efforts targeted at jail and prison officials.

COMMUNITY SUPERVISION

Challenges

Community supervision personnel are often unaware that they can play an important role in reporting conditions of pre-trial release and supervision status. States reported that many community supervision agencies do not have automated CMSs. In cases where electronic records exist, they are not typically in a statewide system where it can be easily linked to the state repository.

Strategies for Success

Once again, states identified outreach and education efforts as critical to receiving information from community supervision agencies. States also indicated that jurisdictions could repurpose subscription and notification services — e.g., providing probation officers with information about when a client has been rearrested — to more easily submit information to state criminal history repositories.

Conclusion

Based on the comments during the roundtable and breakout sessions, the following presents the major strategies to improve the quantity and quality of dispositions available through state criminal history repositories:

- ***Adopt a unique identifier that follows a subject through the criminal justice system***. Participants viewed this as the best way to improve disposition reporting.

- ***Engage in outreach and communication with all key criminal justice stakeholders.*** Outreach and education needs to be inclusive of all contributing agencies. SEARCH Members reported that it is helpful to talk to court clerks, law enforcement, prosecutors, jailers, etc. at their local or statewide association meetings. However, there was consensus that it is far more effective to have multi-disciplinary workshops.

- ***Establish clear laws and/or policies for charges that cause a subject to be fingerprinted***. There was significant discussion during the breakout session about how different jurisdictions interpret "serious" misdemeanors. There was even inconsistency in terms of routinely fingerprinting for certain felony charges. This means there are inconsistencies in what law enforcement agencies capture

and submit to the state repository. By establishing clear guidance to when subjects should be fingerprinted, states can help eliminate "orphaned" dispositions that cannot be associated with an arrest charge.

- ***Provide clear guidance about collecting fingerprints when individuals are convicted of a crime, but fingerprints were not collected previously.*** This is in response to the increased adoption of cite and release policies and new state laws stating that persons may not be fingerprinted prior to conviction for certain "low-level" offenses.

- ***Provide feedback to contributing agencies regarding dispositions***. This may be part of a formal auditing process or simply a periodic report. Some states not only conduct routine audits, but also publish the results on a public website. Other states reported sending "suspense file" reports to agencies requesting them to submit missing arrests and/or dispositions. Both strategies are effective, so perhaps states should consider both.

- ***Design interoperable IT systems.*** States should ensure that criminal justice partners communicate and plan for information sharing when implementing IT projects to avoid perpetuating the problem of information silos.

- ***Establish governance structure.*** States should consider creating a governance structure for creating and maintaining criminal histories that is inclusive of all the relevant contributing agencies.

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