IJIS INSTITUTE INFO BRIEF:
THE ROLE OF COURTS IN ACCURACY AND COMPLETENESS OF CRIMINAL HISTORY RECORDS

The information contained in criminal history repositories is essential to law enforcement and other criminal justice agencies. The use of criminal history information for non-law enforcement purposes, such as background checks for firearms, employment, licensing, and other purposes, is rapidly growing, resulting in greater awareness and growing criticism. Most of the criticism is focused on concerns about the integrity of computerized criminal history (CCH) records, and, in particular, records that are not complete, accurate, and timely.

According to a July 2013 report from the National Employment Law Project, background checks for employment and licensing purposes have increased from roughly 2.8 million conducted in 2002 to almost 17 million in 2012. Not that more motivation was needed, but this ever-increasing use of background checks, and the significance of decisions being made based on those checks, has put greater pressure on justice agencies, including courts, to improve the integrity of criminal history records.

Background checks on an individual will generally include a record of any arrests and how the resulting charges and court cases were resolved. The scope of this brief focuses on the latter – disposition of charges and cases resulting from an arrest and/or indictment – which is a major area of concern. Many challenges and criticisms are related to incomplete information on dispositions. Criminal history repositories in many states contain a vast number of arrests with what appear to be pending charges and/or counts that have not been resolved. Though difficult to quantify, cases associated with a significant number of these arrests have long been resolved, just not reported to the repository in a manner that can be definitively associated with the originating arrest/indictment.

Courts and prosecutorial agencies are largely responsible for reporting the disposition of cases to state criminal history repositories. The agency/organization responsible for maintaining criminal history in the state will then attempt to match reported dispositions to original arrest records. These two functions – reporting dispositions and matching dispositions to arrest records – are where many problems arise, resulting in negative impacts on completeness and accuracy of criminal history records.

Common Problems

While methods, approaches, and policies relating to disposition reporting vary from state to state, overarching challenges and problems with reporting and matching are very similar. These issues are compounded as the functional environment under which records are collected and maintained is high-risk and publicly visible,

especially as CCH consumers continue to perceive the data to be largely inaccurate or incomplete. Some of the common themes around disjointed reporting of disposition information to the central repository include:

Stewardship: Single points of ownership or authority largely do not exist for governing the overall criminal history reporting process. Many would argue that, is as it should be – public entities are stewards of the data, not owners of the data. However, committee or governance boards that directly address the day-to-day records processing issues between agencies are often absent or powerless. Consequently, responsibility for reporting key components of the criminal record to the repository is distributed and varies by jurisdiction, and programs for the continued outreach and training of personnel responsible for reporting criminal history data are too expensive to operate over time.

Statutory Reporting Requirements: Statutory reporting requirements are often lacking, conflicting, or difficult to enforce. Further, inconsistency often exists among state statutes relative to what is a reportable crime and by which agency. Methods for determining compliance with state reporting mandates rarely exist and any disciplinary actions or sanctions for the noncompliance of crime reporting regulations are often not imposed.

Documented Procedures: Operational procedures for organizations that provide disposition data are not well documented. Local agencies do not know how to process the more complex transactions such as warrants, cite and release, failures to appear, and probation violations. Consequently, repository management agencies spend significant amounts of time researching complex transactions that do not match. Attrition and lack of reference materials have, over time, led to disjointed business processes that perpetuate misreporting of criminal history information or no reporting at all.

Workflows: Workflow between local law enforcement, prosecutors, courts, and custody agencies is largely unregulated. Few agencies use accounting mechanisms to ensure the movement of critical criminal history data elements from agency to agency. Methods that do exist are largely manual in nature, which increases the likelihood of error. Local agencies have to make decisions on where to best apply their limited resources, and record-keeping accuracy is often a lower priority.

Local Agency Capabilities: Local justice agency capabilities and willingness to provide information vary widely; many issues impact capability and willingness. For example:

- Prosecution agencies are often reluctant to deliver declinations because these may not get reflected on the criminal history as a conviction or they may see these cases again.
- The outcome of a court case might also change the nature of a charge to non-reportable.
- Linking record identifiers are often not established or are not transferred to justice partners.
- Variability in case management architectures between local justice practitioners discourages systems compatibility throughout the justice life cycle.

Arrest-oriented: CCH systems are highly person-based and arrest-oriented and can only contain information that is biometrically verifiable. Repository managers expend large amounts of resources ensuring the absolute completeness of arrest data reporting, so

conviction information can only be entered when a subject's identification has been biometrically verified. The case-based nature of most court systems often complicates the process of matching to arrest records. Courts have traditionally focused on the concept of a case rather than the individual.

No Files: When a prosecutor elects not to pursue charges arising from an incident or arrest, it may be referred to (depending on the state) as a *no file*, *nolle prosequi*, *nolle prose*, or simply a declination. A decision to discontinue criminal charges often results in the courts never knowing about the charges and, consequently, there being no court case.

If prosecutors aren't reporting such dispositions to criminal histories (as is the case in many states), the result is incomplete criminal history records. In some states, court cases are filed immediately after booking, regardless of whether prosecutors pursue formal charges. In this scenario prosecutors could advise the court (ideally through an electronic notification) so that the court record could be immediately closed (and reported as such to criminal history). Some courts have processes to periodically review and close these cases, but not all.

In most states, prosecuting attorneys are elected officials and the realities of caseload and financial constraints require tough decisions on what the office will and cannot pursue. Because the reporting of a declination becomes a matter of public record, some prosecuting attorney's offices will not provide declination information to the court or the repository as it will impact their prosecution statistics, and ultimately their ability to get re-elected. They may also be motivated to leave it unreported so that there is no record of a declination should they later decide to pursue the case.

Amended, Consolidated, New, and Dropped Charges: A prosecutor may elect to amend, consolidate similar, or add charges to those recorded in the arrest, and may also in the process drop some of the charges. The corresponding court case may (depending on procedures that vary among states) reflect only those charges being formally filed by the prosecutor. Similar to the *no file* situation, disposition of the original charges may never be reported. When this occurs, it is difficult for repository systems and staff to know how to apply any resulting dispositions to original charges. Note that the impact of this problem is more significant in states where matching of dispositions is done by charge rather than by case.

Cite and Release: Many states have programs allowing law enforcement to issue a ticket or citation for some misdemeanor offenses (even low-level felony offense in some states) rather than arresting and formally booking the individual. This is sometimes referred to as a *Cite in Lieu* processing and there is still a subsequent criminal court case and eventual disposition. However, when the disposition is reported, there is no arrest record to match to since arrest records are generally reported during a booking transaction that captures charges and fingerprints simultaneously and submits those to the repository to create the arrest record.

When Matching Fails: Most states have formal processes in place for dealing with dispositions they are unable to match to an arrest record. However, not all states do this well. Even in those states with formal processes, level of compliance and action on the part of local courts varies significantly. The result is the appearance of pending charges in cases where, for whatever reason, dispositions were not successfully matched to the original arrest.

Arrest Warrant Processing: New crime arrest warrants start from an investigation standpoint. Either no subject was arrested when the incident occurred or no suspects were known at the time of incident, so an investigation took place and enough evidence was found for law enforcement to refer case information to a prosecuting attorney to get an arrest warrant issued. This type of process is similarly used for cases involving a grand jury and secret indictment. The issue here is that a subject could arrive at court without being fingerprinted, then be convicted of a crime for which there is no arrest record. This situation is commonly compounded further when the warrant for an arrest is issued relative to a failure to appear (FTA) charge from a prior citation. In this case, the FTA becomes the charge and varying booking policies can lead to issues with the application of charges in the repository.

Probation/Parole Violation Bookings: The treatment of probation and parole violations (PV) by community correctional agencies can vary greatly given the possible courses of action available to the probation/parole officer. For example, because a PV charge can be associated with a closed court case and is not a formal charge, it is not reported via the typical disposition reporting processes, even if the subject has been booked for the PV. For a disposition on a PV charge to be reported to the CCH, assuming the subject was fingerprinted, the prosecutor must file with the court – which is often not treated as a new case. This ultimately causes issues with the ability of the repository to correlate case information. Sometimes it is treated as a new case, which can cause other problems. For example, a guilty plea (or dismissal) in one case in exchange for dropping (or an admission) of a probation violation in another. CCH systems don't typically handle this multi-case complexity very well.

Release Agreements: When arraigning a subject who has been in custody, the court may agree to release a subject from the jail pending further court proceedings. In this situation, a pre-trial release agreement is typically issued. The sequence of events (including possibly a rearrest) that ensues should the subject in this case fail to appear at his/her next hearing can result in disjointed booking and charge information that may inhibit matching.

Violation Treatments: Violation treatment of misdemeanor and felony charges is a tool used by prosecution and judicial systems to avoid costly court appearances and sentences for low-risk offenders. Subjects will plead guilty to a violation rather than a felony or misdemeanor, and the violation carries a lesser sentence. The use of this violation treatment should still result in a misdemeanor or felony conviction on the subject's CCH record. Instead, violation related crime-codes are often not reportable to the repository by statute.

Old Records: Criminal history repositories have been around for a long time. Over the years there have been significant improvements in disposition reporting and matching. Changes in reporting requirements have also contributed to generational inconsistencies in repository data. Consequently, many states still have a substantial number of older records that are incomplete. Some states have been very proactive in identifying and correcting these records, but it is still a major area of concern in many other states.

Potential Solutions

The spectrum of possibilities is very broad and is reliant on the objectives and scope of projects that may or may not directly address disposition reporting improvements. It's worth noting that effecting improvements to completeness and accuracy of criminal history

records is not generally a technical problem – it is more often a political and/or management problem. Technology should be considered a tool, not the solution. Nonetheless, there are a number of possibilities, including more effective use of technology. This is not an exhaustive list by any means, but here are a few ideas to consider:

Foster Collaboration: Solutions for many of the issues discussed in this paper start with solid governance, policies, and cooperation among affected agencies. Consultants and solution providers should start with guidance for their customers in these areas, including facilitating a level of collaboration that is essential to any information sharing initiative. National initiatives – such as the National Information Exchange Model (NIEM) and the Global Reference Architecture (GRA) – provide guidance on methods that promote engaging stakeholders and development of solutions that are business focused with appropriate agreements among affected agencies. These standards and tools will not solve governance problems, but they do promote processes that foster collaboration.

Reporting Disposition of Initial Charges: In states that track dispositions by charge (rather than by case), the scope of projects that affect disposition reporting should include reporting charges that prosecution elected not to pursue, whether or not they are reported to the court. This may involve prosecutors reporting such declinations directly to criminal history repositories, or perhaps prosecution including indication of disposition of all initial charges associated with the arrest when they file with the court. Of course, the court would also need to capture such charges and report them as they would any other disposition.

Biometric Identification: Criminal history repositories use fingerprints to uniquely identify an individual's criminal history record. When a new print is captured and not matched to an existing record, a new record is created and assigned a number/identifier that is unique within that state. This identifier is often referred to as a State ID (though that varies by state). Naturally, updating disposition information can be accomplished much more accurately if this unique identifier is included when reporting dispositions. Some states share this information with the courts when cases are filed, some do not. Improvement projects should focus on why State IDs, or similar tracking mechanisms like arrest tracking numbers (ATNs), are not shared among agencies.

As previously noted, fingerprints are not always captured (e.g., cite and release). Some states have started capturing fingerprints in court (or at least somewhere in the courthouse) at the time of disposition. Capturing biometric identification at disposition not only confirms identity of the defendant, but it also allows for matching to existing criminal history records (when a State ID is not known) or creating a new record in situations where a record had not already been created (e.g., cite and release).

Information Sharing Standards: Sharing of relevant identification information among justice system agencies is essential to effectively match dispositions to criminal history records. Solution providers should promote standards-based information exchange to support timely, consistent, and secure sharing of information. Adoption of NIEM and GRA information sharing standards leverages guidance and methods to insure essential elements are included in data exchanges. Further, reference specifications (in the form of NIEM Information Exchange Package Documentations and GRA Service Specification Packages) have been developed by practitioners and justice information sharing experts from around the country to provide a great starting point for those embarking on information sharing projects.

Error Handling: In many states, error reporting of unmatched dispositions has historically not been very effective. The problem is compounded in states that may have hundreds of different courts reporting from a myriad of different case management systems. Every effort should be made to standardize information exchanges so that format and definitions are consistent regardless of the source systems. The use of standards like NIEM promote semantic accuracy between disparate data systems. Proactive error reporting, review, and submission of corrections should be adopted to streamline processes and minimize effort required. Feedback loops and audit trails could also be used with, for example, a transaction returned to the court and an update to the court's case management system to capture date and time the disposition was reported to the repository and when it was posted. Errors along the way could also be captured. These types of mechanisms are already employed in financial transactions. It may seem like overkill for what traditionally has been a simple reporting function, but putting in place such controls (rather than just throwing information over the wall and forgetting about it) would seem justified to ensure completeness and accuracy of criminal history information.

Cleaning Up Old Records: As already noted, older incomplete records are still a concern in many states. While the impact wanes as time passes, it is still a significant issue in the near-term. Opportunities for cleaning up old records should be explored while weighing benefits against costs. Possible solutions and approaches to cleaning up old records may vary notably depending on reasons for past mismatches and availability of data to research and resolve discrepancies. As an example, some states have contracted for services that charge a flat fee per record to research and resolve issues.

Conclusion

Criminal histories are being used more and more, not only for public safety decisions but also firearms purchases, licensing, hiring, and housing decisions (i.e., non-criminal justice purposes). Yet there is much concern about the condition of criminal history repositories and the consequential negative impacts on the livelihood and well-being of thousands of individuals each year – and that's over and above public safety concerns that may impact thousands more. The causes are surprisingly similar across jurisdictions collecting criminal history data. While there is no panacea, the challenges can be overcome with governance, incentives, policy, management discipline, and more effective use of information sharing technologies. Some ideas are shared above, but there are many studies and resources available that elaborate and explore further the challenges and potential solutions.

Additional Resources

- Bureau of Justice Statistics (BJS), Survey of State Criminal History Information Systems, 2012, https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf
- BJS National Criminal History Improvement Program, http://www.bjs.gov/index.cfm?ty=tp&tid=47
- BJS Publications & Products, Use of Management of Criminal History Record Information, http://www.bjs.gov/index.cfm?ty=pbse&sid=54
- National Employment Law Project, Criminal Records and Employment, http://www.nelp.org/index.php/content/content_issues/category/criminal_records_and_employment/
- National Employment Law Project; Wanted: Accurate FBI Background Checks for Employment; July 2013, http://www.nelp.org/page/-/SCLP/2013/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf?nocdn=1

- Bureau of Justice Assistance (BJA) Warrant and Disposition Management Program, NCSC Warrant and Disposition Toolkit, http://www.wdmtoolkit.org/ (note, as of the date of this writing, this site is still a work in progress and may be updated and/or moved as the project nears completion)
- National Information Exchange Model (NIEM), http://www.niem.gov
- Global Justice Information Sharing Initiative, https://it.ojp.gov/global
- Global Information Sharing Toolkit (GIST), https://it.ojp.gov/gist
- Global Reference Architecture (GRA), https://it.ojp.gov/default.aspx?area=nationalInitiatives&page=1015

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