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State Criminal Records

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Sharing criminal justice information across jurisdictions can improve public safety. Efforts that enable justice departments to receive critical data from different agencies throughout the country have proliferated in recent years. The private sector and non-justice government agencies also have received greater access to states' criminal history records. Legislation in many states requires schoolteachers, nurses, day care providers and others to undergo criminal background checks prior to hiring.

Although increased access to criminal records improves the screening process for such employees, it also raises concerns regarding privacy expectations of individuals. In crafting policies, states must balance rights to privacy and the public good realized by better information.

This report explores the access policies of state crime records by detailing what information is available to the public, under what circumstances it is available, and which states have procedures for the expungement of criminal records. The report also examines how two interstate compacts may improve information sharing between states, at the same time complying with and respecting the laws of participating states. The National Crime Prevention and Privacy Compact sets guidelines for sharing criminal justice records for non-criminal justice purposes. The Interstate Compact for Adult Offender Supervision helps monitor and track offenders who are under community correctional supervision who travel to different states.

State Dissemination and Privacy Policies

The Supreme Court has ruled that constitutional privacy principles do not limit dissemination of arrest information by criminal justice agencies.¹ Thus, state and federal laws have established privacy standards almost exclusively. In 1976, the U.S. Department of Justice Law Enforcement Assistance Administration (LEAA) issued regulations that dictate standards for criminal history records data quality.² Individual states, however, retain wide discretion to set their own standards for dissemination.

Dissemination of criminal records for criminal justice purposes is largely noncontroversial. Indeed, the main purpose for creating a criminal history is to inform future decision makers about the offender. Increasingly, states are requiring decision makers to take criminal histories into account. Twenty-four states either require or permit criminal records to be considered in bail decisions, and 32 states have statutes authorizing consideration of criminal histories in corrections classification and supervision.³ Dissemination of criminal records for noncriminal justice purposes is becoming popular, but is more problematic. Sensitive information often is included in criminal histories, and critics argue that easy access to records may lead to invasion of privacy but may fail to protect the public. Policymakers will want to determine who should have access to what information and for what purpose. Two-thirds of all states require criminal background checks for school employees,⁴ and a majority of states have laws authorizing national criminal history checks for people who work with children, the elderly or individuals with disabilities.⁵ This trend will likely continue as states look for ways to protect vulnerable populations and governments improve their ability to track dangerous offenders and share that information with the public. In fact, some employers have been sued for negligent hiring where the information was available but a background check was not performed. Still, the public is not entirely comfortable with completely open record policies.

Private entities can obtain criminal history information in 32 states.

According to a 2000 survey conducted by the Bureau of Justice Statistics, a substantial majority of the public favors some access to conviction records for private organizations such as the Boy Scouts (88 percent) and for insurance companies investigating fraud (76 percent). However, this support drops to 38 percent if access is used by individuals who want to learn if a neighbor has any criminal record and even lower (23 percent) if the information is limited to arrest information without a conviction.⁶

Access to Criminal Records

Although some states retain strict control over crime records, a majority of states now permit access to criminal records for some compelling noncriminal justice purposes.⁷ Private entities can obtain criminal history information in 32 states.⁸ The process is facilitated by a large number of private companies that provide this service for a modest fee. Typically, states require that a name and date of birth be submitted in order to obtain the information, but some states require more information such as a social security number, a signed release form, or fingerprints.

Although this information is available to the private sector, it is often limited to certain types of data, and specific requirements must be met before the data is released. Twelve states limit the dissemination of criminal record information to individuals or organizations authorized by statute.⁹ Many statutes also limit what is released; for example, 19 states limit the information to convictions, and Alaska provides information only on convictions within the past 10 years. Fifteen states notify the subject when there has been a request for his or her record.¹⁰

Some states have determined that the right to have criminal histories available to the public outweighs any privacy concern. They typically censor personal information, but make the information easily accessible. Colorado, for example, makes the information available to anyone, but omits social security numbers, street addresses, and the names of victims, judges, police officers and jurors.

Internet Access

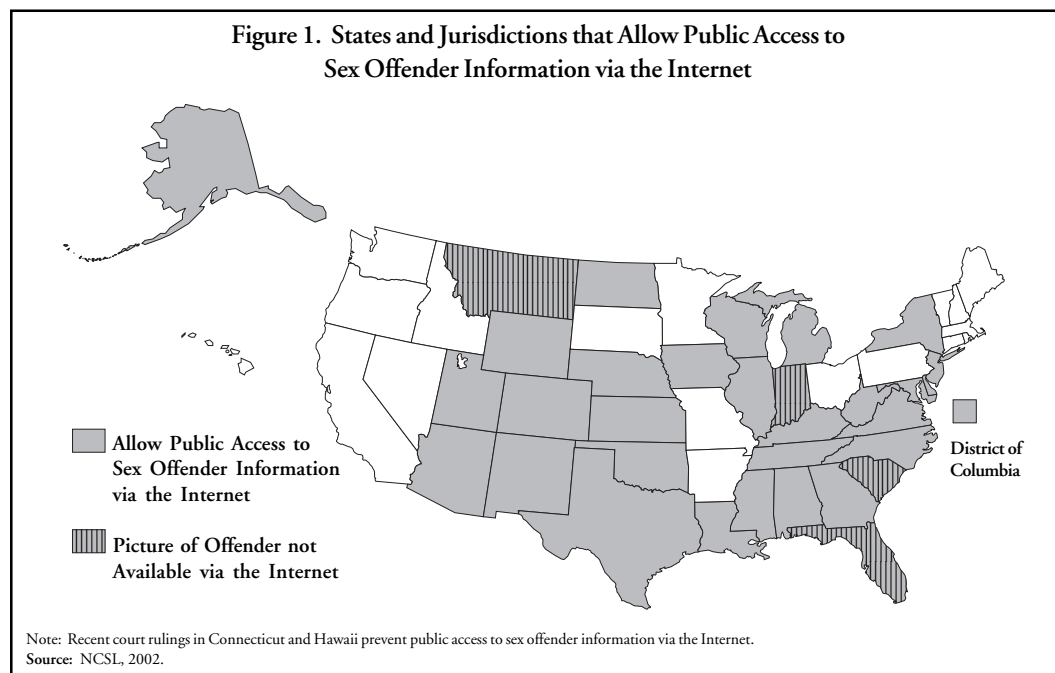
Increasingly, criminal records are being made available to the public on the Internet. Thirteen states now provide direct access¹¹ for a nominal fee. Wisconsin, for example, provides public access to criminal records via the Internet for a \$15 fee. It charges nongovernmental agencies \$5 and charges nonprofit organizations \$2. Full conviction and arrest information is provided and is updated every 24 hours. Colorado provides court records to the public for \$5 per search. Sealed records and probate, mental health and juvenile records are not available.

Other states restrict the dissemination of criminal records over the Internet. Virginia law specifically prohibits the availability of criminal records on the Internet. Tennessee prohibits noncriminal justice access except for limited purposes specifically authorized by statute. Tennessee law also creates a criminal offense for releasing criminal records for unauthorized purposes.¹²

Sex offenders are among those about whom public notification often is allowed under state law. Some states, however, limit the amount and type of information available in order to avoid vigilante action and to make sure information that may be useful to law enforcement agencies is not used by offenders to mislead police. Obviously, errors in the system can be devastating. Yet, being able to search for sex offenders by name, picture or geographic area is popular with the public, particularly parents who want information about their children's

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proximity to danger. Currently, 32 states and the District of Columbia have Internet sites that contain searchable information about individual sex offenders (figure 1).¹³



Once information is available to the public, private companies compile it in their databases and sell it either over the Internet or as a paper document. Although many states have long allowed public access to these records, they have been relatively inaccessible; obtaining them has required a trip to the police station or courthouse.

Crime records may include private information about the arresting officer or the victim. Reassessing the public nature of these records has taken on a new meaning now that the Internet facilitates access to many records. The ease with which the public can obtain records via the Internet or through private data collection companies accelerates the need to edit or expunge records before they are made public. If lawmakers are concerned about the integrity and wide dissemination of court records, these issues should be addressed before the information is made available to the public.

Expungement of Criminal Records

The information contained in criminal history records affects individual and public interests. The presence of an arrest or conviction record can be a barrier to future employment,

and research shows that a job is an important factor in assisting offenders to avoid crime. Access to criminal data also can have adverse effects on the victim or on the offender's family, which can be the unexpected recipient of discrimination simply by their relation to the offender. Further, criminal data sometimes contains inaccuracies—it can be incomplete, outdated, or simply entered incorrectly.

What public record information should be retained and what should be expunged is, therefore, important not only to individuals, but also to society at large, which has an interest in encouraging employment and avoiding unnecessary discrimination. Policymakers face the challenge of crafting laws that balance public safety and individual privacy. Juvenile records, arrests that do not lead to a conviction and non-serious offenses have been the focus of most state statutes that allow record expungement.

Most states have laws that provide for the disposal of a juvenile's criminal record. Typically, statutes stipulate the method of record disposition—either by sealing, expunging or destroying the record—and the conditions that must be met (e.g., no new offenses) to do so. Statutes usually provide for the sealing of records for a given period of time and then, when that time ends, for the destruction of those records.¹⁴ Virginia law, for example, calls for the automatic, annual expungement of all court records for juveniles who are age 19, provided they meet certain requirements.¹⁵ Illinois permits relatively minor and isolated acts of juvenile delinquency to be expunged but maintains records of other, more significant, juvenile crimes. Wisconsin gives judges virtually unbounded discretion to decide what should be expunged from a juvenile's record. In all, half of the states prohibit sealing juvenile records of offenders who are involved in serious or violent crime.¹⁶

Allowing criminal data access can adversely affect the victim or the offender's family.

Adult Expungement

Expungement of adult records is less common and usually requires the offender to petition the court to have the information sealed or expunged. The expungement of criminal records is an important consideration when dealing with criminal histories. Most states provide for the expungement of criminal records that do not result in a conviction or that exist as the result of clerical error or stolen identity. Even if state statutes do not specifically allow for the expungement of records, courts may purge certain records in the interest of justice.

Arrest records are afforded greater protection than conviction records because arrest information could lead to discrimination based on unfounded charges. Still, some states con-

sider arrest records to be public information. Using arrest records as a basis for denying employment without checking the actual disposition of the case may be in violation of some state statutes and the Federal Fair Credit Reporting Act.

Twenty-one states and two territories provide procedures for the expungement of a felony conviction.¹⁷ Even if a record is expunged, the information still can be accessible to government agencies and the public. Since the advent of the Internet and improvements in electronic storage, even if a record is expunged it may be obtained by a private entity before it is expunged. Before information is made public, the dissemination of crime records should be reviewed.

Twenty-one states and two territories provide procedures for the expungement of a felony conviction.

To strengthen the effect of sealed records, some states allow an offender to state in a job application or other documents that no such criminal action has ever occurred if a record is sealed.¹⁸ This rule allows someone to assert that they do not have a criminal record under some circumstances, even if one exists, without fear of retribution. Records can be destroyed in only 10 states.¹⁹ In the remaining states that provide for expungement, the records are retained but can be accessed only under certain conditions, such as for judicial proceeding.²⁰

Public opinion is split on whether conviction records should be sealed if an offender has successfully completed a sentence and has not re-offended for a certain period of time (such as five years). Fifty-two percent favor keeping conviction records available to employers and licensing agencies, regardless of the length of time that has passed since the individual's conviction or release.²¹

States that allow convictions to be expunged often set conditions that limit relief. The conditions vary greatly in the states. Oklahoma allows a conviction to be expunged only if it is later reversed, and Pennsylvania allows expungement of criminal information when the petitioner reaches age 70 and "has been free of arrest or prosecution for 10 years."²² Rhode Island allows a conviction record to be expunged 10 years after sentence completion (five years for a misdemeanor) if the petitioner has not been convicted or arrested for a felony or misdemeanor, there are no criminal proceedings pending against the person, and expungement is consistent with the public interest.

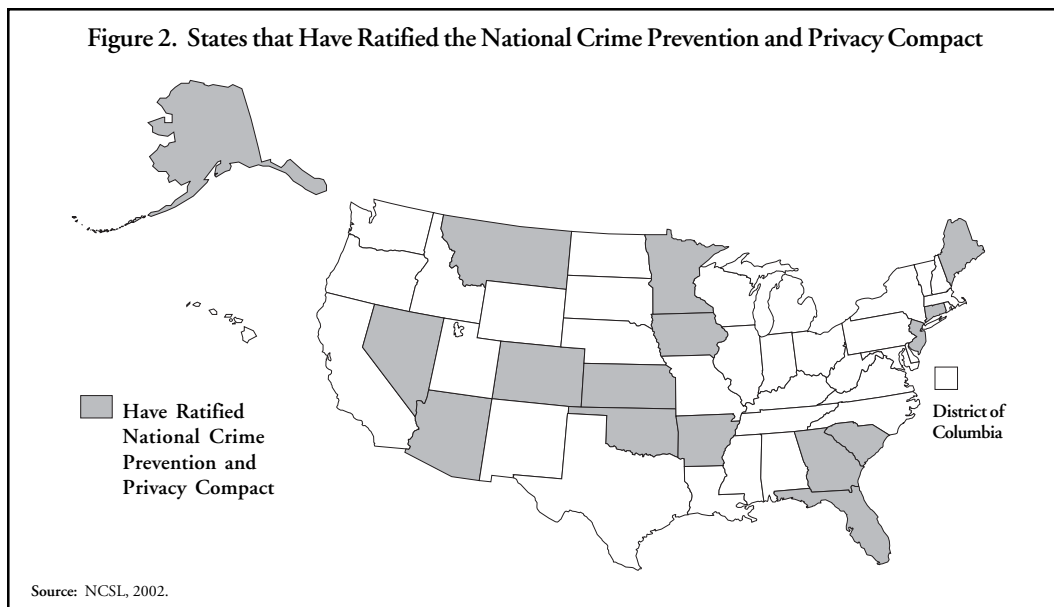
Many states specifically retain information about convictions of sex crimes or crimes involving children. Arizona forbids expungement of any crime involving serious physical injury

or use of a deadly weapon, and Oregon allows convictions of listed crimes to be annulled, including some drug offenses and crimes that do not involve children or sex crimes.²³

Because privacy policy differs greatly among states, sharing information between states is complicated. To address these concerns, a number of states have adopted interstate compacts that are designed to facilitate information sharing but, at the same time, that respect different state laws and comply with their dissemination rules.

National Crime Prevention and Privacy Compact

In some states, requests for non-criminal-justice criminal history checks outnumber requests for criminal justice requests. This increased need for background checks has sparked an interest in establishing uniform standards to govern the interstate dissemination of criminal history records. The National Crime Prevention and Privacy Compact establishes these procedures. The compact went into effect in 1999 when Montana and Georgia became the first two states to ratify it. To date, 16 states have ratified the compact (figure 2).²⁴



The compact allows an authorized entity that seeks a subject's criminal history in another state to contact the FBI electronically. The FBI then directs the inquiring party to the appropriate state or federal database, using a federal-interstate computer network known as

the Interstate Identification Index (III). The III is designed to tie together state criminal record databases and the FBI, providing the means to conduct national searches of criminal records anywhere in the country. Once a state receives the information, it follows its own guidelines to determine how to disseminate it.

Some states are concerned that they may lose control of their information in other states, but 43 states that participate in the FBI's III already release substantially the same information to the FBI. The compact simply standardizes what information is made available. Still, some control over the records is sacrificed in exchange for more complete background checks.

States' Role

States need assurances that they will have a voice sufficient to protect their interests as the III evolves. The FBI will maintain the III and will, therefore, be in a strong position to influence the system's development. Nevertheless, the records available through the system will continue to be predominantly state-maintained, and states need to be assured that use of those records will be consistent with their policy concerns in areas such as individual privacy, system security and data quality. The compact addresses states' concerns by establishing a policymaking council with authority to oversee the use of the III for noncriminal justice purposes. A majority of the members of the council must be state officials selected by the participating states.

States are required to make available all unsealed criminal history records, as authorized by each state's statutes for noncriminal justice requests.

To participate in the compact, states are required to make available all unsealed criminal history records, as authorized by each state's statutes for noncriminal justice requests. Increased participation in the compact may allow states and the federal government to eventually eliminate costly maintenance of duplicate sets of criminal history records. The FBI and the participating states have agreed to maintain detailed databases of their respective criminal history records, including arrests and dispositions. The FBI manages the primary data infrastructure for the system. Participating states are relieved of the burden and the cost of submitting arrest fingerprints and disposition data to the FBI for all arrests for felonies and serious misdemeanors. Instead, they submit only fingerprints and textual identification data for each person's first arrest.

In states that already have efficient automated systems, the compact adds no significant new burdens and produces overall cost savings. For example, the fiscal impact statement prepared by Colorado Legislative Council staff determined that it would have no fiscal impact.

Interstate Compact for Adult Offender Supervision

The importance of crime records for post-release supervision has received greater attention in recent years, in part because of policies dealing with registration and movement of sex offenders. Probation and parole officers must be able to track and locate offenders to smoothly transfer supervision authority when necessary. The Interstate Compact for Adult Offender Supervision facilitates tracking the estimated 250,000 probationers and parolees who are expected to cross state lines each year.

Interstate supervision is complex. Three thousand local parole and probation offices, operating within 830 different agencies, currently oversee those parolees and probationers who are traveling to another state. This fragmented system makes it difficult to account for all offenders. Offenders who live in other states frequently return home following their sentence. However, they remain under the supervision of the state in which they were convicted. As a condition of release, probationers and parolees must adhere to numerous court orders, such as drug treatment, community service and restitution.

The compact has developed an Interstate Commission (composed of commissioners from its member states) to establish uniform procedures to manage the movement between states of adults who are placed under community supervision. The commission is instituting a system of uniform data collection to provide access to information to authorized criminal justice officials and to coordinate regular reporting of compact activities to state executive, judicial and legislative branches and to criminal justice administrators.

The compact is estimated to cost each member state between \$18,000 and \$46,000 annually, depending on state population and the amount of offender traffic within each state. Other costs may be incurred by the state, depending on how they decided to classify probationers, but the advantages of the system could outweigh any additional cost. It is anticipated that automation will reduce the per-case work-effort required.²⁵ More important, states will improve public safety and avoid civil liability by properly supervising dangerous parolees and probationers. Maryland, for example, recently settled a civil lawsuit with the mother of a Colorado murder victim because the state had failed to notify Colorado about a dangerous parolee it sent to Denver for treatment.

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The Interstate Compact for Adult Offender Supervision went into effect on June 19, 2002, when Pennsylvania became the 35th state to ratify the compact. As of July 17, 2002, 38 states were parties to the agreement.

Conclusion

States may want to readdress their expungement and dissemination policies in light of advancements in information sharing and data collection.

Efforts to enable information sharing among agencies and with the public have proliferated in recent years. New technologies and greater access to criminal records can improve the administration of justice and enhance public safety; however, lawmakers will want to address the unintended consequences of readily available information. Easy access to crime records can diminish individual privacy and can hamper rehabilitation efforts.

States may want to readdress their expungement and dissemination policies in light of advancements in information sharing and data collection. Cooperation among states through the National Crime Prevention and Privacy Compact may improve the quality of a background check by increasing the pool of information. Adoption of the Interstate Compact for Adult Offender Supervision may provide the standards that some lawmakers are looking for in tracking probationers and parolees. Regardless of whether policymakers want to adopt these compacts, deciding what information should be provided to whom and for what purpose should set information policy.

Notes

1. *Paul vs. Davis*, 424 U.S. 693,713 (1976).
2. 28 C.F.R. §20.21(a)(1).
3. *Use and Management of Criminal History Record Information: A Comprehensive Report, 2001; Update: A report prepared by SEARCH for the Bureau of Justice Statistics* (appendix 2, table 2; appendix 6, table 8) (Washington, D.C.: Bureau of Justice Statistics, December 2001).
4. National Association of State Directors of Teacher Education and Certification, *1998-1999 Manual* (Mashpee, Mass.: NASDTEC, 1998).
5. U.S. Department of Justice (OJJDP), *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support* 9 (Washington, D.C.: OJJDP, April 1998).
6. Bureau of Justice Statistics, *Public Attitudes Toward Uses of Criminal History Information Summary of Survey Findings, A report prepared by SEARCH* (Washington, D.C.: Bureau of Justice Statistics, July 2001), 36.
7. Bureau of Justice Statistics, *Use and Management of Criminal History Record Information*, 47.
8. Research conducted by Bruce Meyer, National Conference of State Legislatures staff, July 2002.
9. SEARCH, Survey of states that provide some level of “open” access to their criminal history records, March 27, 2001, 1.
10. Ibid.
11. SEARCH, survey of which states provide public access to their criminal history records through the Internet, April 9, 2001, 1.

12. Bureau of Justice Statistics, *Compendium of State Privacy and Security Legislation: 1999 Overview*, a report prepared by SEARCH, July 2000, 9.

13. Research conducted by Bruce Meyer, National Conference of State Legislatures staff, July 2002.

14. Bureau of Justice Statistics (OJJDP), "State Legislative Responses to Violent Juvenile Crime 1996-97 Update" (Washington, D.C.: OJJDP, November 1998).

15. Va. Code Ann. §16.1-306.

16. Bureau of Justice Statistics (OJJDP), *Responses to Violent Juvenile Crime* (Washington, D.C.: OJJDP, November 1998).

17. Bureau of Justice Statistics, *Survey of State Criminal History Information Systems*, (Washington, D.C.: Bureau of Justice Statistics, October 2000), Table 9, 31.

18. Colo. Rev. Stat. §24-72-308; see also Utah 77-18-10(7) (Supp. 1997) (allowing individual with expunged arrest record to deny its existence) and 77-18-13(3) (1997) (providing that individual receiving expungement of conviction may deny its existence).

19. Bureau of Justice Statistics, *Survey of State Criminal History Information Systems*, 1999, Table 9, 31.

20. Ibid.

21. Bureau of Justice Statistics, *Public Attitudes*, 42.

22. 18 Pa. Cons. Stat. Ann. §9122(b)(1).

23. Or. Rev. Stat. §137.225.

24. Montana, April 8, 1999; Georgia, April 28, 1999; Nevada, May 14, 1999; Florida, June 8, 1999; Colorado, March 10, 2000; Iowa, April 7, 2000; Connecticut, June 1, 2000; South Carolina, June 22, 2000; Arkansas, Feb. 21, 2001; Kansas, April 10, 2001;

Alaska, May 7, 2001; Oklahoma, May 24, 2001; Maine, June 8, 2001; New Jersey, Jan. 3, 2002; Minnesota, March 25, 2002; Arizona, April 29, 2002.

25. Council of State Governments, *Frequently Asked Questions Vol. 2*, January 2001, obtained from <http://www.statesnews.org/clip/policy/faq.pdf>; Internet.

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