

Memo

To: Oregon District Attorneys
From: Clancy Griffith, Auditor
CC: Terry O'Connell, CJIS Director
Date: 1/5/2006
Re: Discovery Guidelines

Recently there have been questions regarding discovery of Computerized Criminal History (CCH) information in criminal trials. Oregon CCH information can be obtained by the defense in several ways. If the prosecution has it in their files it can be released. Also some indigent defense consortiums and Public Defenders have requested an Originating Agency Identifier (ORI) and have received one, allowing terminal access of Oregon only information. Oregon CCH information may be obtained by purchasing it through the Oregon State Police Identification Services Division as well.

The Access Integrity Unit of NCIC was asked about access to NCIC Interstate Identification Index (III) information by defense counsel. Following is the response received.

August 21, 2003

17. The Washington County Attorney's Office is required by the Discovery to release all criminal history to district attorneys on both their clients as well as any witnesses to the crime. Is this an allowable use of III? What about if the prosecutor wants to run III on witnesses that will testify during the trial. Is this allowed?

If the CHRI is already in the Prosecutor's files it can be released under discovery.

The prosecutor can run III on the witnesses. If it is discoverable under the state's law then he must give it to the defense. He just can't run it for the defense if he did not want it for his own purpose.

October 16, 2003

The potential jurors are checking on the preliminary form that they have a felony conviction in another state. The screeners of these forms do not know if the individual is telling the truth or lying to get out of jury duty. To complicate the matter further the jurors could be hearing either a criminal or civil case. It is not known what type of case they will be hearing until after they have passed the screening and are assigned to a case. Our policy packet states that purpose code C can be run on jurors. Is this correct and does it matter if the case is civil or criminal?

Direct access to CHRI by defense counsel (public defender offices and defense attorneys) has uniformly been denied. The definitions of "criminal justice agency" and "administration of criminal justice" found in 28C.F.R. 20.3 do not include criminal defense counsel. Courts have inherent and/or statutory powers to procure relevant evidence and ensure fairness to court proceedings.

The means of producing NCIC III information in these circumstances depends upon whether such information already exists in the prosecutor's file, or whether access to NCIC III will have to be effected to satisfy the request of defense counsel. In the former circumstance, we have previously acknowledged in production of CHRI to defense attorneys by prosecutors in response to (1) blanket discovery by pretrial orders which require limited production in every criminal case in a particular jurisdiction (unless objected to), and (2) specific orders of the court requiring particularized production in a specific case (either as a matter of course or to compel that the CHRI is already in the possession of the prosecution as a result of appropriate access for its own use pursuant to the provisions of the C.F.R.; as such, the CHRI is effectively part of the prosecution's own records and secondary dissemination pursuant to court order is permissible.

In the latter circumstance, where CHRI has not been previously obtained by the prosecution for its own use, access to III by the prosecution to obtain CHRI about the defendant or witnesses solely on behalf of defense counsel should not occur. In this circumstance, the Court's order should be directed to the FBI CJIS Division's Special Correspondence Unit. In these instances the FBI will provide the Court with the requested records. The records produced will be accompanied by a letter requesting the Court to review the CHRI prior to providing it to defense counsel and prosecuting attorney to ensure that it is relevant to the matter before the Court.

CHRI to background potential jurors in criminal cases should be limited to jurors serving as triers of fact in a criminal trial or a jury panel amenable to service in a criminal trial.

e. Defendants, codefendants, jurors, witnesses, experts, etc. - but only for prosecutorial purposes in a criminal court, a court of general jurisdiction, or an appellate court. It should be noted that defense functions, whether performed by a public defender, or retained, appointed or private counsel, is not considered the administration of criminal justice. Inasmuch as defense counsel - even if employed by a government agency such as a Public Defender's Office - do not have direct access to III and are required to procure a court order, or engage in criminal discovery of information in a prosecutor's file to obtain such information. Fingerprints are NOT required.

If there are any questions please contact Criminal Justice Information Services, LEDS Division, Clancy Griffith, Compliance Auditor at (503) 378-3055 extension 55007, or Director Terry O'Connell at extension 55020.

Direct inquiries can be made at NCIC at Access Integrity, (304) 625-3511 or Interstate Identification Index Policy Matters at (304) 625-2714.