

*Report of*

# The National Task Force on the Criminal Backgrounding of America



**SEARCH**

*The National Consortium for Justice Information and Statistics*

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# Report of the National Task Force on the Criminal Backgrounding of America

## Introduction

The criminal record background check has become a ubiquitous part of American culture. As some observers have noted,<sup>1</sup> “Today, background checking—for employment purposes, for eligibility to serve as a volunteer, for tenant screening, and for so many other purposes—has become a necessary, even if not always a welcome, rite of passage for almost every adult American.”

A Society for Human Resource Management survey of employers, the results of which were published in January 2004, found that more than 80 percent conduct criminal background checks of prospective employees. Fifty-one percent of employers conducted such checks in 1996.<sup>2</sup>

The terrorist attacks of September 11, 2001, resulted in millions more criminal record checks being conducted routinely. Just weeks after the attacks, Federal Aviation Administration administrator Jane Garvey ordered criminal checks of up to 1 million workers with access to secure areas in the nation’s airports. The Patriot Act,<sup>3</sup> enacted by Congress in October 2001, directed the criminal backgrounding of hazardous materials transporters. The process was expected to result in approximately 3.5 million checks each year. Similar checks were contemplated for those working in U.S. ports and in the country’s chemical industry.

Child protection legislation such as the Protect Act<sup>4</sup> on the national level and Florida’s Jessica Lunsford Act<sup>5</sup> on the state level broadened ever further the scope of both statutorily authorized and required screening. Estimates as to the number of youth-serving volunteers who could potentially be backgrounded as a result of the Protect Act range in the tens of millions. Florida schools are struggling with the impact of the Lunsford Act, which requires the backgrounding of virtually anyone who enters school grounds when children are present, including meter readers, package delivery service representatives, drivers who deliver groceries to school cafeterias, and individuals who fill vending machines.

Some law enforcement criminal records repositories now conduct almost as many criminal record checks for civil or non-criminal justice purposes as for criminal purposes. The FBI, for example, processed 9,777,762 fingerprint submissions for civil checks in Fiscal Year 2005 compared to 10,323,126 fingerprint submissions for criminal checks during that same period.<sup>6</sup> It would be difficult to accurately tally the tens of millions of noncriminal justice criminal record checks, both name- and fingerprint-based, conducted throughout the country each year by government-administered repositories and by private commercial background check service providers.

<sup>1</sup> *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (SEARCH: Sacramento, CA, December 2005), available at <http://www.search.org/files/pdf/RNTFCSCJRI.pdf>.

<sup>2</sup> *Wired News*, “When Old Convictions Won’t Die,” May 10, 2004, [http://www.wired.com/news/business/0,1367,63364,00.html?tw=wn\\_story\\_related](http://www.wired.com/news/business/0,1367,63364,00.html?tw=wn_story_related).

<sup>3</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107-56.

<sup>4</sup> The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Public Law 108-21.

<sup>5</sup> Florida Statutes 1012.465.

<sup>6</sup> Information provided Jan. 10, 2006, by Barbara S. Wiles, Management Analyst, Criminal Justice Information Services Division, FBI.

America's growing dependence on criminal record background checks to strengthen public safety by reducing opportunities for certain criminal offenders to repeat their past histories requires new and additional resources to help law- and policymakers craft backgrounding laws, policies, and procedures to effectively govern this expansion.

To assist on the national level, Congress included a directive in the Intelligence Reform and Terrorism Prevention Act of 2004<sup>7</sup> for the U.S. Attorney General to prepare a report making "recommendations ... for improving, standardizing, and consolidating the existing statutory authorization, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes." The Attorney General was directed to look at a number of factors associated with noncriminal justice background checks, including the role of private information providers, security concerns, fee structures, dissemination policies and restrictions, information technology infrastructure issues, and other factors.

To provide further guidance and assistance, SEARCH, The National Consortium for Justice Information and Statistics (SEARCH), and the Bureau of Justice Statistics (BJS), U.S. Department of Justice, launched a comprehensive and analytic look at non-criminal justice background checks, seeking clarity on many of the pervasive questions associated with the process.<sup>8</sup>

<sup>7</sup> Public Law 108-458.

<sup>8</sup> SEARCH is a nonprofit consortium of the states dedicated to improving the quality of justice and public safety through the use, management, and exchange of information; application of new technologies; and responsible law and policy, while safeguarding security and privacy (<http://www.search.org/>). The Bureau of Justice Statistics, a component of the Office of Justice Programs in the U.S. Department of Justice, collects, analyzes, publishes, and disseminates information on crime, criminal offenders, crime victims, and the operation of justice systems to all levels of government, providing critical data to federal, state, and local policymakers (<http://www.ojp.usdoj.gov/bjs/>).

How can the checks be conducted most effectively? What criminal record information is most relevant to a suitability determination? How do we balance public safety concerns against the rights of individuals? Can states find ways to accommodate the increasingly burdensome noncriminal justice background check cost and still respond effectively to demands?

### **National Task Force Created to Guide Effort**

To guide this effort, SEARCH and BJS convened nationally recognized experts in August 2004 to be the National Task Force on the Criminal Backgrounding of America.<sup>9</sup> The Task Force was comprised of representatives from federal agencies, including the Federal Bureau of Investigation (FBI), the Department of Justice (DOJ), the Department of Defense (DOD), and the Office of Personnel Management (OPM); volunteer organizations which screen volunteers' backgrounds; state criminal history record repositories and identification bureaus; private companies that assemble criminal justice information and sell it for background checks; employers; state legislatures; criminal record background check clearinghouses; and scholars and academic experts.

The Task Force met four times between August 2004 and August 2005. Its findings and recommendations herein do not necessarily represent the views of all or any one member or the organizations with which they are affiliated.

### **Scope of this Report**

This report is intended to provide law- and policymakers with recommendations and discussion on criminal backgrounding for noncriminal justice purposes, and it describes the Task Force's vision for such backgrounding based on values identified

<sup>9</sup> Hereafter, the Task Force. A list of Task Force members appears on page 22.

during its meetings. Recommendations, which begin on page 8, are organized into the following subsections: Appropriate Levels of Access; Privacy and Social Safeguards; Complete and Accurate Records; and Miscellaneous. It is hoped that this report will be a positive and important contribution to the continuing debate surrounding criminal backgrounding for noncriminal justice purposes.

### **Definition of Terms**

The Task Force identified the following key terms that describe the background check layers available today. These terms and definitions were crafted in a building-block manner that emphasizes record source, which is a critical aspect of backgrounding discussions and concepts. Consequently, many of these definitions are based on record source. They rely on the concept that government records are generally considered “official” records, and that private-sector records are not “official” records unless designated as such by government. The following terms were defined for use in this report:

**Backgrounding** – The overall collection, maintenance, retrieval, and use of data about a person’s background, from any source.

**Criminal Backgrounding** – The overall collection, maintenance, retrieval, and use of data about a person’s criminal record, through official government records, as set forth in the next two definitions.

**Criminal History Record Check** – A check that returns records from official criminal history repositories.<sup>10</sup> Criminal history repositories store “criminal history record information,”<sup>11</sup> which federal law de-

fines as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release.”<sup>12</sup> Two types of criminal history record checks exist: fingerprint-based and name-based. These two types will be referred to throughout this report to clarify issues associated with each. (While not part of this definition, some repositories return information from sex offender registries and wants-and-warrants files with criminal history record checks.)

**Criminal Case Record Check** – A check that returns results from official criminal case records maintained by state or federal criminal justice agencies, other than records returned by criminal history record checks, as defined above. Examples include information from wants and warrants files, sex offender registries, courts, law enforcement, corrections, and other sources of records on individuals and offenses kept in criminal justice agency case management systems. Some of these records are original source records for criminal history repositories. Criminal case record checks are generally not fingerprint-based.

**Investigatory Record Check** – A check that returns results from investigatory records maintained by government or quasi-government entities, other than records returned by criminal history record checks and criminal case record checks as defined above. Examples are gang registries, intelligence or investigative files, and Interpol and other international records. Investigatory record checks are not usually fingerprint-based.

**Civil Record Check** – A check that returns results from official government-

<sup>10</sup> For the purpose of this report, “criminal history repository” means state repositories and the FBI-administered Interstate Identification Index (III), which includes the National Fingerprint File (NFF).

<sup>11</sup> Hereafter, CHRI.

<sup>12</sup> 28 C.F.R. § 20.3(d).

maintained civil records. Examples include records of birth and death, marriage, land, public education, military service, and civil court records and judgments. Civil record checks are not fingerprint-based.

**Commercial Check** – A check that returns results from non-governmental private providers, which collect, compile and store data from many different sources, including civil and criminal government databases and other private databases. Examples include personal identifiers such as Social Security Numbers, past addresses, records from criminal history databases, civil courts, credit and consumer agencies, assessors’ offices, county clerks, the military, and educational institutions. Commercial checks often draw upon a multitude of different source databases and combine the results into a consolidated profile. They are almost always name-based.

## Current Landscape

The backgrounding landscape is very complex. The landscape is comprised of two distinct components: 1) laws and policies governing access to, and the use of, background information; and 2) the collection and management of data that provide background information. Complexities multiply when the components are combined. Further, as we face increased demand for backgrounding, and criminal backgrounding in particular, important national public policy issues surface regarding privacy, authorized use of official records, and others.

In its broadest sense, backgrounding is “the overall collection, maintenance, retrieval and use of data about a person’s background, from any source.”<sup>13</sup> A full background check can include many types and sources of personal information, such as:

- Information to verify the identity of the applicant or record subject, including birth certificates and other vital records
- Criminal history and criminal case record information
- Employment history
- Credit history and score
- Education history
- Residence and rental history
- Civil court actions
- License issuance
- Department of Motor Vehicle records
- Military and Department of Defense histories
- No-fly, selectee, and other terrorist watch lists
- Character references
- Federal agency records
- Drug and alcohol test results
- Immigration records
- Office of Foreign Assets Control data
- “Deadbeat dad” registries
- Various insurance databases, including the Comprehensive Loss Underwriting Exchange (CLUE)
- Non-adjudicated shoplifting reports from retail sources
- Foreign association databases
- Various abuse registries
- Voting records
- Travel information databases
- Others.

Although the Task Force recognized and discussed backgrounding in its broadest sense, it focused the bulk of its discussions and recommendations on criminal record backgrounding. The Task Force viewed

<sup>13</sup> See “Definition of Terms” section on page 3 of this report.

criminal record backgrounding as at the heart of the most significant backgrounding issues, and an area for which it could offer the most significant recommendations and insight. Therefore, criminal record backgrounding is the primary focus of this report's discussions and recommendations.

### **Demand for Criminal Record Backgrounding and Resulting Tensions**

According to a February 2005 survey of human resource professionals by the Society for Human Resource Management, criminal background checks were the second-most frequently conducted employee background checks by employers after U.S. employment eligibility checks.<sup>14</sup> A number of reasons, not necessarily mutually exclusive of each other, motivate employers, volunteer organizations, and others to conduct criminal record background checks. They include:

- Public safety
- Compliance with legal requirements
- Limitation of liability
- Conditions of doing business
- Protection of vulnerable populations
- Customer assurance
- Avoidance of loss of business
- Fear of business loss, or public or media backlash over an incident caused by an individual with a past record
- To regain public or customer trust.

New and advancing technologies also play a role in the demand for criminal background checks, as they ease the collection, maintenance, and dissemination of background information.

With the high demand for criminal backgrounding, tensions surface between differing views on the value and appropriate use of criminal background information. Some conclude that widespread access to criminal background information is predominantly beneficial to society for public safety and other reasons, and should be prevalent. Others conclude that widespread access to criminal background information may be predominantly detrimental to society and invites negative unintended consequences, especially if privacy rights are not carefully protected. Still others fall at various points on the spectrum between these two opposing views, recognizing a need to balance these interests.

The Task Force recognized that tensions exist between access and privacy. These tensions were discussed at length and were of great concern. The Task Force strived to strike an appropriate balance between these two perspectives and issued its recommendations with this goal in mind.

### **Law and Policy**

Layers of law and policy governing criminal record backgrounding activities exist at the state and federal levels. For example, 28 U.S.C. § 534, an important provision at the federal level, states, "The Attorney General shall (1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; and (2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions."<sup>15</sup>

The Code of Federal Regulations (C.F.R.) further governs the use of records collected under the authority of 28 U.S.C. 534, which shall be referenced in this report as "FBI-

<sup>14</sup> Bureau of National Affairs, "SHRM Survey Finds Employers Spending more Time on Worker Background Checks," *Privacy Law Watch*, Feb. 25, 2005.

<sup>15</sup> 28 U.S.C. § 534. See also *U.S. v. Rosen*, 343 F.Supp. 804, 806 (D.C.N.Y. 1972) (noting that the word "shall" in 28 U.S.C. § 534 "is not merely an authorization but an imperative direction.").



maintained CHRI” (criminal history record information).<sup>16</sup> Specifically, 28 C.F.R. 20.33 limits the use of such records to “criminal justice agencies for criminal justice purposes,<sup>17</sup> which purposes include the screening of employees or applicants for employment hired by criminal justice agencies.” This provision has led to the common use of two phrases for the purpose of distinguishing the use of CHRI: “use for criminal justice purposes” and “use for non-criminal justice purposes.”<sup>18</sup> Such phrases shall be used throughout this report.

Given the generally restrictive use of FBI-maintained CHRI, specific legislation is required to authorize its use for noncriminal justice purposes, such as employment and licensing background checks. Further, the authorization must specifically authorize access to FBI-maintained CHRI or FBI systems, rather than a mere obligation, prohibition, or administrative responsibility to perform certain employment or licensing screening.<sup>19</sup>

Public Law 92-544 was enacted by Congress in 1972 to permit states to enact legislation that designates specific licensing or employment purposes for which state and local government agencies may submit fingerprints to the FBI and receive FBI-maintained CHRI. It is important to note that FBI-maintained CHRI includes state records

to the extent that they are collected by the FBI and indexed through the FBI’s Interstate Identification Index (III).<sup>20</sup>

Public Law 92-544 statutes may include disqualifying offenses that prevent an applicant from obtaining a position of employment or a license if the applicant has the stated offense in his or her background. Crimes of violence or of a sexual nature are almost a universal disqualifying offense in Public Law 92-544 statutes. Other disqualifying offenses relate more specifically to the license or position being sought; for example, a conviction for a financially related crime would likely disqualify an individual from a position that involves handling money.

<sup>20</sup> The Interstate Identification Index (III), known informally as “Triple I,” is an interstate/federal-state computer network for conducting national criminal history record searches. III uses an index-pointer approach to tie together the criminal history record databases of state central repositories and the FBI.

Under this approach, the FBI maintains an automated master name index, which includes the names and identifying information on all individuals whose CHRI is available through the III system. (As of December 1, 2005, the system held more than 56 million records.) If a search of the index indicates that an individual is the subject of a III-indexed record, the index will point the inquiring agency to the FBI and/or to the state or states from which the individual’s criminal history records can be obtained. The inquiring agency may then obtain the records directly from the state or FBI criminal record database that holds the records.

III searches for criminal justice purposes, including criminal investigations and prosecutions, are conducted pursuant to federal regulation 28 CFR Part 20, Subpart C. III searches for noncriminal justice purposes must be fingerprint-based and are conducted pursuant to the National Crime Prevention and Privacy Compact, as established by the Crime Identification and Technology Act of 1998, Public Law 105-251.

Twenty-five states have ratified the Privacy Compact: Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Iowa, Kansas, Maine, Maryland, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, and Wyoming. Eleven states and territories have signed a Memorandum of Understanding effectively subscribing to the Compact: American Samoa, Guam, Hawaii, Illinois, Kentucky, Mississippi, North Dakota, Nebraska, New Mexico, South Dakota, and Vermont.

<sup>16</sup> See “Definition of Terms” section on page 3 of this report, especially “Criminal History Record Check,” for the definition of CHRI.

<sup>17</sup> “Criminal justice purpose” is further defined to be for an “administration of criminal justice,” as outlined in 28 C.F.R. 20.3(b). Qualifying activities include: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, rehabilitation, and the criminal identification activities and the collection, storage, and dissemination of criminal history record information.

<sup>18</sup> “Use for non-criminal justice purposes” has also been commonly called referred to as “use for civil purposes.” However, this second reference to civil purposes is not as widespread, and its terms do not relate as directly to the underlying legal authority.

<sup>19</sup> CJIS Information Letter, U.S. Department of Justice, April 6, 2001.

The following criteria must be met before access is allowed under a Public Law 92-544 statute: (1) the statute must exist as a result of a legislative enactment; (2) it must require that applicants be fingerprinted; (3) it must, expressly or by implication, authorize the use of FBI records for the screening of applicants; (4) it must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth; (5) it must not be against public policy; and (6) it must not identify a private entity as the recipient of the results of the record check.<sup>21</sup>

The problem with the overall Public Law 92-544 approach is that the specific state provisions that authorize access to FBI-maintained CHRI create a complex, inconsistent, and noncomprehensive authorization scheme. Similar positions of employment in different states may be treated differently, even though the underlying public safety issues may be the same. States have enacted more than 1,100 statutes under the Public Law 92-544 umbrella.

State statutes separate from Public Law 92-544 statutes allow public access to state-held CHRI. Each state legislature controls access to its own state-maintained CHRI, and each state may take a different approach to making such records publicly available for employment, licensing, and other noncriminal justice purposes. (A listing of many of the State laws governing the security and dissemination of State-maintained criminal history record information can be viewed on the online *Compendium of State Privacy and Security Legislation* at <http://www.search.org/programs/policy/compendium/>.) State-level criminal history record checks vary considerably, from name-based searches that do not require data subject authorization to fingerprint-based searches that require

both statutory and data subject authorization. State-maintained CHRI databases are believed to be more complete than those maintained by the FBI in that they often have more dispositions, misdemeanor information that was not collected by the FBI, and offender information that the state maintained even though it was rejected by the FBI because of poor fingerprint images or other quality control issues.

The Task Force recommendations follow.

<sup>21</sup> CJIS Information Letter, *supra* note 19 at p. 19.

## Task Force Recommendations

<b>Appropriate Levels of Access: Recommendations 1.1 to 1.9</b>	
<b>Recommendation 1.1</b>	National investment should be directed toward enabling and maximizing the use of fingerprints for criminal history record checks for noncriminal justice purposes.
<b>Recommendation 1.2</b>	Expand access to fingerprint-based criminal history record checks under Public Law 92-544 for noncriminal justice purposes that involve positions of trust.
<b>Recommendation 1.3</b>	Consider alternate means to support cost of producing checks.
<b>Recommendation 1.4</b>	Consider options to reduce fees paid by requestors and applicants.
<b>Recommendation 1.5</b>	Offer automatic updates of disseminated information.
<b>Recommendation 1.6</b>	Set a response time deadline.
<b>Recommendation 1.7</b>	Establish access controls to prevent unauthorized access.
<b>Recommendation 1.8</b>	Allow private agents and value-added services from the private marketplace.
<b>Recommendation 1.9</b>	Consider electronic consumer interfaces and data exchange services.
<b>Privacy and Social Safeguards: Recommendations 2.1 to 2.4</b>	
<b>Recommendation 2.1</b>	Obtain the subject's consent for criminal history record checks for noncriminal justice purposes.
<b>Recommendation 2.2</b>	Develop appropriate relevancy criteria.
<b>Recommendation 2.3</b>	Provide notice of disqualifying offenses.
<b>Recommendation 2.4</b>	Allow access and correction by data subject.
<b>Complete and Accurate Records: Recommendations 3.1 to 3.3</b>	
<b>Recommendation 3.1</b>	Work toward complete and accurate records.
<b>Recommendation 3.2</b>	Continue funding for the National Criminal History Improvement Program (NCHIP).
<b>Recommendation 3.3</b>	Provide clear and consistent results.
<b>Miscellaneous: Recommendations 4.1 to 4.3</b>	
<b>Recommendation 4.1</b>	Create a federal act to address backgrounding for noncriminal justice (or "civil") purposes.
<b>Recommendation 4.2</b>	Impose civil and criminal penalties.
<b>Recommendation 4.3</b>	Develop a national education campaign.

## Appropriate Levels of Access: Recommendations 1.1 to 1.9

### **RECOMMENDATION 1.1:**

**National investment should be directed toward enabling and maximizing the use of fingerprints for criminal history record checks for noncriminal justice purposes.**

Two primary identifiers are used for criminal history record checks: fingerprints and names, with names often being coupled with other identifiers such as gender, date of birth, and Social Security Number. Criminal history record checks conducted for noncriminal justice purposes under Public Law 92-544 are fingerprint-based. Criminal history record checks performed for noncriminal justice purposes outside the authorization of Public Law 92-544 are predominantly name-based. The majority of state criminal history repositories offer name-based checks for noncriminal justice purposes to the general public.<sup>22</sup> It is easier and cheaper for both consumers and repositories that offer this service to perform name-based checks rather than fingerprint-based checks. Checks of prospective handgun purchasers performed under the Brady Handgun Violence Prevention Act<sup>23</sup> are also name-based, as are most criminal case record checks. However, there is some movement throughout the states to increase fingerprint capture, storage, and search capabilities for criminal history record checks. The use of other biometric data, such as digital photos, is also emerging in some areas. Overwhelmingly, however, civil record and commercial checks are name-based.

The Task Force concluded that fingerprint-based criminal history record checks are more accurate than name-based checks. Name-based checks may return results that are “false positive” (incorrectly associates an individual with a criminal record) and “false negative” (fails to associate an individual with his/her criminal record). Names tend to be unreliable identifiers for many reasons: people lie about their names and obtain names from false documents; people change their names; people have the same name; people misspell names; people use different versions of their names—with middle name, without middle name, and with middle initial; people use nicknames and aliases; and names have different formats depending on culture and/or country of origin. Although many databases use names as a primary record identifier, the result can be unlinked or unfound records unless other identifiers are also used to further increase the likelihood of an accurate match.

Although the Task Force agreed that fingerprint-based criminal history record checks are more accurate than name-based checks, criminal history repository records are not always complete for a given request.

Fingerprint-based criminal history record checks often cost more and take longer to provide a response. Ideally, only fingerprint-based checks would be performed. However, name-based checks are often less expensive, are easier for the consumer to conduct, and provide a quicker response. Consequently, name-based checks are often the choice of entities that would otherwise prefer fingerprint-based checks, if available.

The Task Force recommends that national investment be directed toward enabling and maximizing the use of fingerprints for criminal history record checks for noncriminal justice purposes.

<sup>22</sup> *Survey of State Criminal History Information Systems, 2003*, Criminal Justice Information Policy Series, NCJ 210297 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, February 2006), available at <http://www.ojp.usdoj.gov/bjs/abstract/sschis03.htm>.

<sup>23</sup> Public Law 103-159.

**RECOMMENDATION 1.2:**  
**Expand access to fingerprint-based criminal history record checks under Public Law 92-544 for noncriminal justice purposes that involve positions of trust.**

*Remove the Public Law 92-544 limitation that requires a public agency to receive record check results, and instead allow authorized private entities to receive results directly. Expand access to fingerprint-based criminal history record checks under Public Law 92-544 for noncriminal justice purposes that involve positions of trust. Specifically, expand such access to "end users who appoint individuals to positions or responsibilities entailing/involving access to vulnerable populations, client residences, businesses' significant organizational assets; sensitive information; or as otherwise deemed necessary by state legislatures or the U.S. Attorney General for public safety or national security."*

The Task Force discussed the growing national demand for access to state and federal fingerprint-based criminal history record checks under Public Law 92-544. Although existing state statutes approved by the Attorney General under 92-544 cover a multitude of noncriminal justice purposes, the Task Force recognized that Public Law 92-544 is limiting in that it only permits the FBI to disseminate identification records to state and local governments identified in state statutes approved under the Public Law 92-544 scheme. It forbids dissemination to private entities. State legislatures are unable to authorize criminal history record checks for noncriminal justice purposes pursuant to Public Law 92-544 without a governmental hiring or public regulatory body to receive and screen the results.

The Task Force recommends removal of the Public Law 92-544 limitation that prohibits dissemination of record check results

to private entities, and recommends that authorized private entities be allowed to receive record check results directly. This will allow expansion of Public Law 92-544 access for broader purposes. The Task Force emphasized that positions of trust and levels of risk should be the primary qualifiers under approved Public Law 92-544 statutes, not the existence of a governmental regulatory body to accept and screen results.

In addition, the Task Force defined the degree to which Public Law 92-544 should be broadened, recommending that the law be expanded to allow state and federal criminal history record checks to be requested by "end users who appoint individuals to positions or responsibilities entailing/involving access to vulnerable populations, client residences, businesses' significant organizational assets; sensitive information; or as otherwise deemed necessary by state legislatures or the U.S. Attorney General for public safety or national security." Under this scheme, state legislatures would have the opportunity to enact authorizing legislation under the Public Law 92-544 umbrella for private entities within this definition; those entities would, in turn, be able to request fingerprint-based criminal history record checks through state criminal history repositories. State legislatures deciding not to enact such authorizing legislation would, in effect, be "opting out." Entities within the definition affected by state opt-outs would then need authorization by the U.S. Attorney General to request criminal history record checks directly through the FBI.

The Task Force emphasized that such expansion should be achieved in a manner that sends authorized entities to **state** criminal history repositories for access, not directly to the FBI, unless states opt out by choosing to not create enabling legislation. Allowing entities within the definition

to bypass state criminal history repositories and to go directly to the FBI would result in a loss of state fees, a potential breakdown of the state criminal history infrastructure, and other unintended consequences due to diversion of revenue.

The Task Force specifically noted that its recommendation is a compromise of various Task Force members' views. It noted that the Task Force was divided on the degree to which authorization under Public Law 92-544 should be expanded; some members wanted expansion to cover all employers and landlords, and others wanted a much more limited expansion. As a compromise, the Task Force adopted the stated recommendation with the intent of authorizing a large pool of positions of trust, but not the entire universe of possible legitimate purposes. The Task Force referred to its final recommendation of expansion under Public Law 92-544 as "not the best possible recommendation, but the best possible recommendation on which the Task Force could reach consensus."

**RECOMMENDATION 1.3:**  
**Consider alternate means to support the cost of producing checks.**

*The concept of adequate and continued funding for criminal history repositories and infrastructure must be a guiding principle for all decisions surrounding the reform of criminal backgrounding. Alternative means to supplement traditional funding for criminal history repositories and infrastructure should be studied. New business processes and technologies should be considered to help streamline criminal history repositories and infrastructure, including capture, processing, and screening, with the goal of reducing costs in the long run.*

The Task Force recognized that the cost to criminal history repositories of capturing, processing and screening CHRI for both

criminal justice and criminal backgrounding purposes is a critical element in the national discussion of reforms. The cost of technology and staffing to operate and support criminal history repositories is significant. To be effective, criminal history repositories require a sufficient funding commitment to ensure that repository record completeness and accuracy remain the highest priority, that current technology is used, and that requests for criminal history record checks are properly screened and processed in a timely manner.

State criminal history repositories obtain funding and resources in a variety of ways. Some states support criminal history repositories solely through the collection of user fees, which are appropriated back to the repositories. Twenty-two states that responded to a 2004 survey by the National Crime Prevention and Privacy Compact Council<sup>24</sup> reported that all or part of the collected user fees were put in the state's general fund; criminal history repositories then receive general fund appropriations. The problem with varied funding mechanisms is that some criminal history repositories are adequately funded and consequently are more likely to employ advanced technology, while others receive inadequate funding and manually perform certain functions that can be handled more efficiently through automated means. Fingerprint capture by law enforcement and other entities is another critical and related component that also lacks proper funding and technological capabilities in many jurisdictions. These funding factors directly affect CHRI quality and completeness.

In states that redirect fees collected by criminal history repositories back to the repositories, the fees collected for noncriminal justice record checks are often used to offset staff costs and the increasing expen-

<sup>24</sup> See [http://www.search.org/files/pdf/CCouncilUserFeeSurvey\\_Summarytables\\_final.pdf](http://www.search.org/files/pdf/CCouncilUserFeeSurvey_Summarytables_final.pdf).

ditures on technology maintenance and upgrades. In some states, noncriminal justice fees subsidize and, in some cases, even fully fund the repositories' primary criminal justice functions. Criminal history repositories, and their fingerprint identification systems, were created primarily to provide CHRI to support decision-making at various stages of the criminal justice process, including investigation, bail determinations, sentencing, probation, and parole. In the past 20 years, criminal history repositories have experienced a rapidly escalating national demand for criminal history record checks for noncriminal justice purposes. In states where repositories are funded directly by noncriminal justice check revenue, the secondary noncriminal justice purpose partially subsidizes the primary criminal justice purpose, because criminal justice checks are conducted without fees.

Also, a state criminal history repository only collects fees when a criminal history record check originates with that repository. If a state's criminal history records are obtained through another repository or channel, such as through the FBI, there is no mechanism through which that state can charge for the use, access, or delivery of its records. As noted previously, new cost recovery approaches should be considered, including recovery for results provided regardless of where a record check originates, and regardless of whether the results indicate a returned record or the absence thereof.

After lengthy discussion and review, the Task Force concluded that adequate resources must be provided to criminal history repositories and infrastructure, especially state criminal history repositories, to maintain, at a minimum, the current quality of criminal history record checks. If service demands are increased, adequate resources must be made available so criminal history repositories can respond to

increased demands. Absent the availability of adequate resources, the criminal history repository infrastructure will break down with resulting unintended consequences impacting both the criminal justice system and criminal backgrounding.

A similar consequence could occur if existing service demands are legislatively diverted from state criminal history repositories to an alternate, centralized source. Each state repository would play an important role in providing state CHRI to this centralized record source, which would only be as strong as its weakest contributing state repository. Any weak links in this chain would degrade local and national checks for backgrounding, for criminal justice, and for public safety purposes.

The Task Force recommends that the concept of adequate funding for criminal history repositories and infrastructure be a guiding principle in all decisions surrounding the reform of criminal backgrounding. Further, it recommends that alternative means to supplement traditional methods of funding for criminal history repositories and infrastructure, including the development of a national funding model, should be studied. Finally, it recommends that new business processes and technologies be considered to help streamline capture, processing and screening, with the goal of reducing costs.

#### **RECOMMENDATION 1.4:**

##### **Consider options to reduce fees paid by requestors and applicants.**

*Congress and state legislatures should consider the impact of fees on individuals and organizations using fingerprint-based criminal history record checks. Varying fee structures, fee reduction strategies, government subsidies, and other innovative approaches are needed to relieve the financial burden of fingerprint-based*

*criminal history record checks, especially with respect to circumstances under which multiple or volume checks are performed. Schemes to expand noncriminal justice access to fingerprint-based criminal history record checks should be considered in connection with solutions to address existing fee problems.*

The Task Force discussed and expressed great concern about fees charged for fingerprint-based criminal history record checks for noncriminal justice purposes, and the overall indirect impact that fees have on public safety. This concern stems from feedback received from industries and individuals who often view fees as too high, and even unaffordable, to many.

Fees for fingerprint-based criminal history record checks vary from state to state and at the federal level. State fees range from \$0 to \$75. FBI fees range from \$18 to \$24. Fees are sometimes reduced or waived for certain classes of consumers, such as volunteers. Fees for name-based criminal history record checks and criminal record checks are usually less than fingerprint-based checks, but all Public Law 92-544 checks are fingerprint-based. Fees for commercial checks also vary, and can be held down by market pressures. Such checks can also be more expensive than state or federal checks based on the nature and extent of the check and the information provided.

The Task Force expressed concern that fees for criminal history record checks can be a financial burden, especially when multiple checks are required. Employees and licensees earning higher incomes are less affected than those seeking positions in the lower economic strata. More checks may be needed for the latter, who may be working multiple jobs or who change jobs often. A delivery person serving multiple hospitals or schools may need a criminal history re-

cord check for each entity or in each jurisdiction he or she serves. Volunteers serving more than one organization may also need multiple checks. The cost of such checks could be a disincentive.

Some state and local governments and industries minimize the need for multiple checks through licensing boards and associations. The need for multiple checks is reduced when a licensing board or industry association acts as an intermediary between licensees and the criminal history repository, receiving and screening record check results. The intermediary issues licenses or clearance cards, or otherwise conveys to the public that its licensees or constituents have passed statutory requirements.

The Task Force recognized that various options can address fee problems and the high cost of multiple criminal history record checks. These options require study and evaluation. The fee issue should be resolved before Public Law 92-544 criminal history record checks are broadly expanded.

The Task Force recommends that Congress and state legislatures consider the impact of fees on individuals and organizations authorized for criminal history record checks under Public Law 92-544. Varying fee structures, fee reduction strategies, government subsidies, and other innovative approaches are needed to relieve the financial burden of fingerprint-based criminal history record checks, especially with respect to those who need multiple or a high volume of checks. Schemes to expand private sector access to fingerprint-based criminal history record checks should be considered in connection with solutions to the existing fee issues.



**RECOMMENDATION 1.5:**  
**Offer automatic updates of disseminated information.**

*All criminal history repositories should offer automatic updating of disseminated information as part of their criminal history record check offerings.*

The Task Force discussed the need for automatic mechanisms to update disseminated criminal history record check results as changes to a subject's record occur. Employees, licensees, and volunteers often need to be rechecked on a frequent basis. CHRI can change almost immediately after a set of compiled information is released. Specifically, new arrest information may arrive at the repository. Without a mechanism to automatically update results when changes occur (sometimes described as a "rap-back" approach), a criminal history record check would, in theory, have to be run frequently to remain current—an obvious financial and logistical burden on consumers as well as criminal history repositories. Instead, providing automatic update services for previously run checks—e.g., notification of subsequent arrest or conviction—is a more sound and efficient approach. The Task Force recommends that criminal history repositories offer automatic updating of disseminated information as part of their criminal history record check offerings.

**RECOMMENDATION 1.6:**  
**Set a response time deadline.**

*The Attorney General should set a deadline for criminal history repositories to have end-to-end electronic processing for submission of fingerprints to the FBI. All criminal history repositories should work toward receiving electronic fingerprints from all consumers at the point when fingerprint-based criminal history record checks are submitted, and set a deadline for this to occur. State criminal history repositories,*

*together with the FBI, should work toward setting a goal of a maximum amount of time to process the vast majority of fingerprint-based criminal history record checks, from the time a request is submitted to the time results are returned to the consumer.*

The Task Force discussed the amount of elapsed time from the initiation of a fingerprint-based criminal history record check to the point when the consumer receives the check results. Consumers receive diminished value if checks are not processed quickly. Applicants do not get hired. Volunteers do not get placed. Many factors can introduce time lags attributable to the consumer, the criminal history repository, or the FBI. The Task Force acknowledged that electronic submission of fingerprints generally results in better response time than manual submission.

The Task Force recommends that the Attorney General set a firm date, at which time all state criminal history repositories must be capable of electronic processing and electronic submission of fingerprints to the FBI to support end-to-end electronic processing. In addition, repositories should work toward receiving electronic fingerprints from all consumers when checks are initiated, and set a deadline for this to occur. Finally, a national goal should be set along the following lines: "The maximum time for a criminal history repository to process the vast majority of fingerprint-based criminal history record checks, from the time a request is properly submitted to the time results are sent back to the consumer, is \_\_\_\_." Although the Task Force was unable to determine the exact number of days, it expressed that delays of more than a week are problematic.

The Task Force also discussed the time that elapses from the point when a consumer decides a fingerprint-based criminal history record check is needed to the time that the

consumer properly initiates the request. However, it was noted that delays occurring prior to the submission of the request are out of the immediate control of criminal history repositories. No recommendations were made with respect to this part of the process.

**RECOMMENDATION 1.7:**  
**Establish access controls to prevent unauthorized access.**

*Proper access controls and security should be established, maintained, and funded to prevent unauthorized access to criminal history repository infrastructure and data.*

The Task Force discussed the need for proper security and access controls to ensure that CHRI access is limited to authorized entities, and also to protect against unauthorized access to infrastructure and data. Risks of security breaches increase as laws are modified to expand access to criminal history record checks, and to authorize private entities to receive check results directly. The Task Force recommends that appropriate technical and nontechnical access controls and security, including identification verification at the time the applicant presents himself/herself for fingerprinting, must be implemented and maintained.

**RECOMMENDATION 1.8:**  
**Allow private agents and value-added services from the private marketplace.**

*Private agents should be allowed to offer value-added services to, and to represent consumers in connection with, criminal history record checks, but with appropriate security and controls.*

The Task Force discussed the use of private companies as “consumer agents” to provide value-added services to private entities authorized under Public Law 92-544

statutes, and to individuals who are the subject of criminal history record checks. The range of value-added services that private consumer agents can offer is great. Such services may hold the answers to some of the technical and logistical issues that exist around criminal record background checks today. Consequently, the private marketplace should be encouraged to develop value-added services for consumers, and to offer creative solutions to alleviate problems. For example, private agents could serve consumers by capturing electronic fingerprints, ensuring that proper consent is obtained, making requests for criminal history record background checks to repositories, managing accounts for large-volume consumers, and holding record check results in trust for individuals, such as volunteers, who want to provide their results to multiple entities. All of the Task Force recommendations work together to facilitate the use of the private marketplace while retaining certain privacy and social safeguards. The Task Force recommends that private agents be allowed to offer value-added services for criminal history record checks and represent consumers in connection with such checks, but with appropriate security and controls.

**RECOMMENDATION 1.9:**  
**Consider electronic consumer interfaces and data exchange services.**

*Electronic consumer interfaces and data exchanges should be considered by criminal history repositories to facilitate the provision of fingerprint-based criminal history record checks for noncriminal justice purposes, with appropriate security and controls.*

The Task Force discussed the need for criminal history repositories to build consumer Internet portals and electronic data interchange services to facilitate the provision of fingerprint-based criminal history

record checks for noncriminal justice purposes. Although this would involve significant technical and security challenges, consumer Internet portals and electronic data interchange services would provide efficiencies for consumers and criminal history repositories. These would require proper security, credentialing and authentication, and trustworthy mechanisms to submit fingerprints and other necessary documentation. Through electronic data interchange services, value-added systems could be built in the private marketplace to serve various industries by offering sophisticated and intelligent solutions to manage large volume accounts with multiple pending requests; by providing automated screening guidance that meets industry relevancy standards; and by processing electronic payment transactions. The Task Force recommends that consumer Internet portals and electronic data interchange services be considered by criminal history repositories to facilitate the provision of fingerprint-based criminal history record checks for noncriminal justice purposes, with appropriate security and controls.

### **Privacy and Social Safeguards: Recommendations 2.1 to 2.4**

#### **RECOMMENDATION 2.1: Obtain the subject's consent for criminal history record checks for noncriminal justice purposes.**

*Consent of the subject should be required for any entity to conduct criminal history record checks for noncriminal justice purposes, to the extent it does not conflict with other law. Consent should be obtained in a uniform way, and should define important consent-related issues surrounding criminal history record checks, such as the type of criminal history record check authorized; the scope of consent granted; the duration of the consent; whether the consent covers automatic updates to check*

*results; whether re-disclosure is allowed and, if so, under what circumstances; the extent to which the consent allows storage and re-use of the information obtained to conduct the check (such as fingerprint and Social Security Number); and any other pertinent factors.*

The Task Force discussed the issue of consent as it pertains to conducting criminal history record checks for noncriminal justice purposes. It recognized that consent is generally inherent when a subject provides fingerprints for the purpose of a criminal history record check; however, consent may not be present in the context of name-based checks. The Task Force also recognized that state law varies with respect to the degree to which criminal history record checks may be performed within the state, with and without consent.

At the same time, the Task Force recognized that consent is an important concept and in accordance with general privacy principles. The Task Force agreed that a national policy should be developed requiring consent, which is to be applied to the extent that it does not conflict with other state or federal laws. A standard approach for obtaining consent should be defined. The consent should specify the type of criminal history record check authorized; the scope of consent granted; the duration of the consent; whether the consent covers automatic updates to check results; whether re-disclosure is allowed and, if so, under what circumstances; the extent to which the consent allows storage and re-use of the information obtained to conduct the check (such as fingerprints and Social Security Numbers); and any other pertinent factors. If other law exists that conflicts with this consent policy, notice should be provided to the subject of the check, explaining that information may be re-disclosed or otherwise used according to such law.

**RECOMMENDATION 2.2:**  
**Develop appropriate relevancy criteria.**

*Study is needed to develop appropriate relevancy guidelines for end-users, especially as access to criminal history record checks is expanded.*

The Task Force discussed the issue of relevancy and the need for guidelines for end-users of backgrounding results to determine whether the existence of various offenses is relevant to the position of employment, licensure, or other service at issue. The Task Force recommends that guidelines be developed to address redemption, forgiveness, and opportunities for individuals after rehabilitation. Whether information from backgrounding results is relevant to a certain position or service is dependent on many factors, such as the type of information (arrest, disposition, or other); the circumstances surrounding an offense; the age of information; the number and severity of offenses; evidence of rehabilitation; and the age of individuals, including the age at which the offense was committed. The core decision in connection with relevancy is one of risk management. Is the arrest or conviction of a type that would create unacceptable risk in the workplace or service environment at issue? Is the arrest or conviction information unrelated to such a degree that one could properly conclude that the subject does not pose a significant risk?

The Task Force agreed that a risk management analysis is the appropriate relevancy approach, as opposed to automatic rejection on the basis of a criminal record. More study is needed to determine which factors should be applied, and how they should be applied to different circumstances, to make appropriate relevancy decisions for various positions of employment, licensure, and other services. Little guidance is currently available to end-users on fair and prudent

use of record check results in applicant selection decisions. The Task Force recommends that study is needed to develop relevancy guidelines for end-users.

**RECOMMENDATION 2.3:**  
**Provide notice of disqualifying offenses.**

*Individuals should have access to information that describes disqualifying offenses at the earliest point in time possible, preferably prior to completing an application for employment, licensure, or other service.*

The Task Force discussed the need for individuals to receive notification of disqualifying offenses as early as possible when applying for employment, licensure, and other services. It recognized that the earlier applicants receive notice of past events that may disqualify them, the more respectful the process is to applicants, and the more control applicants have over whether to participate in the process and disclose personal information. For example, if certain offenses automatically disqualify a person from obtaining a professional license, notice of such disqualifying offenses should be provided prior to application, examination, or even a pre-requisite course of study. As another example, if an employer has a policy of not hiring an individual with a certain past conviction, applicants should be notified prior to their filling out an application, or even as part of the position posting. Advance notice of disqualifying offenses provides clear benefit to applicants, but does not prevent applicants from moving forward with the application process if they believe a proper case can be made to overcome the disqualification criteria. In addition, advance notice of disqualifying offenses optimizes applicant, end-user, and repository resources. By allowing applicants to self-select out of criminal history record checks, all are spared time and resources that would be otherwise

expended toward an unproductive result. The Task Force recommends that individuals have access to information that describes disqualifying offenses at the earliest point in time possible, preferably prior to completing an application for employment, licensure, or other service.

**RECOMMENDATION 2.4:**  
**Allow access and correction by data subject.**

*Data subjects should have the right to obtain both name-based and fingerprint-based criminal history record check results about themselves, and should have the opportunity to review and correct such records at minimal or no cost. To avoid abuse of this policy, information should be provided to data subjects in a manner that prevents such information from being passed onto employers or others as official record check results. Data subjects should also have access to information about adverse actions against them based on the results of criminal record checks.*

The Task Force discussed the importance of data subjects having access to their own criminal history repository records at minimal cost for inspection and correction. It acknowledged that the FBI and state criminal history repositories have procedures for data subjects to request access to, and to correct, their own records. Providing data subjects with access to their own records reduces overall public concerns about the collection and use of information. However, the right to access records for review and correction should not be abused; therefore, the information should not be passed onto others as official record check results in an effort to circumvent fees charged by criminal history repositories.

The Task Force recommends that data subjects have the right to obtain both name-based and fingerprint-based criminal histo-

ry record check results about themselves, and also have the opportunity to review and correct them at minimal cost. The Task Force also recommends that criminal history repositories implement mechanisms to prevent information provided to data subjects from being passed on to others as official record check results. Finally, the Task Force recommends that data subjects have access to information about adverse actions against them based on the results of criminal record checks.

**Complete and Accurate Records:**  
**Recommendations 3.1 to 3.3**

**RECOMMENDATION 3.1:**  
**Work toward complete and accurate records.**

*Criminal history repositories must continue to work toward complete and accurate records.*

The Task Force discussed and stressed the need for complete and accurate records in criminal history repositories. State criminal history repositories do not cover state offenses in a consistent manner. Some repositories maintain information about minor offenses and others do not. The Task Force recommends that criminal history repositories review and compare the types of offense information they accept and retain with approaches from other states, and that they strive for thoroughness and consistency. Similarly, the FBI only recently broadened its acceptance policy to accept minor (i.e., formerly non-criterion ) offenses.

Regardless of the scope of offenses covered, criminal history repositories must strive for complete records, especially with respect to arrests, charges, and dispositions for offenses covered. Does the criminal history repository have comprehensive information for all the events in the

criminal justice cycle for the incident? For example, does the repository receive complete and timely information on prosecution (including prosecutor declinations), disposition, sentencing (including alternative sentencing, fines incarceration, work programs, community service), and completion of sentencing terms?

The Task Force acknowledged that gaps exist in criminal history repository records for various reasons; for example, when the police issue a notice to appear instead of formally arresting and fingerprinting an individual. However, if state law requires that information on certain offenses is to be collected, then repositories should work to collect 100 percent of such information. The Task Force recommends that criminal history repositories work to ensure that they have complete records within the scope of covered offenses.

The Task Force acknowledged that various problems exist with respect to criminal history record checks providing results that are incomplete from certain political jurisdictions. Some state criminal history repositories do not have records from all jurisdictions within the state. Likewise, with at least 48 state repositories serving as sole-source conduits for transmission of arrest information to the FBI, if it is not known at the state, it cannot be known at the FBI. The Task Force recommends that all states move toward adoption of the National Crime Prevention and Privacy Compact,<sup>25</sup> which represents a commitment by signatories to participate in the National Fingerprint File (NFF)<sup>26</sup>—the ulti-

mate extension of the decentralized Interstate Identification Index (i.e., the national criminal records exchange system). The Task Force also recommends that the FBI maximize its response to queries that come from state criminal history repositories to help states accomplish a better national search, by forwarding those queries to indexed states. More technically, the Task Force recommends that state queries produce results that include CHRI held by the FBI, the eight NFF<sup>27</sup> states, and the states that have agreed to respond to the QR (Criminal Code Request) purpose Code “I” request.<sup>28</sup>

**RECOMMENDATION 3.2:**  
**Continue funding for the National Criminal History Improvement Program (NCHIP).**

*Continued federal funding is needed to meet NCHIP objectives directed at accurate, timely, and complete criminal history records.*

The Task Force discussed the need for continued federal NCHIP funding. The more complete, accurate, and timely the records in state criminal history repositories, the better the quality of results from criminal history record checks. NCHIP provides technical assistance and grant funding to states to improve the quality of their criminal history records. It sets forth various objectives toward accurate, timely, and

<sup>25</sup> Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616.

<sup>26</sup> NFF states assume an obligation to provide interstate record services to all authorized III users for both criminal and noncriminal justice purposes. Thus, there is no need for these states to continue submitting fingerprints and criminal history data to the FBI for arrests of persons whose records are the states’ responsibility for III purposes. NFF states submit fingerprint and offender identification information only for the first arrest of an individual for an

offense within each state. This enables the FBI to include the record subject in the III index (and set a “pointer” to the submitting state) and to include the subject’s fingerprints in NFF. (From *Use and Management of Criminal History Record Information: A Comprehensive Report, 2001 Update*, Criminal Justice Information Policy series, NCJ 187670 (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, December 2001), available at <http://www.ojp.usdoj.gov/bjs/abstract/umchri01.htm>.)

<sup>27</sup> The eight NFF states are Colorado, Florida, Kansas, Montana, New Jersey, North Carolina, Oklahoma, and Oregon.

<sup>28</sup> A purpose Code “I” request is used for a III transaction that involves noncriminal justice and/or licensing.

complete records. The completion of these objectives, especially those focused on improved records and increased reporting, is an important companion to criminal backgrounding reforms for noncriminal justice purposes. The Task Force recommends that continued federal NCHIP funding be provided for states to help them achieve accurate, timely, and complete records in state criminal history repositories.

**RECOMMENDATION 3.3:**  
**Provide clear and consistent results.**

*Criminal history repositories should provide the results of criminal history record checks in a clear and consistent format that is easy to read and understand. They should also provide publicly accessible resources to help readers interpret results.*

The Task Force discussed the need for criminal history record checks to return clear and consistent results. The public often has difficulty reading and understanding the results of criminal history record checks. States have different offenses and present information differently. The Task Force recommends that all criminal history repositories work to present results in a clear and consistent manner, and to make resources available to aid the public in interpreting results. For example, a criminal history repository could adopt the Interstate Criminal History Transmission Specification developed by the Joint Task Force on Rap Sheet Standardization (JTF).<sup>29</sup>

<sup>29</sup> The JTF resulted from the work of a task force put together by the Bureau of Justice Statistics, U.S. Department of Justice, and SEARCH in 1993. The National Task Force on Increasing the Utility of the Criminal History Record in 1995 issued a list of recommendations, one being a call for consistency in the data elements included in exchanged criminal history records, and in the format in which the exchanged information was presented. The JTF was formed following publication of the task force's report to pursue creation of a rap sheet specification that would present responses to criminal record queries in a presentation format and with data elements that requestors could understand. The JTF has issued several iterations of a "standardized rap sheet" since then, the most recent version in February 2005. That version, which is XML compatible, is available at [http://www.search.org/files/pdf/CH\\_transmission\\_spec.pdf](http://www.search.org/files/pdf/CH_transmission_spec.pdf).

Repositories can provide paper brochures and/or public portals with offense information and explanations on how to read and interpret check results. The Task Force recommends that criminal history record check results should be provided in a clear and consistent format that is easy to read and understand, and that members of the public should be provided with resources to help them interpret results.

**Miscellaneous:**  
**Recommendations 4.1 to 4.3**

**RECOMMENDATION 4.1:**  
**Create a federal act to address backgrounding for noncriminal justice (or "civil") purposes.**

Create a new federal act to uniquely address backgrounding for noncriminal justice (or "civil") purposes, and to address privacy and social safeguards and other recommendations under these recommendations. The Task Force discussed the need for a new federal act to address the various recommendations set forth in this report. Confusion exists surrounding laws that govern criminal backgrounding for noncriminal justice purposes and backgrounding in general. To reduce confusion, the public needs one, comprehensive federal act that addresses backgrounding for civil purposes, along with the many considerations described within these recommendations. The Task Force recommends a new federal act to address backgrounding, including criminal backgrounding, for noncriminal justice (or "civil") purposes.

**RECOMMENDATION 4.2:**  
**Impose civil and criminal penalties.**

*Civil and criminal penalties should be imposed for violations of laws that govern backgrounding.*

The Task Force discussed the need for continued focus on, and strengthening of,

penalties for violations of laws pertaining to criminal backgrounding and backgrounding in general. With expanded access to state and federal criminal history record checks on the horizon, coupled with the increased risk to data subjects that comes with such expansion, existing civil and criminal penalties should be reviewed, strengthened, and added, as needed, to prevent abuse of access. The Task Force recommends the review, and strengthening if necessary, of existing civil and criminal penalties for violations of law that govern criminal backgrounding. The Task Force also recommends the establishment of such laws and penalties in jurisdictions where they do not already exist.

**RECOMMENDATION 4.3:**  
**Develop a national education campaign.**

*Develop a comprehensive, national campaign to educate the public on the concept, strategies, processes, and goals of criminal record backgrounding.*

The Task Force discussed the need for a national educational campaign on backgrounding, especially criminal record backgrounding. Throughout its deliberations, the Task Force recognized the lack of understanding by the general public of terminology, concepts, and laws surrounding criminal backgrounding. In fact, confusing terminology and lack of understanding on the part of the general public was a factor in the formation of the Task Force.

The Task Force recommends that a lexicon for criminal backgrounding be established and published to define a common set of terms, and to promote understanding of those terms. The terms defined in this report should be included. The Task Force also recommends that literature be created and widely distributed to help consumers understand criminal backgrounding today, and backgrounding in general.



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