Legislative Research Department August 22, 1975

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY

July 31 - August 1, 1975

Members Present

Senator J.C. Tillotson, Vice-Chairman
Senator Paul Hess
Senator Robert Talkington (first day)
Senator Jim Parrish
Senator Cale Hudson
Representative David Mikesic
Representative William Cather
Representative Ben Foster
Representative Randall Palmer (first day)
Representative Ted Templar (first day)
Representative Patrick J. Hurley

Staff Present

Walt Smiley, Legislative Research Department
Bob Alderson, Revisor of Statutes' Office
Carl Tramel, Legislative Research Department

Conferees and Observers Present

Gary L. Nafziger, County Attorney, Jefferson County
Ruth Wilkin, State Legislature, Topeka
Virgil F. Basgall, Division of Computer Services, Department of Administration
Adrian M. Farver, Director, GCCA
Jim Nix, LEAA, Kansas City Kansas
B.V. Fraser, LEAA, Kansas City, Kansas
William B. Arndt, GCCA, Topeka
Richard J. Bleam, GCCA, Topeka
Carl Gray, Jr., Kansas Highway Patrol, Topeka
John C. Hazelet, Department of Corrections, Topeka
W.L. Albott, KBI, Topeka
Lee Ellis, Department of Corrections, Topeka

The Vice-Chairman called the meeting to order and noted that the Chairman was unable to attend this meeting of the Special Committee. The Vice-Chairman then noted that a conferee desired to be heard on Proposal No. 26.

Proposal No. 26 - Statewide District Attorney

Mr. Gary L. Nafziger, County Attorney, Jefferson County, was introduced to the Committee. Mr. Nafziger indicated that he felt the overall concept of H.B. 2372 is necessary and steps should be taken to implement the concept. He noted he had written the Committee a letter dated July 2 in lieu of an appearance before the Committee at the last meeting (a copy of Mr. Nafziger's letter is appended to the July 10 minutes). Mr. Nafziger stated that his objection to the bill was to the mechanics not the concept and that at the present time, county attorneys in rural counties are part-time and underpaid and overall criminal administration suffers. However, Mr. Nafziger did not feel the solution was to create a District Attorney for four counties and then place assistants in each county. This, in his opinion, would not be a change for the smaller counties. He recommended increasing the salary of the present county attorneys and making the positions full-time.

A Committee member noted that statements were made at a prior meeting that the part-time person in each county could also act as the county counselor, making him full-time. A Committee member then asked Mr. Nafziger if unification of the courts would sufficiently increase prosecutions to warrant a full-time deputy. It was Mr. Nafziger's opinion that the number of prosecutions in Jefferson County now warrant a full-time person. He noted that an intern is employed presently to assist the County Attorney. He further stated that Jefferson County has from 12,000 to 14,000 traffic tickets each year and approximately two and one-half criminal cases filed per day. The juvenile caseload is 65% to 70% of the total caseload.

In response to a question about the number of hours spent on county attorney business and the salaries paid by his office, Mr. Nafziger said that he spent approximately 30 hours per week in the office for a salary of $9,500 per year. A full-time secretary is paid $410.00 per month and a part-time secretary is paid $395.00 per month with an hourly wage of $3.75 paid to someone for research.

In response to questioning Mr. Nafziger stated the position of county attorney was not a highly sought office by the attorneys of the county. The local people who have contacted Mr. Nafziger have left him with the feeling that they prefer the County Attorney remain a locally elected official in order to maintain a close relationship with the local people.

In response to a question, Mr. Nafziger said that the biggest argument he saw in favor of a full-time prosecutor was the conflict of interest problem. He noted this was certainly a problem in small counties with a part-time prosecutor.

Staff then reviewed a memorandum from the Research Department on the fiscal ramifications of 1975 H.B. 2372 (see Attachment I).

Proposal No. 27 - Criminal Justice Information System

The Vice-Chairman directed the Committee's attention to Proposal No. 27.

Mr. Adrian Farver, Executive Director of Governor's Committee on Criminal Administration was introduced to the Committee. He stated that GCCA has been working since 1971 on a criminal justice information system. Mr. Farver noted that a $70,000 federal grant has been received by the GCCA to be used to develop a master plan for a Criminal Justice Information System in Kansas. Mr. Farver stated that bids for the master plan had been requested, with a closing date of August 31, 1975. He noted that the federal Privacy Act set the plan deadline for December 31, 1975.

Mr. Farver then introduced Mr. Bert Fraser, Regional Information System Director of the Law Enforcement Assistant Administration, Jim Nix of the LEAA, and Mr. Bill Arndt of GCCA, to answer the Committee's questions.

Mr. Nix advised the Committee that the federal Privacy and Security Act of 1974 becomes effective September of 1975. (Copies of this Act are on file with the Research Department.) He said the LEAA has been working with the State of Kansas since 1971 to develop an adequate Criminal Justice Information System.

In response to questioning by the Committee, Mr. Nix said the Department of Justice has set basic guidelines for what kinds of information is to be contained within the system. Although the state is the controlling agent for the CJIS, certain rules and regulations must be met to tie into the national unit. A copy of these rules and regulations may be found at Attachment II.

Mr. Nix was questioned further as to the reaction of other states. He stated he could not answer regarding opposition by any states but said approximately 30 states have operational systems and other states are at various stages of development.

Mr. Fraser noted that Kansas is currently dependent upon the Alert 2 system out of the Kansas City, Missouri Police Department, with 17 terminals to northeast Kansas and one to

Wichita. There is access to the FBI line through Alert 2. The Committee was told that without the funds received from the GCCA last October these terminals would have been "unplugged", and this funding expires in December, 1975. A federal grant of $170,000 could be received for use in implementation of a master plan but at some point, the system would have to be funded locally.

Mr. Fraser indicated that Kansas is "plugged into" the FBI system, but only on a limited basis. It is limited because, he said, Kansas does not have a dedicated system. The state may choose between a shared system and a dedicated system. If the latter is chosen, the state must meet the federal regulations for a dedicated system. A dedicated system would be used only for transmission of criminal justice information such as obtaining wants, warrants, arrests, and criminal histories. A shared system would be used for other than criminal justice information purposes, such as payroll and personnel.

Mr. Fraser told the Committee only two states have not tied into the FBI line and it was due to their severe privacy laws. He also indicated that state agencies are not allowed to correct or amend information filed in the system without FBI approval.

Mr. Virgil Basgall, Director of Computer Services, Division of Department of Administration was introduced and mentioned his belief in a need for H.B. 2447. He indicated that he would go into his views at greater length in the afternoon.

Afternoon Session

Colonel William Albott of the Kansas Bureau of Investigation was introduced to the Committee and said that a bill is now in Congress pertaining to the privacy and security question which is expected to pass. The bill would change the Attorney General's rules and regulations concerning a dedicated system. Therefore, he said he did not know what statement to make to the Committee at this time. It was his belief that the state should protect the citizen's privacy but should also protect the citizen.

Colonel Albott indicated that the goal of a CJIS should be to follow an individual through the criminal justice system. He noted that at this point, who gets the information from a CJIS will probably be dictated by the FBI. He then introduced Mr. Dwayne Sachman, also of KBI.

Mr. Sachman said all KBI files are now kept manually and felt an automated system would be very beneficial to law enforcement. At the present time, local law enforcement agencies are required by state statute to submit fingerprint information to KBI, who then stores the information on typed index cards and prepares a "rap" sheet. Fingerprint cards are also maintained.

An estimated 250,000 cards (and thus the same number of "rap" sheets) and a half million fingerprint cards are presently on file. A master name list contains 500-600,000 names, he said. The intelligence cards are filed separately, according to Mr. Sachman. He indicated that most, but not all, of the rap sheets are on Kansans. He felt an automated system would save time and be more accurate. Speed of communications would be the biggest advantage, he felt.

In response to a question, Mr. Sachman stated that there is no real need for the FBI-NCIC program in Kansas. However, he felt an interface with NCIC may be desirable, in order to have information available about who is wanted in other jurisdictions.

Mr. Sachman noted that Massachusetts had pulled out of the FBI system for many reasons, including the belief that the federal regulations were not sufficiently stringent.

Mr. Sachman further noted that a Corrections Department survey had revealed that some local law enforcement agencies are not submitting fingerprint data to KBI. He said KBI accepts fingerprints on persons at the time of their first arrest, but KBI discourages this practice on arrests for lesser offenses.

Mr. Sachman stated that he believes Kansas should meet the requirements to participate in the federal system. He told the Committee that the present manual system made it impossible to keep current and he was sure there were some cards in the active file which should be removed.

In response to a question concerning the procedures used when the court has ordered the annulment or expungement of the records of an individual, Mr. Sachman advised that the Court should submit documents so the individual's criminal records could be pulled and placed in a sealed envelope. He felt it is a matter of educating the various courts as it is not required by the present law. Mr. Sachman stated he favored striking the words "annulment" and "expungement" in the statutes (K.S.A. 21-4616 and 4617) in favor of the term "sealing".

In reply to a question, Mr. Sachman said he felt traffic and criminal records should not be combined. He stated that Kansas is comparable to states of similar size since most of those other states also have manual systems.

Major Carl Gray of the Kansas Highway Patrol was the next conferee. Major Gray told the members he had worked in communications for 11 years and today the mobility of the criminal is of concern. He advised that a check is made with the National Criminal Information Center while a car is being stopped by a patrolman. This is the Highway Patrol's major concern, he indicated--providing information to officers on the road.

Major Gray submitted a statement to the Committee endorsing the need for a State Criminal Justice Information System. Major Gray also submitted a copy of a recent NCIC Newsletter (see Attachment No. III for both documents).

Major Gray indicated that the Highway Patrol maintains teletype communications with 140 agencies and facilities in Kansas. He said that the Highway Patrol arrested 515 felons on the highways in 1974.

In response to a question, he indicated that Wichita has access to the Kansas City Missouri System through Department of Administration computers in Topeka. Wichita also has its own dedicated link with NCIC, he said.

Driving records, according to Major Gray, are not given to troopers on the road unless there is a suspension record.

Mr. Lee Ellis, Director of Research and Planning Division of the Kansas Department of Corrections was introduced to the Committee and submitted a statement (Attachment IV). Mr. Ellis then introduced Mr. John Hazelet, Deputy Secretary of the Corrections Department. Mr. Hazelet indicated that H.B. 2447 is a step in the right direction and would assist in coordinating the various components of CJIS. He felt the security aspects of the bill are important and would assure that records do not fall into the wrong hands, as is possible with the present manual system. An automated system would give a more complete view of the prison population and could give an idea of the effectiveness of rehabilitation programs.

In response to a question, Mr. Hazelet noted that the Department of Corrections furnishes the name, type of offense, and where released to the KBI, which distributes such information to local law enforcement agencies via its weekly bulletin. Thus, the local agencies are not immediately advised of prison releases.

Mr. Bill Arndt of the GCCA again appeared to briefly explain to the Committee that upon acceptance of a master plan by the LEAA another allocation of one to two million dollars would become available for implementation only. The state would be responsible for the funding and purchase of computers, he said.

Mr. Myron Scafe, Police Chief of Overland Park, told the Committee he was in favor of a criminal justice system for the state and felt the automated system to be of great benefit to the officer on the street.

Mr. Scafe noted that then-Kansas City, Missouri police chief Clarence Kelley, intended all Kansas City area law enforcement agencies to use the Alert system free of charge, because Kansas City, Missouri had sufficient federal money to cover the costs. However, in 1974 the State of Missouri reduced its share in the matching grant, and so the participating Kansas agencies

had to find money to stay in the Alert system. Most Kansas agencies came to GCCA, Mr. Scafe said. Overland Park pays $29,000 annually to tie into Alert, and that city makes around 40-60,000 inputs to the system per month. Ordinance violations are filed with the system, and Overland Park also uses the system for certain administrative work.

It was Mr. Scafe's opinion that the Alert system is inferior to a statewide Kansas system. However, Kansas has not sufficiently developed its network, in Mr. Scafe's view.

Mr. Virgil Basgall, Director, Computer Services Division of the Department of Administration was introduced to the Committee and submitted a statement (see Attachment No. V). He responded to questions by the Committee, saying that he favored the passage of H.B. 2447 and that the legislature should address itself to the privacy problem. The bill is general in nature, which is good because privacy is a broad topic, he said. He did not feel Kansas should join the system until the privacy problem is solved. He also told the Committee he was opposed to the cost of the dedicated system and was not sure there was any better or more certain privacy with a dedicated system than there would be with a shared system.

In response to a question, Mr. Basgall explained that Kansas presently has an undedicated, shared system which handles all state work except for work generated by the state colleges and universities. He said the state's computers can presently handle ten users simultaneously and independently. Mr. Basgall emphasized that his main objections to a dedicated system are its cost and the issue of privacy. It was noted by one member and discussed with Mr. Basgall that a law similar to H.B. 2447 should be in effect to protect the privacy of individuals because several cities in the state are now using some type of computer system.

August 1, 1975
Morning Session

Proposal No. 26 - Statewide District Attorney

Committee members and staff discussed future action on this proposal. The staff was asked to prepare caseload figures for certain northwest and southeast Kansas counties as well as the "horseshoe" counties surrounding Topeka for the Committee's review at the next meeting. The staff was also instructed to draft proposed amendments to H.B. 2372, to allow non-partisan selection of district attorneys. It was requested that the proposed amendments provide for local control to be maintained where possible, and

for assistants or deputies to be recruited from the local bar. Also requested was research on the process of selection of district attorneys in states comparable to Kansas.

Prepared by Walt Smiley

Approved by Committee on:

9/15/75
(Date)

July 31, 1975

MEMORANDUM

TO: Special Committee on Judiciary

FROM: Legislative Research Department

RE: Fiscal Ramifications of 1975 - House Bill No. 2372

As you have requested, the fiscal ramifications of 1975 House Bill No. 2372 have been assessed. This memorandum presents some of the dimensions of the cost the state would assume with passage of the bill but does not suggest the cost estimate made to be exact.

Determination of an exact fiscal impact of the cited bill is difficult in that there are no set methods for staff allocations nor an accumulation of data relative to manhours expended by the present county attorneys in carrying out the functions prescribed in the proposed bill from which one can calculate a staffing pattern. Likewise, salary levels for the assistant district attorneys are not prescribed and would be set by the State Finance Council under terms of the bill.

As a basis for presenting the cost projections, the fiscal note prepared by the Division of the Budget will be utilized. In the fiscal note submitted to the 1975 session, the cost to the state for implementing the proposed bill was estimated from a range of $3,260,000 to $4,705,000. A categorical breakdown of the estimate was:

Cost	High	Low
1. 29 District Attorneys	$ 923,000	$ 923,000
2. Assistants and Deputies	3,680,000	2,235,000
3. Travel and Subsistence	52,000	52,000
4. Training and Assistance Council	50,000	50,000
Total	$4,705,000	$3,260,000

As indicated by the above breakdown, the variable of a cost projection is one of how many equivalent full-time assistants and deputies would be required and the compensation to be paid.

Based upon a survey of the current salary levels of county attorneys and district attorneys, the counties are spending approximately $1,585,797 for county attorneys, district attorneys, and their assistants. That amount is being paid to 101 county attorneys, four district attorneys, 51 assistant district

attorneys, and approximately 30 assistant county attorneys. No conclusive indicators on manhours spent in handling criminal matters were discovered in the survey responses.

The fiscal note prepared by the Division of the Budget assumed there would be 149 assistants spread among the counties. Since the district attorneys will not be assuming all of the responsibility now handled by the county attorneys and since some county attorneys only devote part-time to performing duties of the office of county attorney, the projection may be too high.

Attachment No. 1 presents a staffing ratio based both on population and felony cases filed in the district courts in FY 1974 by judicial district. If those ratios are valid, there would be a need for 81 equivalent full-time assistants and deputies. At an estimated average salary of $15,000 plus fringe benefit costs, the cost for assistants and deputies would approximate $1,379,025 annually.

Based upon the approach presented the annual cost to the state would be as follows:

1.	29 District Attorneys	$ 923,000
2.	Assistants and Deputies	1,379,025
3.	Travel and Subsistence (including expenses of the District Attorney Finance Board)	52,000
4.	Training and Assistance Council	50,000
	Total	$2,404,025

Judicial District	Positions A*	B**	C***
1	3.5	2.3	2.9
2	2.0	2.0	2.0
3	8.6	9.1	8.8
4	3.5	1.9	2.7
5	1.5	1.7	1.6
6	2.0	1.4	1.7
7	2.5	3.8	3.1
8	3.5	4.2	3.9
9	2.5	2.4	2.4
10	12.0	7.0	9.5
11	6.0	4.7	5.4
12	2.5	1.0	1.7
13	3.0	3.4	3.2
14	2.0	3.3	2.7
15	1.5	1.0	1.3
16	2.0	1.0	1.5
17	2.0	1.0	1.5
18	16.7	26.6	21.6
19	4.5	3.5	4.0
20	3.5	2.9	3.2
21	2.5	1.0	1.7
22	2.5	1.0	1.7
23	2.0	1.4	1.7
24	1.5	1.0	1.3
25	2.0	1.5	1.7
26	2.0	2.0	2.0
27	3.5	5.0	4.2
28	2.5	3.0	2.7
29	9.4	7.3	8.4
Total	113.2	107.4	110.1

* Based on ratio of one full-time equivalent district attorney or assistant for each 20,000 of population.

** Based on ratio of one full-time equivalent district attorney or assistant for each 40 felony cases filed in the district courts in FY 1974.

*** Based on calculation of giving equal weight to the factors of population and felony cases filed in the district courts.

Fiscal Note Bill No.
1975 Session
March 10, 1975

The Honorable John F. Hayes, Chairman
Committee on Judiciary
House of Representatives
Third Floor, Statehouse

Dear Representative Hayes:

SUBJECT: Fiscal Note for House Bill No. 2372 by Representative Everett

In accordance with K.S.A. 75-3715a, the following fiscal note concerning House Bill No. 2372 is respectfully submitted to your committee.

House Bill No. 2372 established the district attorney's finance board, district attorney's training and assistance council and the office of district attorney in each judicial district. The bill amends certain statutes concerning the duties and responsibilities of district attorneys and their assistants or deputies. District attorneys would receive annual compensation equal to salaries paid district court judges. Assistant district attorneys would receive compensation as determined by the Finance Board. Deputy district attorneys would be utilized on a part-time basis in those counties where there is not a sufficient workload to justify a full-time position; deputy district attorneys would receive per diem. District attorneys and their assistants and deputies would be reimbursed for their travel and subsistence and other expenses incurred in the performance of their official duties. All compensation and travel and subsistence for district attorneys and their assistants and deputies would be paid as "...other state officers are paid". It appears that the language of this act intends that the compensation and expenses for district attorneys and their assistants and deputies are to be paid from amounts appropriated to the District Attorneys Finance Board and financed from the State General Fund. Supporting clerical and investigative staff, operating expenses and office space would continue to be provided by the county.

The bill creates the District Attorneys' Training and Assistance Council. The council would develop training and assistance programs for its membership. The membership of the council would consist of all district attorneys and assistant and deputy district attorneys. The council would meet not more than once each quarter and members attending such meetings would receive subsistence, mileage and other expenses paid by the state. The council would appoint an executive director in the unclassified service whose salary would be fixed by the Finance Board with the approval of the State Finance Council. The executive director would be empowered to employ additional administrative and clerical personnel required to carry out his responsibilities; such personnel would be in the classified service. The executive director would be responsible for coordinating the training and assistance program and provide administrative support for the Finance Board.

Members of the Finance Board would receive subsistence, mileage and other expenses paid by the state. The Finance Board would establish a compensation plan for assistant and deputy district attorneys subject to State Finance Council approval. Annually, the finance board would submit budgets for both district attorney offices and the training and assistance council to the Legislature commencing with the 1976 session for the period January 10, 1977 to June 30, 1977.

At the present compensation rates for district judges ($27,500 plus local suppliments from certain counties and fringe benefits), total compensation including fringe benefits for district attorneys would be approximately $923,000 per year. Compensation for assistant district attorneys and deputy district attorneys would range from $2,235,000 to $3,680,000 per year. This estimate was based on the following assumptions: 1) the compensation schedule would conform generally with that presently paid to assistant attorneys general, ranging from $13,000 to $22,000 per year; 2) there would be 149 assistant district attorneys, 48 assistants in the four most populous judicial districts and one assistant in each of the remaining 101 counties; 3) no estimate could be made at this time concerning the utilization of part time deputy district attorneys in lieu of assistant district attorneys; 4) the range arrived at would provide a general indication of the financial implications of the act. Travel and subsistence requirements for the 29 district attorneys is assumed to be similar to district court judges and at a rate of $887 per district attorney would total approximately $26,000 per year. The travel and subsistence requirements for assistant and deputy district attorneys is assumed to be substantially less than the district attorneys and possibly total an additional $26,000 per year.

The training and assistance council would require a minimum staff of three personnel; executive director, secretary and research assistant. The Kansas County District Attorneys' Association is presently conducting a training assistance program for their membership utilizing a staff of three and operating on a budget totaling approximately $50,000 per year. This would be a minimum operating level in addition to subsistence and travel for council members attending training and assistance program sessions. The association presently receives federal funds to conduct the program and training sessions. Therefore, any state funds used to finance training programs may be augmented by federal funds.

The District Attorney Finance Board would require financing for its work in preparing the budget request for the 1976 Legislature. The administrative arm of the board would not become part of the state agency until January 10, 1977. No estimate can be made at this time concerning the funding requirements for the Finance Board for FY 1976. Total expenditures resulting from the passage of this act would total approximately $3,260,000 to $4,705,000 subject to the qualifications indicated above.

James W. Bibb
Director of the Budget

JWB:JM:emb

ATTACHMENT II

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 601-75]

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

This order establishes regulations governing the dissemination of criminal record and criminal history information and includes a commentary on selective sections as an appendix. Its purpose is to afford greater protection of the privacy of individuals who may be included in the records of the Federal Bureau of Investigation, criminal justice agencies receiving funds directly or indirectly from the Law Enforcement Assistance Administration, and interstate, state or local criminal justice agencies exchanging records with the FBI or these federally-funded systems. At the same time, these regulations preserve legitimate law enforcement need for access to such records.

Pursuant to the authority vested in the Attorney General by 28 U.S.C. 509, 510, 534, and Pub. L. 92-544, 86 Stat. 1115, and 5 U.S.C. 301 and the authority vested in the Law Enforcement Assistance Administration by sections 501 and 524 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197 (42 U.S.C. § 3701 et seq. (Aug. 6, 1973)), this addition to Chapter I of Title 28 of the Code of Federal Regulations is issued as Part 20 by the Department of Justice to become effective June 19, 1975.

This addition is based on a notice of proposed rule making published in the FEDERAL REGISTER on February 14, 1974 (39 FR 5636). Hearings on the proposed regulations were held in Washington, D.C. in March and April and in San Francisco, California in May 1974. Approximately one hundred agencies, organizations and individuals submitted their suggestions and comments, either orally or in writing. Numerous changes have been made in the regulations as a result of the comments received.

Subpart A—General Provisions

Subpart B—State and Local Criminal History Record Information Systems

Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

Authority: Pub. L. 93-83, 87 Stat. 197, (42 U.S.C. 3701, et seq.; 28 U.S.C. 534), Pub L. 92-544, 86 Stat. 1115.

Subpart A—General Provisions

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the completeness; integrity, accuracy and security of such information and to protect individual privacy.

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197, 42 U.S.C. 3701, et seq. (Act), 28 U.S.C. 534, and Pub. L. 92-544, 86 Stat. 1115.

§ 20.3 Definitions.

As used in these regulations:

(a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(c) "Criminal justice agency" means: (1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(d) The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(f) "Statute" means an Act of Congress or State legislature of a provision of the Constitution of the United States or of a State.

(g) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) An "executive order" means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701 et seq. as amended.

(j) "Department of Justice criminal history record information system" means the Identification Division and the Computerized Criminal History File systems operated by the Federal Bureau of Investigation.

Subpart B—State and Local Criminal History Record Information Systems

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to Title I of the Act.

(b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or

long standing custom to be made public, if such records are organized on a chronological basis; (3) court records of public judicial proceedings compiled chronologically; (4) published court opinions or public judicial proceedings; (5) records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses; (6) announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section.

§ 20.21 Preparation and submission of a Criminal History Record Information Plan.

A plan shall be submitted to LEAA by each State within 180 days of the promulgation of these regulations. The plan shall set forth operational procedures to—

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period. (2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

(b) *Limitations on dissemination.* Insure that dissemination of criminal history record information has been limited, whether directly or through any intermediary only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Such other individuals and agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof;

(5) Agencies of State or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and

(6) Individuals and agencies where authorized by court order or court rule.

(c) *General policies on use and dissemination.* Insure adherence to the following restrictions:

(1) Criminal history record information concerning the arrest of an individual may not be disseminated to a non-criminal justice agency or individual (except under § 20.21(b) (3), (4), (5), (6)) if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

(2) Use of criminal history record information disseminated to non-criminal justice agencies under these regulations shall be limited to the purposes for which it was given and may not be disseminated further.

(3) No agency or individual shall confirm the existence or non-existence of criminal history record information for employment or licensing checks except as provided in paragraphs (b)(1), (b)(2), and (b)(5) of this section.

(4) This paragraph sets outer limits of dissemination. It does not, however, mandate dissemination of criminal history record information to any agency or individual.

(d) *Juvenile records.* Insure that dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or supervision (or the equivalent) to non-criminal justice agencies is prohibited, unless a statute or Federal executive order specifically authorizes dissemination of juvenile records, except to the same extent as criminal history records may be disseminated as provided in § 20.21 (b) (3), (4), and (6).

(e) *Audit.* Insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Such records shall include, but are not limited to, the names of all persons or agencies to whom information is disseminated and the date upon which such information is disseminated.

(f) *Security.* Insure confidentiality and security of criminal history record information by providing that wherever criminal history record information is collected, stored, or disseminated, a criminal justice agency shall—

(1) Institute where computerized data processing is employed effective and technologically advanced software and hardware designs to prevent unauthorized access to such information;

(2) Assure that where computerized data processing is employed, the hardware, including processor, communications control, and storage device, to be utilized for the handling of criminal history record information is dedicated to purposes related to the administration of criminal justice;

(3) Have authority to set and enforce policy concerning computer operations;

(4) Have power to veto for legitimate security purposes which personnel can be permitted to work in a defined area where such information is stored, collected, or disseminated;

(5) Select and supervise all personnel authorized to have direct access to such information;

(6) Assure that an individual or agency authorized direct access is administratively held responsible for (i) the physical security of criminal history record information under its control or in its custody and (ii) the protection of such information from unauthorized accesses, disclosure, or dissemination;

(7) Institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or man-made disasters;

(8) Provide that each employee working with or having access to criminal history record information should be made

familiar with the substance and intent of these regulations; and

(9) Provide that direct access to criminal history records information shall be available only to authorized officers or employees of a criminal justice agency.

(g) *Access and review.* Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that—

(1) Any individual shall, upon satisfactory verification of his identity be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;

(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;

(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;

(4) Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to whom the data has been given;

(5) The correcting agency shall notify all criminal justice recipients of corrected information; and

(6) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3(b).

§ 20.22 Certification of Compliance.

(a) Each State to which these regulations are applicable shall with the submission of each plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.

(b) The certification shall include—

(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;

(3) A description of the steps taken to overcome any fiscal, technical, and administrative barriers to the development of complete and accurate criminal history record information;

(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and

(5) A listing setting forth all non-criminal justice dissemination authorized by legislation existing as of the date of the certification showing the specific categories of non-criminal justice individuals or agencies, the specific purposes or uses for which information may be disseminated, and the statutory or executive order citations.

§ 20.23 Documentation: Approval by LEAA.

Within 90 days of the receipt of the plan, LEAA shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by LEAA will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by December 31, 1977, except that a State, upon written application and good cause, may be allowed an additional period of time to implement § 20.21(f)(2). Certification shall be submitted in December of each year to LEAA until such complete compliance. The yearly certification shall update the information provided under § 20.21.

§ 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

§ 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a fine not to exceed $10,000. In addition, LEAA may initiate fund cut-off procedures against recipients of LEAA assistance.

Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal history record information system that serves criminal justice agencies in two or more states and to Federal, state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal history record information systems. These regulations are applicable to both manual and automated systems.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall operate the National Crime Information Center (NCIC), the computerized information system which includes telecommunications lines and any message switching facilities which are authorized by law or regulation to link local, state and Federal criminal justice agencies for the purpose of exchanging NCIC-related information. Such information includes information in the Computerized Criminal History (CCH) File, a cooperative Federal-State program for the interstate exchange of criminal history record information. CCH shall provide a central repository and index of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

(b) The FBI shall operate the Identification Division to perform identification and criminal history record information functions for Federal, state and local criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (86 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States.

(c) The FBI Identification Division shall maintain the master fingerprint files on all offenders included in the NCIC/CCH File for the purposes of determining first offender status and to identify those offenders who are unknown in states where they become criminally active but known in other states through prior criminal history records.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in any Department of Justice criminal history record information system shall include serious and/or significant offenses.

(b) Excluded from such a system are arrests and court actions limited only to nonserious charges, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, nonspecific charges of suspicion or investigation, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run). Offenses committed by juvenile offenders shall also be excluded unless a juvenile offender is tried in court as an adult.

(c) The exclusions enumerated above shall not apply to Federal manual criminal history record information collected, maintained and compiled by the FBI prior to the effective date of these Regulations.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in any Department of Justice criminal history record information system will be made available:

(1) To criminal justice agencies for criminal justice purposes; and

(2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order.

(3) Pursuant to Public Law 92-544 (86 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination

is rized by Federal or state statutes and approved by the Attorney General of the United States. When no active prosecution of the charge is known to be pending arrest data more than one year old will not be disseminated pursuant to this subsection unless accompanied by information relating to the disposition of that arrest.

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

§ 20.34 Individual's right to access criminal history record information.

(a) Any individual, upon request, upon satisfactory verification of his identity by fingerprint comparison and upon payment of any required processing fee, may review criminal history record information maintained about him in a Department of Justice criminal history record information system.

(b) If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information. If the contributor corrects the record, it shall promptly notify the FBI and, upon receipt of such a notification, the FBI will make any changes necessary in accordance with the correction supplied by the contributor of the original information.

§ 20.35 National Crime Information Center Advisory Policy Board.

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, FBI, general policies with respect to the philosophy, concept and operational principles of NCIC, particularly its relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal history record information contained in the CCH File.

(a)(1) The Board shall be composed of twenty-six members, twenty of whom are elected by the NCIC users from across the entire United States and six who are appointed by the Director of the FBI. The six appointed members, two each from the judicial, the corrections and the prosecutive sectors of the criminal justice community, shall serve for an indeterminate period of time. The twenty elected members shall serve for a term of two years commencing on January 5th of each odd numbered year.

(2) The Board shall be representative of the entire criminal justice community at the state and local levels and shall include representation from law enforcement, the courts and corrections segments of this community.

(b) The Board shall review and consider rules, regulations and procedures for the operation of the NCIC.

(c) The Board shall consider operational needs of criminal justice agencies in light of public policies, and local, state and Federal statutes and these Regulations.

(d) The Board shall review and consider security and privacy aspects of the NCIC system and shall have a standing Security and Confidentiality Committee to provide input and recommendations to the Board concerning security and privacy of the NCIC system on a continuing basis.

(e) The Board shall recommend standards for participation by criminal justice agencies in the NCIC system.

(f) The Board shall report directly to the Director of the FBI or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770.

(h) The Director, FBI, shall not adopt recommendations of the Board which would be in violation of these Regulations.

§ 20.36 Participation in the Computerized Criminal History Program.

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency.

It shall be the responsibility of each criminal justice agency contributing data to any Department of Justice criminal history record information system to assure that information on individuals is kept complete, accurate and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

The services of Department of Justice criminal history record information systems are subject to cancellation in regard to any agency or entity which fails to comply with the provisions of Sub C.

EDWARD H. LEVI,
Attorney General.

MAY 15, 1975.

RICHARD W. VELDE,
Administrator, Law Enforcement Assistance Administration.

MAY 15, 1975.

APPENDIX—COMMENTARY ON SELECTED SECTIONS OF THE REGULATIONS ON CRIMINAL HISTORY RECORD INFORMATION SYSTEMS

Subpart A—§ *20.3(b)*. The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet" such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history information.

§ *20.3(c)*. The definitions of criminal justice agency and administration of criminal justice of 20.3(c)(d) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of non-criminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order. The above subunits of non-criminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

§ *20.3(e)*. Disposition is a key concept in the section 524(b) of the Act and in § 20.21(a)(1) and § 20.21(b)(2). It, therefore, is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other unspecified transactions concluding criminal proceedings within a particular agency.

Subpart B—§ *20.20(a)*. These regulations apply to criminal justice agencies receiving Safe Streets funds for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA's authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulations of manual systems, therefore, is authorized by section 524(b) when coupled with Section 501 of the Act which authorizes the Administration to establish rules and regulations "necessary to the exercise of its functions * * *."

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

§ 20.20(b)(c). Section 20.20(b)(c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know.

Section 20.20(b)(ii) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus announcements of arrest, convictions, new developments in the course of an investigation may be made within a few days of their occurrence. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1952" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal agency may respond to the inquiry.

§ 20.21. Since privacy and security considerations are too complex to be dealt with overnight, the regulations require a State plan to assure orderly progress toward the objectives of the Act. In response to requests of those testifying on the draft regulations, the deadline for submission of the plan was set at 180 days. The kind of planning document anticipated would be much more concise than, for example, the State's criminal justice comprehensive plan.

The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor.

§ 20.21(a)(1). Section 524(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

It is, however, economically and administratively impractical to maintain complete criminal histories at the local level. Arrangements for local police departments to keep track of dispositions by agencies outside of the local jurisdictions generally do not exist. It would, moreover, be bad public policy to encourage such arrangements since it would result in an expensive duplication of files.

The alternatives to locally kept criminal histories are records maintained by a central State repository. A central State repository is a State agency having the function pursuant to statute or executive order of maintaining comprehensive statewide criminal history record information files. Ultimately, through automatic data processing the State level will have the capability to handle all requests for in-State criminal history information.

Section 20.21(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at the State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most noncriminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

§ 20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the "privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes." The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

§ 20.21(b)(2). This subsection is intended to permit public or private agencies to have access to criminal history record information where a statute or executive order:

(1) Denies employment, licensing, or other civil rights and privileges to persons convicted of a crime;

(2) Requires a criminal record check prior to employment, licensing, etc.

The above examples represent statutory patterns contemplated in drafting the regulations. The sine qua non for dissemination under this subsection is statutory reference to criminal conduct. Statutes which contain requirements and/or exclusions based on "good moral character" or "trust worthiness" would not be sufficient to authorize dissemination.

The language of the subsection will accommodate Civil Service suitability investigations under Executive Order 10450, which is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

§ 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

§ 20.21(b)(4). Under this subsection, any good faith researchers including private individuals would be permitted to use criminal history record information for reseach purposes. As with the agencies designated in § 20.21(b)(3) researchers would be bound by an agreement with the disseminating criminal justice agency and would, of course, be subject to the sanctions of the Act.

The drafters of the regulations expressly rejected a suggestion which would have limited access for research purposes to certified research organizations. Specifically "certification" criteria would have been extremely difficult to draft and would have inevitably led to unnecessary restrictions on legitimate research.

Section 524(a) of the Act which forms part of the requirements of this section states:

"Except as provided by Federal la[illegible]er than this title, no officer or employee of the Federal Government, nor any recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings."

LEAA anticipates issuing regulations pursuant to Section 524(a) as soon as possible.

§ 20.21(b)(5). Dissemination under this section would be permitted not only in cases of investigations of employment suitability, but also investigations relating to clearance of individuals for access to information which is classified pursuant to Executive Order 11652.

§ 20.21(c)(1). "Active prosecution pending" would mean, for example, that the case is still actively in process, the first step such as an arraignment has been taken and the case docketed for court trial. This term is not intended to include any treatment alternative-type program which might defer prosecution to a later date. Such a deferral prosecution is a disposition which should be entered on the record.

§ 20.21(c)(3). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

§ 20.21(c)(4). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in § 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished.

§ 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language or statute or Federal executive order specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§ 20.21(e). Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies.

§ 20.21(f)(2). In the short run, dedication will probably mean greater costs for State and local governments. How great such costs might be is dependent upon the rapidly advancing state of computer technology. So that there will be no serious hardship on States and localities as a result of this requirement, § 20.23 provides that additional time will be allowed to implement the dedication requirement. For example, where local systems now in place contain criminal history information of only that State, used purely for intrastate purposes, in a shared environment, consideration will be given to

granting extensions of time under this provision.

§ 20.21(f) (5), (8). "Direct access" means that any non-criminal agency authorized to receive criminal justice data must go through a criminal justice agency to obtain information.

§ 20.21(g)(1). A "challenge" under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge.

The drafters of the subsection expressly rejected a suggestion that would have called for a satisfactory verification of identity by fingerprint comparison. It was felt that states ought to be free to determine other means of identity verification.

§ 20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under § 20.21(e) must be kept so that notification can be made.

§ 20.21(g)(6). This section emphasizes that the right to access and review extends only to criminal history information and does not include other information such as intelligence or treatment data.

§ 20.22(a). The purpose for the certification requirement is to initiate immediate compliance with these regulations wherever possible. The term "maximum extent feasible" acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Report #2; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum #3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum #4.

Subpart C—§20.31. Defines the criminal history record information system operated by the Federal Bureau of Investigation. Each state having a record in the Computerized Criminal History (CCH) file must have a fingerprint card on file in the FBI Identification Division to support the CCH record concerning the individual.

Paragraph b is not intended to limit the identification services presently performed by the FBI for Federal, state and local agencies.

§ 20.32. The grandfather clause contained in the third paragraph of this Section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses which were stored prior to February, 1973.

In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will appear in the arrest segment of the CCH record.

§ 20.33. Incorporates the provisions of a regulation issued by the FBI on June 26, 1974, limiting dissemination of arrest information not accompanied by disposition information outside the Federal government for non-criminal justice purposes. This regulation is cited in 28 CFR 50.12.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are particularized in 28 CFR 16.30–34.

The procedures by which an individual may obtain a copy of his Computerized Criminal History record are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C., by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or, possibly, in the State's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the CCH file. One of the requirements is that hardware, including processor, communications control and storage devices, to be utilized for the handling of criminal history data must be dedicated to the criminal justice function.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in Subpart B in order to allow for processing time which may be needed by the states before forwarding the disposition to the FBI.

[FR Doc.75–13197 Filed 5–19–75;8:45 am]

[Order No. 602–75]

PART 50—STATEMENTS OF POLICY

Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings

This order amends the Department of Justice guidelines concerning release of information by personnel of the Department of Justice relating to criminal and civil proceedings by deleting the provision permitting disclosure of criminal history record information on request.

By virtue of the authority vested in me as Attorney General of the United States, § 50.2(b)(4) of Chapter I, Title 28 of the Code of Federal Regulations is amended to read as follows:

§ 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.

* * * * *

(b) * * *

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(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

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MAY 15, 1975.

EDWARD H. LEVI,
Attorney General.

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ATTACHMENT III

CRIMINAL JUSTICE INFORMATION SYSTEM
KANSAS HIGHWAY PATROL
July 31, 1975

The Kansas Highway Patrol endorses the need for a State Criminal Justice Information System.

This endorsement is based on a knowledge that no single Federal, State, county or city law enforcement agency can approach effectiveness without sharing their information or having access to other agency data.

To be a Criminal Justice Information System rather than a Law Enforcement Information System, the management should be truly representative of:

courts	probation and parole
corrections	identification division
prosecution	law enforcement

There is a common tendency for systems or functions to become self serving, disregarding user needs.

The compelling need for an Information System is:

First: Creation of a central file of common data elements commonly recorded by all agencies in the criminal justice community. There are approximately 355 state, county and city law enforcement agencies in Kansas trying to effectively enforce laws with no complete central files of wanted persons, stolen properties or unsolved crimes. There are about 770 other (criminal justice offices, agencies and) facilities identified in the state.

Second: Interstate criminal mobility, calculated at 25-30%, requires sharing of information from state to state. The same FBI Uniform Crime Reports advise that 70% of the rearrests (criminal repeating) will be in the same state. The only effective sharing of information Kansas is now able to provide in the law enforcement area is their entries in the National Crime Information System, Washington, D. C.

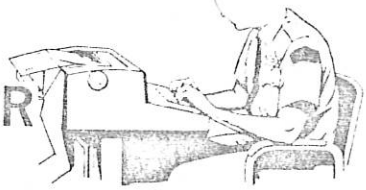
Stolen guns 6124 (3/1/74)
Wanted felons 1479 (10/4/74)
Stolen articles 3152 (1/6/74)
Stolen securities 199 (4/17/74)
Stolen vehicles 3759 (5/2/75)
Stolen plates 12499 (5/2/75)
Stolen boats 34 (5/2/75)

plus, Kansas agency sharing in the Kansas City, Missouri Police Department (ALERT) System.

Third: Rules and Regulations published in the Federal Register, Volume 40, Number 98, Part IV dated May 20, 1975 and effective June 19, 1975 imposed limitations on interstate exchange of criminal information which may make it imperative for the state to adopt a statutory posture.

Summary: Organization of a Criminal Justice Information System should be based on needs as interpreted by the Kansas Legislature and not on promises of abundant federal funds. Kansas has an effective Criminal Justice System which can be more so by controlled exchange of information while safeguarding security and privacy and maintaining confidentiality.

NCIC
NATIONAL CRIME INFORMATION CENTER
FBI
Newsletter
75-6 June, 1975



SYSTEM OPERATIONS

As of June 1, 1975, there were 5,403,172 active records in NCIC, with the breakdown showing 154,323 wanted persons; 882,249 vehicles; 302,335 license plates; 1,000,314 articles; 876,624 guns; 1,587,466 securities, 11,522 boats; and 588,339 criminal history records. In May, 1975, NCIC network transactions totaled 5,656,260, averaging 182,842 daily. The hour from 4 a.m. to 5 a.m. EDT was the peak hour on NCIC during the month, averaging 8,439 transactions during that interval.

NCIC operating performance figures for May, 1975, revealed that of the 744 hours in the month, NCIC was operational 729.2 hours (98.0%). This figure is broken down to show 715.4 hours (96.2%) unrestricted operational time and 13.8 hours (1.8%) restricted operational time; i.e., NCIC on the air but accepting only certain types of messages because of concurrent file maintenance. There were 1.3 hours (0.2%) of scheduled downtime. Unscheduled downtime totaled 13.5 hours (1.8%).

HIT ON THE SYSTEM

Police officers of the Wayne Township, New Jersey, Police Department were summoned to investigate the breaking and entering of a house. Upon arriving at the scene, the officers observed a vehicle bearing Virginia license plates. An NCIC check on the vehicle via the New Jersey Statewide Communication Information System (SCIS) disclosed the operator was wanted in connection with the murder of a police officer in West Virginia and the vehicle was reported stolen from Virginia. A search of the area resulted in the apprehension of the subject.

CONFIDENTIALITY OF COMPUTERIZED INFORMATION

Information has been received that there is possibly a group of individuals attempting to discredit law enforcement agencies concerning confidentiality of record systems. Several police departments have documented cases of individuals, usually female, calling by telephone to drivers license bureaus and motor vehicle departments requesting information on individuals or license numbers. The caller is familiar with police terminology and identifies herself as an employee or member of a law enforcement agency giving the NCIC originating agency identifier (ORI) for the agency and a unit or badge number. When requested, the caller leaves a telephone number, but an attempt to recontact her at this number discloses that she is unknown at the agency. Law enforcement officers are reminded of their responsibility to protect the confidentiality of information in computerized records. Information relative to drivers permits, vehicle registrations, individuals, or any other information contained in computerized files, should be given only to authorized personnel. Agencies receiving telephone requests for information are advised to verify the identity of the caller before any information is given out.

Federal Bureau of Investigation
United States Department of Justice, Washington, D. C. 20535

RULES AND REGULATIONS RELATING TO CRIMINAL JUSTICE INFORMATION SYSTEMS

The Department of Justice Rules and Regulations (Order Number 601-75) relating to criminal justice information systems were issued May 20, 1975, and become effective June 19, 1975. The purpose of the regulations is to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the completeness, integrity, accuracy, and security of such information and to protect individual privacy. A copy of these Rules and Regulations has been mailed to each control terminal.

TRANSLATION OF ORIs IN WANTED PERSON AND STOLEN PROPERTY FILES RESPONSES

Effective June 30, 1975, the coded nine-character ORIs will be translated in the NCIC Wanted Person and stolen property files responses to "Q" inquiries. The translated ORI will come immediately after the words "ORI IS" in the line after the NCIC number (NIC) in the first block of data transmitted. The purpose of this procedure is to furnish users information as to the identity of the originating agency without the necessity of referring to the Agency Identifiers Manual.

NCIC WELCOMES MICHIGAN INTO CCH PROGRAM

The State of Michigan is now entering and updating CCH records. Other states fully participating in the CCH File are Arizona, Florida, Illinois, and California. Since implementation in November, 1971, the Computerized Criminal History File has grown to a data base of 588,339 records.

MISUSE OF ADMINISTRATIVE "Z" TYPE INQUIRIES IN THE NCIC WANTED PERSON AND PROPERTY FILES

Instructions for use of the "Z" and "Q" inquiries are set forth in the NCIC Operating Manual, Part I, page 36. It is estimated that if system users were to follow these instructions, less than 3% of all the NCIC inquiries would be "Zs".

"Q" inquiries should be made on all action-type police checks, even though the person or property is not actually in custody. The "hit" notification triggered by the "Q" inquiry serves to let the entering agency know the movements of the subject or property and this fact may aid in alerting other agencies, thus facilitating apprehension or recovery.

The misuse of "Z" inquiries was discussed at the NCIC Participants' Meeting in April. As a result, 3 of the 4 regions agreed to have all control terminals institute programs to focus on correcting the problem. These programs will involve a detailed analysis of present state system written/oral instructions concerning the use of the "Z" and discussing this administrative inquiry in agenda/curriculum of conferences, training seminars, schools, and written directives.

After six months these programs will be evaluated and the results obtained furnished to NCIC.

REMEMBER-USE Qs FOR ALL OPERATIONAL INQUIRIES

ATTACHMENT IV

PREPARED STATEMENT TO
THE SPECIAL COMMITTEE ON JUDICIARY OF THE KANSAS LEGISLATURE
CONCERNING THE KANSAS CRIMINAL JUSTICE INFORMATION SYSTEM

Lee Ellis, Director
Research and Planning Division
Kansas Department of Corrections

I appreciate the opportunity to address this Legislative Committee concerning the involvement of the Kansas Department of Corrections in efforts to create a Criminal Justice Information System. It has given me an opportunity to update my assessments of where Corrections stands with relationship to the other components in the Criminal Justice Community on this issue.

Let me briefly outline where the Kansas Department of Corrections is at this time regarding statistical information. We have made unsuccessful attempts in the past to automate the processing of the most basic correctional information, and still operate with a manual system. The Department is now in the midst of another effort to automate that should work. October of this year has been identified as the time for completion of a computerized system of simply tracking offenders from the point of entering correctional custody through the successful completion of parole. This will mark the modest beginning of a system that should eventually meet the bulk of the Department's basic routine statistical requirements. Nonetheless, it is being built with a complete acceptance of the fact that whatever we have built of our own system will, and should, be absorbed into the Criminal Justice Information System at some point in the future.

Let me touch upon the Department's concerns over security and privacy problems of data that it now maintains on a manual basis, and will incorporate into the automated information system being built at this time. We appreciate public concern over the misuse of much of the information that the Department is charged with maintaining. The chances for abuse of correctional information should be less when our files are automated than they are right now if well-planned safeguards are instituted as the system is developed. We have read the proposed House Bill No. 2447, and consider it an excellent legislative structure within which to build a correctional information system, as well as for incorporating and elaborating our system within the overall criminal justice information system.

These remarks are brief and general. This does not mean that the Department has only a casual interest in the CJIS, however. We hope to be involved in every step of its development, and look forward to reaping many benefits from its successful implementation. Having said that, I yield to any questions the committee may have.

ATTACHMENT V

Comments by Virgil F. Basgall at the Judicial Committee Hearings of July 31, 1975, Proposal No. 27, Privacy in the Criminal Justice Information System.

The Impetus for Criminal Justice Information System

In the past, Law Enforcement agency's capacity to collect, store, process, access, and disseminate personal data was severely limited. The very inefficiency of the then-available systems was one of chief protections of individual privacy. Scattering of data in many manual files, no linking of files, poor access and storage problems all served to reduce the scope and effectiveness of the pre-computer information systems. The FBI would have you believe the use of the computer has corrected these inefficiencies, and removed whatever protection they may have provided to individual privacy. This statement requires some correction. It should actually read, "the use of the computer has corrected these inefficiencies, and the procedures followed in the use of the new tool could possibly remove whatever protection that may have been provided to individual privacy."

Computers lead to the tendency to gather more data because of the ease in which the computers handle data. It is no longer possible to rely on the in-efficiency of information systems for protection of privacy.

However, other agencies with private information have automated and found that it makes the data less visible, increasing confidentiality. The difference is in the use of information. Other agencies mostly use the information in a regulatory manner, and the information only surfaces to produce some end product for the individual concerned, or for an investigator to be used against some known offender, such as for income tax evasion.

This is not true with intelligence files. The entire Criminal Justice System, and particularly Law Enforcement agencies, are responsible for preventing as well as controlling crime. Intelligence efforts in many cases will go beyond what is public record. The threat to individual rights from unrestricted intelligence operations is direct. These kind of files require rigorous safeguards to prevent retention of inaccurate and unnecessary intelligence, and to prevent its being disseminated or entered into a Criminal Justice Information System.

How Criminal Justice Information Systems have Developed.

In June 1969, Project Search began with the purpose of designing, side-by-side, prototypes of a Criminal Justice Information System and a Criminal Justice Statistics System.

The greater emphasis was placed on the Criminal Justice Information System, to demonstrate the feasibility of an on-line computer system for interstate exchange of offender history files, integrating basic information needs of police, prose-cution, judicial, and correctional agencies.

The success of the project led to the national implementation of such a system under the control of the FBI's NCIC. The Criminal Justice Statistics

System, better known as the Offender Based Transaction System, was also successful, but given lower priority because the need at that time was to control increasing violence and civil disobendience.

As a result funding for State computerized criminal history implementation has been more available. A further result is that the statistical data is considered a by-product of the criminal history system.

How Should a Criminal Justice Information System be Implemented Where None Exists?

My studies have indicated that there is no Criminal Justice System in America today. It might be characterized instead as a Criminal Injustice System. There have been many committees appointed to make studies who have made impressive contributions to our knowledge of the problem, and they have made many recommendations to improve the system.

One obvious fact that shows up time and again is that the need for more research into the problems of criminal justice is required. Most of the things we try seemed to fail. Research requires accurate and complete statistical information, and privacy demands it.

The Criminal Justice Information System should begin with the entrance of offender based transactions into the system, with the necessary edit and audit procedures to insure that only accurate and complete transactions are entered. There should be no conversion of existing criminal history files.

Each criminal justice agency will then have an accurate statistical base for research and management purposes. This data is not likely to surface inappropriately. The by-product of the Offender Based Transaction System would be the computerized criminal history.

The criminal history file should be regulated very closely, with purging based upon some aging process. It will be as free from error as possible, and lack records which are incomplete as to disposition. Intelligence not related to an offender based transaction would be absent. This will provide maximum protection for privacy when criminal history is exchanged between States and the FBI.

It should be emphasized that perhaps the first question to be answered is, "Will the State of Kansas have a Criminal Justice Information System?" Because it is not possible for one to be developed without the active participation of Law Enforcement, the Courts and Corrections.

The FBI will not forward criminal history record unless the FBI number or the State identification number are included in the inquiry, but they will send an index which contains the FBI number. According to the plan the inquiring State must then compare the index information with the known facts before inquiring for the complete criminal history record.

QUESTION: How will privacy be protected if the single-state offender index record containing the FBI number is transmitted to the inquiring State on the initial inquiry?

QUESTION: Should index records be furnished which allows a State to accumulate criminal history on individuals other than the one they are looking for?

Why is it that Dedication of Computer Systems is Specified in the Federal Regulations?

Many of the concerns over non-dedicated systems could be resolved through combination of law and technical systems design procedures. Systems security can be instituted as well in a non-dedicated system as in a dedicated one. However, to date there has been very little evidence that non-criminal justice agencies would necessarily adopt the proposed protections, or that the criminal sanctions against misuse would be enacted. Law Enforcement officials generally view the lack of statutory action as a non-credible response to the need for protection. The bill which we are considering is the first step in the right direction, a general information practices act.

The other reason for dedicated systems in the eyes of the Law Enforcement would be the response time to inquiries into the system. In a State system there would typically be hundreds of remote communications terminals relying on telephone line connection to the computer. The standards promulgated by the FBI indicate a necessity for 90% availability.

Dedication in the eyes of the FBI does not restrict the process of procurement and computer equipment responsibility. A department other than a criminal justice agency can own the computer and service it as a dedicated system, provided that the criminal justice agency which owns the data has sufficient management control over the programmers, operators, terminals and other input/output devices, and storage media.

It is my position, and indeed the position of my counterparts nationwide, that security and privacy can be maintained on a shared system. We believe that States like the State of Kansas, where the Legislature has enacted provisions for the centralized, shared processing of data on computers, that it should be left up to the State to determine whether or not dedicated computers are required for Criminal Justice Information Systems.

The way it currently stands, what is lost if the State goes its own way, is participation in the national computerized criminal history program. I am sure the Law Enforcement community considers this a great loss, and I cannot speak to how great a loss that really represents.

My basic objection to dedication of a computer for criminal justice information is that of cost. The State would have to spend a minimum of $250,000 a year for hardware to support the dedicated system. LEAA funds would not be available for these costs. There would be a duplication of $125,000 a year in salaries and wages for people to operate that dedicated computer. There would be a one-time charge of $35,000 at a minimum to prepare a site for the computer. At the present time I spend $180,000 a year for support to the Law Enforcement community for message switching, inquiry into the motor vehicle files, the National Law Enforcement Teletype System, the NCIC Wants and Warrants, and the Kansas City Alert System. To remove this activity to a dedicated computer will require that I raise my rates to the rest of the Users who share our computer system. The duplication of costs would, therefore, come to $555,000 a year. This does not include the costs of program development because that would need to be done in either case.