



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

SEP 21 2015

Honorable Patrick J. Leahy
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, DC 20510

RECEIVED OCT 01 2015

Honorable Charles E. Grassley
Chairman
Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairmen:

Your letter dated June 26, 2015, concerning the accuracy and completeness of the FBI's Identity History Summary (IdHS) information and their use in background checks for employment and licensing, has been forwarded to the FBI's Criminal Justice Information Services (CJIS) Division for response. You are seeking specific information on current FBI policies and practices.

Question 1:

Please provide the total number of criminal history record information (CHRI) checks that FBI has provided for non-criminal justice purposes, including from employment and licensing, for each of the past five years (2010, 2011, 2012, 2013, 2014).

2010 – 23,449,091; 2011 – 25,561,754; 2012 – 26,519,715; 2013 – 27,171,832;
2014 – 30,161,402

Question 2:

According to the recent GAO report, the Department of Justice provides funding to states through the National Criminal History Improvement Program (NCHIP) to enhance the quality, completeness, and accessibility of criminal history record information maintained by the states. The report suggests that these grants are "primarily intended to support state efforts to increase the number of felony records and criminal-related mental health records available for firearm background checks." Please provide detailed information regarding NCHIP grant awards for

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

each of the past five years (2010, 2011, 2012, 2013, 2014). How many grants have been directed at improving the fairness and accuracy of collection and reporting for individuals who are seeking employment and licensing? Have these grants led to actual improvements in collection and reporting?

The FBI's CJIS Division does not maintain this information. You may wish to contact the Bureau of Justice Statistics (BJS), 810 Seventh Street, Northwest, Washington, DC 20531, telephone (202) 307-0765, for possible assistance.

Question 3:

According to the GAO report, the FBI formed a Disposition Task Force in 2009 to address these issues, but "after more than 5 years, the task force has not issued best practices or national standards for collecting and reporting disposition information or developed a national strategy, even though disposition reporting has been a long-standing challenge." Please provide detailed information regarding the Task Force's plans and its efforts to establish best practices and national standards on this subject.

The goals of the CJIS Advisory Policy Board (APB) Disposition Task Force (DTF) are to (1) refine disposition rate calculations, (2) identify existing federal and state requirements for collecting and reporting disposition information, (3) identify and recommend best practices for collecting and reporting disposition information, (4) examine and recommend improvements to the national standards for collecting and reporting disposition information, and (5) promote the adoption of national standards for sharing dispositions by state judicial systems.

The first goal, refining disposition rate calculations, was completed in the fall of 2012 after extensive research and discussions. The second goal, identify existing federal and state requirements for collecting and reporting disposition information, is underway relying on a survey performed by the National Consortium for Justice Information and Statistics and the National Center for State Courts. Both groups have provided presentations of data to the APB DTF. In addition, the identification of collection and reporting requirements is included in the research underway to support the third goal.

The third goal, identify and recommend best practices for collecting and reporting disposition information, was included in the Fall 2014 meeting. In August 2014, the APB DTF passed a motion requesting the FBI's CJIS Division gather statistics regarding disposition reporting (using the SEARCH survey and data from the Next Generation Identification system) and collaborate with those states reporting high disposition rates to identify commonalities within their disposition reporting processes. The CJIS Division was required to coordinate the efforts with the APB DTF who is to use the results to develop a disposition best practice guide. Once

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

completed, the guide will be forwarded to the APB Identification Services Subcommittee. The motion illustrates the plan to complete the third goal of the APB DTF goals. While the motion did not outline time frames for completing that plan, milestone dates for the project were discussed and agreed to. The CJIS Division believes the motion captured by the APB DTF in August 2014 outlines a plan and milestones for completing the best practices guide, but agrees that a complete time line was not provided.

The fourth and fifth goals will be undertaken after the identification of the best practices. The length of time to identify and provide solutions is a direct result of the scope and complexity of the problem being addressed.

Question 4:

According to the GAO report, the FBI helps ensure the integrity of state criminal records through periodic audits. However, the GAO report indicates the "from 2011 through 2013, 12 of the 44 states that it had audited were noncompliant" with the requirements to provide accurate and timely reports. Please provide detailed information regarding these periodic state audits, including any information documenting the rates of incomplete or inaccurate records at the state level, for each of the past five years (2010, 2011, 2012, 2013, 2014).

Interstate Identification Index (III) Participation Minimum Requirements and National Fingerprint File (NFF) Qualification Requirements are formally assessed triennially at the state level, typically at the agency designated as the state criminal history repository responsible for administering III or NFF programs. These requirements establish the framework for the overall completeness, accuracy, and the timeliness of criminal history records indexed as part of the III and NFF programs. The assessment of III and NFF policies includes a review of the audit participant's processes and procedures through the use of administrative interviews, document requests, and direct observation. The assessment of specific policies also includes transactional data quality reviews in order to validate and support the audit participant's processes and procedures.

A review of state procedures for disposition reporting is included in the assessment of policy requirements for III and NFF participation. The assessment centers on the timely processing of disposition information once it is received from or made available by contributors and is directly associated with III and NFF sole source submission and record content policies which reference dispositions. If procedures employed by a state repository do not result in the timely addition of dispositions to state criminal history records or do not result in the timely forwarding of applicable dispositions to the FBI, then the state is assessed out of compliance. The current audit methodology does not include a direct data quality review to document state-level rates of criminal history records missing disposition information. However, data quality reviews are

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

performed of samples of unsolicited maintenance messages sent to the state through the III system. These data quality reviews gauge and validate the state's procedures for maintaining accurate, complete, and timely criminal history records. In addition, with respect to direct criminal history record comparisons, states are required to complete biannual criminal history record synchronizations. The audit process includes an assessment of the state's performance in meeting the specific III and NFF policy requirements associated with these record synchronizations.

Draft audit results are provided to the audit participant and include findings of compliance status, supporting analysis, high-level corrective actions required, and a request for a response describing specific corrective actions. Final audit results incorporate the audit participant's response. Applicable final audit results are forwarded to the National Crime Prevention and Privacy Compact (Compact) Council Sanctions Committee for review and reconciliations. Final audit results may also be reviewed and reconciled through respective FBI program offices. As part of the procedures, the Compact Council or FBI may require the audit participant to provide additional information in order to ensure compliance issues have been adequately resolved prior to formally closing the audit cycle.

The following table summarizes the results of finalized audits conducted during Fiscal years 2010 through 2014:

	Fiscal Year				
	2010	2011	2012	2013	2014
Number of States Audited	19	15	16	20	14
Number of States with at least one finding of noncompliance with III/NFF requirements	13	12	14	13	11
Number of States with at least one finding of noncompliance with III/NFF requirements for processing/reporting dispositions	8	5	5	4	1

Question 5:

A federal regulation (28 C.F.R. Section 20.37) requires states to submit all dispositional information related to an arrest "so that all such records shall contain to the maximum extent feasible dispositions for all arrest data" and states that such dispositions "should be submitted" within 120 days after the date of disposition. Nevertheless, the GAO report notes that in 2012, 10 states reported that 50 percent or less of their arrest records had final dispositions, and a 2012 FBI audit found that one state was submitting dispositions only twice a year. Please explain FBI's interpretation of this regulation. Has the FBI explored any avenues to enforce this requirement, especially against states that consistently fail to comply with its mandate? What

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

penalties, if any, are available to the FBI if a state is found to be consistently out of compliance with this requirement?

Applicable final audit results are forwarded to the National Crime Prevention and Privacy Compact (Compact) Council Sanctions Committee for review and reconciliation in accordance with Title 28, Code of Federal Regulations, Part 907. As part of these procedures, the Compact Council or FBI may require the audit participant to provide additional information in order to ensure compliance issues have been adequately resolved prior to formally closing the audit cycle. If an audit participant fails to provide the requested information or if the Compact Council or FBI concludes that the actions taken are not sufficient to remedy compliance issues, the Compact Council or FBI may initiate a progressive series of actions which could include notifying higher authorities and requesting their assistance in correcting the deficiencies.

Question 6:

We understand that there may be concerns about the accuracy and timeliness of criminal history record information being collected from federal law enforcement agencies. Are there any federal regulations or requirements related to the reporting of criminal history record information from federal law enforcement agencies? Has the FBI conducted any audits or analyses related to the collection and distribution of these records? Please explain what specific steps, if any, the FBI is taking to address this issue.

Federal agencies would be required to comply with 28 CFR § 20.37, as well as the Presidential Mandate, issued 01/23/2013, which holds federal agencies accountable for sharing reliable information with the federal firearm background check system. Through a Presidential Memorandum, the administration required agencies to identify records, making them available to the background check system, and regularly report that they are complete and up-to-date. The Presidential Memorandum did not limit the information being updated to either the criminal history records or the NICS Index. Information regarding the Memorandum can be found at: https://www.whitehouse.gov/sites/default/file/docs/wh_now_is_the_time_full.pdf

Question 7:

According to the GAO report, officials cited three key areas affecting the completeness of state criminal records: (1) prosecutors not reporting final dispositions; (2) a lack of records for "cite-and-release" practices, and (3) case number coordination issues. The GAO report suggests that assistance programs have helped to address these areas. Please indicate how assistance programs have helped to address these areas. Please indicate how assistance programs have helped to address these areas. For example, how may NCHIP grants have been directed to these areas?

The FBI's CJIS Division does not maintain this information. You would need to contact the BJS for possible information pertaining to this topic.

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

Question 8:

According to the GAO report, the FBI is not appropriately incorporating information related to inaccurate and incomplete criminal histories that is developed by the Office of Personnel Management in connection with investigation of applicants for federal employment. Please explain what specific steps are being taken to address this issue.

Multiple conversations have occurred between various levels of FBI and Office of Personnel Management (OPM) to identify a means to securely and efficiently transfer disposition information discovered during the OPM's investigations to the FBI and then on to the FBI's state partners. Progress has been made to ensure the disposition information will be shared with the FBI's state partners to provide the state the opportunity to update their systems in accordance with the guidance of the APB and the National Crime Prevention and Privacy Compact Council (Compact Council). The OPM and the FBI signed a letter of agreement dated March 19, 2015, that served as a formal concurrence between the two agencies on the methodology to exchange the disposition information. Specifically, the OPM agreed to provide the FBI with specific and appropriate disposition-related data field in an extensible markup language (XML)-tagged report data format. The report will be transferring the data in the XML-tagged report format on or before October 1, 2015. The OPM has recently provided the FBI access to the secure portal. The FBI will then sort the information by state and forward the information for each state to state's CJIS Systems Officer (CSO). Both the OPM and the FBI have taken steps to ensure the protection of the data through the transfer process. The FBI will request feedback from each state CSO regarding the efficiency of the process and the effectiveness of the information and format for the state's use in updating IdHS information.

Question 9:

According to the GAO report, FBI audit findings show that states generally do not provide job applicants with sufficient information about an individual's ability to correct or complete his or her criminal history. The GAO reports encouraged the FBI to take additional action to encourage states to comply with these requirements. Please identify any steps the FBI has taken or intends to take to address this issue.

During audits, if it is determined that an agency is not meeting the applicant notification and records challenge requirements, auditors take the opportunity to educate the agency on the requirements and direct the agency on how to locate Compact Council brochures on the non-criminal justice applicant privacy rights on the FBI Web site.

Question 10:

Please provide the total number of public requests received by FBI to correct CHRI and the number of CHRI records that were updated as a result of these public requests, for each of the

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

five past years (2010, 2011, 2012, 2013, 2014). Please also provide information on any audits or analysis of these public requests, including the timing and cost of responses to these requests.

In 2010, the FBI's CJIS Division received 1,306 requests to correct IdHS information, it is estimated that 665 were updated. 2011 – 1,566 requests were received, and it is estimated that 799 were updated. 2012 – 1,649 requests received and an estimated 841 were updated. 2013 – 1,447 requests were received and 742 were updated, and 2014 – 980 requests were received and an estimated 500 were updated. Requests received from January 1, 2013, through December 31, 2013, were audited to determine the types of requests received and the number of modifications effected as a result of the challenge process. A cost analysis was completed for Fiscal Year 2014, and the actual cost per challenge ranged from \$88 to \$140.

Challenge requests, once received by the FBI are generally responded to within 30 days. However, due to various complexities encountered in the research and verification processes, some IdHS challenge requests may require additional processing times.

Question 11:

A recent article in the Wall Street Journal (referenced in Footnote 1) suggests that background-check companies are inappropriately collecting and distributing criminal history information records related to expunged criminal records. How does the FBI handle expunged criminal records? Does the FBI collect and distribute information related to arrests that were dismissed or nolle prossed? Does the FBI collect and distribute information related to arrests that resulted in a not-guilty verdict by a judge or jury? When the FBI distributes criminal history record information for employment and licensing purposes, does it delete on its own initiative records related to arrests that were dismissed or nolle prossed or that resulted in a not-guilty verdict by a judge or jury? If not, why not?

IdHS information is voluntarily submitted to the FBI by federal, state, local, and tribal law enforcement agencies. The FBI serves only as the repository for such information. Therefore, upon the request by a state or federal agency, and when the agency submits the necessary information (i.e. – court order), the FBI will comply with the request.

As mentioned previously, the FBI serves only as the repository for IdHS. Congress previously recognized the importance of the exchange of all IdHS for noncriminal justice purposes when it enacted the National Crime Prevention and Privacy Compact (Compact) Act of 1998 (Title 42, United States Code, Section 14611-14616). The Compact was signed into law on October 10, 1998, and became effective upon ratification by two states, which occurred in April 1999. When ratified, the Compact permits the exchange of all IdHS for noncriminal justice purposes authorized by federal or state law. Currently, the federal government and 30 states have ratified the Compact. This ratification required each state to enact legislation that it would provide all of

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

its records (excluding sealed records) in response to inquiries from authorized agencies. Accordingly, as a party to the Compact, the FBI must disseminate all information it maintains for employment and licensing purposes.

Question 12:

The National Employment Law Project suggest that to improve the criminal background check process for employment and licensing, the federal government should implement a system similar to the “Brady check” process for criminal background checks for firearm purchases, known as the National Instant Background Check System (NICS). Please provide the total number of NICS requests, the total number of CHRI’s generated for NICS purposes, and the total number of incomplete offenses that required additional investigation for each of the past five years (2010, 2011, 2012, 2013, 2014). Has the FBI conducted any audits or analyses of the NICS process, particularly with regard to the accuracy and completeness of CHRI in that context? For instance, what is the average cost of searching for incomplete offense information? How many FBI personnel are involved in this process for Brady background checks? How often does the FBI track down incomplete offense information in the prescribed three-business-day time period? Has the FBI considered the feasibility of such a process for employment and licensing?

The following numbers are NICS requests processed by the NICS contracted Call Centers, the FBI, and the NICS E-Check: 2010 – 6,037,394; 2011 – 6,875,625; 2012 – 8,725,425; 2013 – 9,315,963; and 2014 – 8,256,688. When a NICS background check is initiated, a name search is conducted to search three national databases for possible matches. These databases are the National Crime Information Center (NCIC), which contains information on wanted persons, protection orders, and other persons identified as relevant to the NICS searches; the Interstate Identification Index (III), which contains criminal history records; and the NICS Index, which contains information on prohibited persons as defined in the Gun Control Act of 1968, as amended.

The NICS Section responds to a firearm background check with one of three responses: a “proceed,” a “deny,” or a “delay.” In accordance with Title 28, Code of Federal Regulations, subsection 25.9(b)(1)(iii), background checks proceeded are purged from the NICS; therefore, the NICS Section cannot provide the number of IdHSs generated on proceed transactions. The following data contains the number of NICS background checks initially transferred from the NICS Contracted Call Centers to the NICS Section requiring further review due to a record in one of the three national databases being generated: 2010 – 547,502; 2011 – 621,251; 2012 – 790,449; 2013 – 818,610; 2014 – 779,139. The NICS does not capture statistical information for individual offenses.

To search for incomplete offense information for NICS purposes is mandated by law. An analysis of cost for researching incomplete offense information was conducted in previous years

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

since the inception of the NICS. However, that data is not captured annually, and due to the future deployment of New NICS' enhancements, the rates may be affected or outdated.

The current scope of the internal NICS audit conducted by the CJIS Audit Unit does not include review or analyses of the NICS process in regard to the accuracy and completeness of the IdHS.

The NICS Section staffs approximately 500 personnel involved in processing firearm background checks. However, the total does not include the three NICS Contracted Call Centers, and other FBI personnel that assist the NICS Section with various duties regarding the firearm background checks.

The NICS Section does not maintain statistical data for incomplete offense information. However, for the calendar year 2014, of the 8,256,688 checks processed by the NICS Section, 2,849,931 required research. The NICS Section was successful in obtaining the pertinent data within the three-business-day time frame for 2,621,925 of those checks.

Over the years, the FBI has evaluated processes and worked to increase the number of dispositions available. However, the process of obtaining missing dispositions for licensing and employment background checks would be significantly different than obtaining dispositions for the limited scope of NICS firearm checks. The NICS is designed to provide a delay for potential disqualifying NICS prohibitors. Pursuant to the firearm background checks conducted under the Brady Handgun Violence Prevention Act of 1993, the NICS employees must research arrests missing dispositions for delayed firearm checks. Therefore, the NICS employees conduct research on those arrests that are potential NICS prohibitors, not every arrest that is missing a disposition. Only one federal prohibitor is required for a denial of a firearm transaction. Conversely, the FBI does not conduct the adjudications for licensing and employment checks, the disqualifying criteria for each position varies, and the FBI would not know if an arrest was a disqualifier for the position. Accordingly, for those employment and licensing fingerprint submissions that have an identification to an FBI IdHS, the FBI would need to delay the response in order to research each arrest on the IdHS that is missing a disposition. Thus, the number of arrest records needing reviewed would increase. In addition, although a state must respond to the FBI for all firearm purpose requests, some states do not release arrest information to the FBI for licensing and employment purpose requests. Therefore, in those instances, the FBI only provides what it maintains. As a result, the FBI would only research missing disposition information for arrests maintained at the FBI, not arrests maintained only at the state level.

Over the last several years, as a result of the enactment of federal and state statutes requiring background checks, the number of civil fingerprint submissions has increased. Due to automated system enhancements, the FBI has not only been able to accommodate the increase of civil

Honorable Patrick J. Leahy
Honorable Charles E. Grassley

fingerprint submissions, but has reduced the turn-a-round time of the background check (generally less than two hours). To implement a process similar to the NICS would require significant system enhancements, as well as delay the response time. Thus both the turn-a-round time and cost to process these checks would most likely increase.

Question 13:

A federal regulation [20 CFR Section 20.32 (b)] appears to limit the FBI's ability to collect and distribute information related to "nonserious offenses." Please explain the FBI's interpretation of this requirement. Please also explain the status of the proposed regulation 71 Fed. Reg. 52302 (dated September 5, 2006), which apparently sought to eliminate this exception for "nonserious" offenses. Does the FBI decline to collect or distribute criminal history information for "nonserious offenses?" Or does the FBI collect and distribute all information provided by the states without conducting a review of the nature of the reported offenses? Has the FBI conducted any audits or analysis related to the collection and distribution of information related to "nonserious offenses?" If so, please provide them.

This regulation states that IdHS information maintained within the FBI's Fingerprint Identification Records System (FIRS) (now the Next Generation Identification (NGI) and the Interstate Identification Index (III)) System includes serious arrest and/or significant adult and juvenile offenses. That regulation states that these FBI systems exclude arrests and court actions concerning nonserious offenses except when those nonserious offenses are accompanied by a serious and/or significant adult or juvenile offense. The regulation provides examples of nonserious offenses. The regulation does not apply to state records accessible through NGI, including National Fingerprint File (NFF) participating states or records submitted to the FBI prior to February, 1973. An NFF participant is a III participating state that submits a single fingerprint submission for each offender to be maintained at the national level and subsequent arrests are maintained in the state repository.

In June 2001, the FBI Advisory Policy Board moved to have the FBI consider the feasibility of revising the CFR provision to allow the FBI to retain nonserious offenses within FIRS and III. The FBI proposed subsequently such a regulatory revision in the Federal Register on September 5, 2006. After receiving public comments to the notice of the proposed regulatory change, the matter has not been pursued.

The FBI no longer vets arrest charges received from submitting criminal justice agencies to determine if they are serious or nonserious offenses as defined under their respective state laws. The exponentially increasing criminal arrest charges submitted to the FBI to approximately 1.6 million criminal fingerprint arrest submissions per month in 2015 has made manual review of every arrest charge impractical. Moreover, the vernacular names of crimes evolve over time

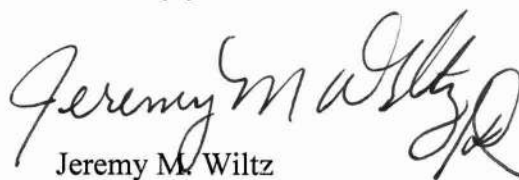
Honorable Patrick J. Leahy
Honorable Charles L. Grassley

(particularly with nonserious offenses) and the names and the designation of crimes varies significantly among states, within each state, and within each state criminal code as to the degree of seriousness of offenses. The subjectivity of state law to the seriousness of an offense coupled with the volume of submissions does not give the FBI the practical ability to manually or electronically screen each offense to accurately determine whether it is a serious or nonserious offense under state law. However, as a practical matter, most serious offenses require fingerprinting. Because the NGI is fingerprint-based, nonserious offenses for which the subject was charged, but not printed, could not be submitted to, or retained by, NGI. Moreover, the FBI provides criminal justice agencies with the ability to query fingerprint records of any criminal arrest against NGI with the option of NGI nonretaining the record. As such, through written agreements between the states and the FBI, when submitting fingerprints in conjunction with nonserious offenses to be searched with the NGI, these fingerprint submissions are categorized as "do not retain submissions" prior to submission to the FBI, therefore directing the NGI to not retain the record.

The FBI has not conducted any formal audits or analysis related to the collection and distribution of information related to nonserious offenses.

I trust this information will be helpful to you. Should you have any additional questions or concerns regarding this information, the FBI's CJIS Division would be happy to discuss further. Please contact the Office of Congressional Affairs at (202) 324-5051 if you wish to do so.

Sincerely yours,

A handwritten signature in black ink, reading "Jeremy M. Wiltz". The signature is fluid and cursive, with a large, stylized "J" and "W".

Jeremy M. Wiltz
Deputy Assistant Director
Information Services Branch
Criminal Justice Information
Services Division