



Work Group Report on the Non-Criminal Use of Criminal History Information

AS REQUIRED BY:

**The Laws of Minnesota 1996
Chapter 408, Article 1, Section 4, Subdivision 3**

**DEPARTMENT OF PUBLIC SAFETY
BUREAU OF CRIMINAL APPREHENSION
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**Per M.S. 3.197 cost of this
report was approximately
\$8,000.00**

Summary of Recommendations

RECOMMENDATION 1:

The BCA should provide training to the non-criminal justice community on accessing and interpreting criminal history information to the noncriminal justice community and provide instructional tools in the form of a printed "Guide" and via the Internet.

RECOMMENDATION 2:

Except when required by State or Federal law or to settle disputed identity, the BCA should continue with current policy to not require fingerprints for licensing/employment background checks.

RECOMMENDATION 3:

There should be on-going monitoring of problems that arise from the "misuse" of computerized criminal history (CCH) data of private entities and a record kept of those problems.

RECOMMENDATION 4:

The Legislature should discuss whether restrictions be placed on the use of criminal history data by private users or holders.

RECOMMENDATION 5:

The Legislature should develop a process for ensuring greater consistency in mandated background checks to eliminate confusion and unintended consequences. The Legislature should consider creating a statutory "explanation of purpose" for background checks in order to clarify the policy reasons that support the statute. They should also utilize the chart in the House Research Report that lists the features of background checks when determining whether to make changes to these statutes as well as when constructing new laws.

RECOMMENDATION 6:

When conducting mandated background checks, the hiring authorities should have discretion concerning how long convictions should impact hiring decisions.

RECOMMENDATION 7:

As some agencies conduct background rechecks periodically and others checks only at initial hire, there should be no change to the current process.

RECOMMENDATION 8:

Because of the conflict between the need for information on a subject's criminal background for licensing, employment, housing and other purposes, and the ~~question of whether prior misdemeanors should "haunt" subjects for the rest of~~ their lives, the legislature should decide the question of whether there should be any limit on how long and what type of misdemeanor information should be disseminated for background checks.

RECOMMENDATION 9:

The issue of releasing conviction information that is not backed up by positive identification should be deliberated in the Legislature.

RECOMMENDATION 10:

The courts should declare and report the level of conviction at sentencing to eliminate any misstatement of the level.

RECOMMENDATION 11:

A standard detailed consent form should be developed and required with the additional requirement of providing a copy to the requestor.

RECOMMENDATION 12:

The data subject should be informed up front of the general implications of the data that will be requested, but there should not be a requirement to inform the "consenter" after the fact of how the data impacted the requestor's decisions.

INTRODUCTION

Chapter 408, Article 1, Section 4, Subdivision 3 (1996 Omnibus Crime Bill) contains the following language:

The superintendent of the bureau of criminal apprehension shall convene a workgroup to study and make recommendations on criminal justice information access and retention issues including processes on expungement, correction of inaccurate records, destruction of records, and other matters relating to the privacy interests of individuals. The workgroup shall also address noncriminal justice agency access to records.

The workgroup shall include representatives of the criminal and juvenile justice information policy group and task force, the supreme court and racial fairness, the department of administration, law enforcement, prosecuting authorities, public defenders, one member of each caucus in each house, and interest and advocacy groups.

The workgroup shall report to the committee on crime prevention in the senate and the committees on judiciary and judiciary finance in the house of representatives by January 15, 1997.

In 1996 the superintendent convened a workgroup to address these issues. As the issues were being framed for presentation to the group, however, it became apparent that a separate workgroup would be necessary to address the diverse issues of non-criminal justice background checks. For that reason, the 1996 workgroup consisting of criminal justice representatives and representatives of the advocacy community only addressed the access and retention issues of the criminal justice community. A report was submitted to the Legislature with the recommendations of the workgroup. Legislation was drafted and passed incorporating the recommendations of the workgroup.

In November, 1997, a second workgroup of the appropriate representatives was convened to address the specific issues surrounding noncriminal justice agency access to records. Attachment A lists the individuals invited to participate.

BACKGROUND

For the purposes of this report, non-criminal justice background checks are defined as searches of the Computerized Criminal History (CCH) system maintained by the Bureau of Criminal Apprehension (BCA) for the purpose of determining whether an individual has a criminal offense that would make them unsuitable for certain employment, licensing or volunteer positions. Non-criminal background checks are a major part of the work at the BCA. Over 110,000 requests are processed each year. Attachment B shows the growth in non-criminal justice background checks over 9 years. In addition, the Department of Human Services does several hundred thousand background checks each year that include queries of the state criminal history system. Queries made on the public access terminal in the lobby of the BCA average over 6,000 queries per month. Of all the queries made of the state criminal history system, including all the criminal justice queries (law enforcement, courts, probation, etc.), over 51% are for licensing and employment.

Over the years, many state and federal statutes have been passed mandating or authorizing criminal background checks on individuals. In addition, legislation mandates accessing juvenile adjudication records when conducting statutorily mandated background checks for employment and licensing. The laws vary on what data can be used to deny employment, and some do not limit use at all but leave it to the discretion of the employer. For some employment positions subjects are rechecked regularly, and in others they are never checked again.

There have been attempts to coordinate efforts in meeting the requirements of some of the laws. For example, the Commissioner of the Department of Children, Families and Learning convened a work group to recommend an efficient and effective process for conducting background checks on candidates for teacher licensure and school district employees. The resulting legislation eliminated multiple background checks and provided school districts with some options. In addition, the Departments of Human Services and Health have coordinated the requirements for their licensing and background checks and specified the offenses restricting licensure and employment in statute.

In addition to state and local laws, many companies make it a part of their hiring process to conduct background checks, including obtaining criminal history information. They utilize the informed consent process as provided in the MN Data Practices Act. The BCA, by policy, has adopted the requirements for informed consent as stated in 13.05, subd. 4. The required 7 elements actually pertain to accessing insurance information only. The irony here is that these private companies are accessing much more information than those that are statutorily mandated to conduct background checks because the consent form the companies use directs the BCA to provide access to all criminal history information. While non-conviction data generally cannot be used against an individual for public employment (MS 364.0), it is not known if non-conviction data is being used to

eliminate job candidates in the private sector.

Many communities have local ordinances which require background checks for a variety of reasons, as well. These may include city employees, supervisors of park programs, tenant screening for public housing, and "McGruff Houses",

During the first meeting of the workgroup, the following examples of the process going "awry" were presented:

- A person was employed in supervisory position in a security company. When the law was passed requiring background checks in 1989, a conviction for misdemeanor theft in the 1950's was discovered. This would have disqualified this individual from continued employment. The individual was able to secure an order to seal the information.
- The Human Resources department of a large local hospital was conducting background checks on current employees. A record was located on a nurse who had been employed for a long time. She was removed from her station and escorted to Human Resources office where she was informed that a background check had revealed that she had a conviction that would mean she could no longer work in that position. After much discussion she was able to convince the director that they had a record on another individual with the same name. Fingerprints were submitted to the BCA where it was determined that the record did not belong to her.
- A background check was conducted on an individual under the Child Protection Background Check law. As required, the subject completed a form and stated that he had not been convicted of any of the listed offenses. The check revealed a criminal record that spanned 13 years preceding the request and included 19 arrests and 10 convictions, of which 5 were for felony offenses. The subject spent time in the Reformatory and had been returned for parole violation on one occasion. Because the felony convictions were not those listed in M. S. 299C.62 , the subject was given the "all clear".

Because the state laws on background checks vary widely and because of the growing use of criminal records for non-criminal justice purposes, a review should be conducted to determine if some consistency should and can be developed. In addition, several data policy issues concerning the use of criminal history data for these purposes should be addressed. This is particularly critical now that juvenile adjudications and certain misdemeanor convictions will be included in the criminal history data base in the near future.

SSUE 1:

Should some form of "training" or "instructional/educational device" be made available to the non-criminal justice users of criminal history information regarding how to interpret criminal records and how to responsibly use and retain the records?

The BCA provides training to the criminal justice community on accessing and reading criminal history records. While they have attempted to respond to special requests for training from groups in the "non-criminal justice" world, many agencies receive and act on information in criminal history records with no formal training on interpreting the records.

In addition to interpreting records, there are occasions when confusion arises about the true identity of an individual and whether a record received actually belongs to the subject being queried on. As many offenders use alias names during their criminal career, the issue of positive identification is a concern. The records released by the BCA contain a caveat cautioning the reader that the record may or may not be the individual on whom the query was made, but there have been cases where it is assumed to be the same person. The BCA can settle any question about identity if fingerprints are submitted, however.

Discussion:

The group felt strongly that, to the extent possible, **training should be provided** for a fee to users of CCH data. The training should address the issues of record interpretation, subject identification, use of CCH data, subjects rights, and informed consent responsibilities. This should be offered as formal training, electronic training (i.e. information on BCA home page), and by providing instructional tools such as a "Guide to Criminal History Records". In addition, a redesign of the CCH record could make interpretation easier.

RECOMMENDATION:

The BCA should provide training to the non-criminal justice community on accessing and interpreting criminal history information to the noncriminal justice community and provide instructional tools in the form of a printed "Guide" and via the Internet.

ISSUE 2:

Should the BCA require fingerprints for background checks to verify identity?

The group felt that training should also address the issue of possible "misidentification" of individuals or assuming that a record with the same name actually belongs to the subject being queried. The current process for the BCA background checks does not routinely require fingerprints. And, while there may be isolated cases of "misidentification" of individuals, it does not seem to be a significant enough problem to require that fingerprints be obtained to conduct a background check. ~~Not only would requiring fingerprints add an expense to the process, but could be considered intrusive to require in all cases.~~ The BCA responses always caution the recipient that the record may or may not be the person on whom they are making a query. There is always the ability to settle any questions of identity by fingerprint comparison and in those cases of questioned identity the BCA may request fingerprints so a comparison can be made. The group felt that any caveat warning recipients about identification should be highlighted to emphasize the fact that the query was done by name and date of birth and may not be the same individual.

RECOMMENDATION:

Except when required by State or Federal law or to settle disputed identity, the BCA should continue with current policy to not require fingerprints for licensing/employment background checks.

ISSUE 3:

Are there any ways to institute control over the use and retention of criminal history data once shared with non-criminal justice entities? Should there be civil or criminal liabilities for private parties who "misuse" criminal history data pursuant to mandated background checks or through informed consent?

The data accessed by the criminal justice community is a combination of public and private data. In the criminal justice community there are many safeguards to assure proper access to and use of criminal history data. Attachment C illustrates those safeguards. Subjects accessing criminal history data in the criminal justice community are assigned passwords and any access is logged. In addition, operators are trained in accessing and interpreting CCH data, certified through testing, and recertified every other year. The network via which they access the data is restricted to criminal justice purposes pursuant to M.S. 299C.46. These agencies are audited every two years to assure, among other

things, that they are only accessing criminal history data for authorized purposes and that any improper access and/or use of CCH data results in discipline such as suspension or dismissal. Repeated serious violations could result in the agency being denied access to the information. While it is recognized that a record may need to be retained to support a decision that was made based on the record, the agencies are instructed to request a new copy for any future use because records are continually updated. As government entities, the agencies are held accountable for the proper use of CCH data by the Data Practices Act.

Discussion:

The group agreed that CCH records have become prominent in making decisions about people. The government entities that use CCH data must use it only for the specific purpose stated. However, the private entities that utilize CCH data are not regulated by the Data Practices Act, which defines the responsibilities for the proper collection, creation, maintenance, dissemination and access to government data. It must be stated that public hearings were not held, so testimony from persons who have been adversely affected was not heard. The Legislature should be made aware of this issue, however, and consider whether the private entities should be held accountable for any misuse of CCH data. As for safeguards, the group discussed the fact that giving informed consent to an entity to obtain CCH data may be a contract and, as such, there are civil remedies if the data accessed is misused in violation of the informed consent. Pursuit of those remedies, however, could be expensive.

RECOMMENDATION:

There should be on-going monitoring of problems that arise from the "misuse" of computerized criminal history (CCH) data by private entities and a record kept of those problems.

ISSUE 4:

Are there any ways to ensure the integrity of the public information that is compiled by private sector companies and sold for a profit? Should the focus be on communicating to potential users of criminal history information that the BCA criminal history record is the "official" record and the only record source that ensures positive identification?

In addition to the thousands of individual queries made at the public terminal in the lobby of the BCA, there are frequent requests for complete dumps of the public CCH data. Some of these requests come from the media and some from agencies in the business of

conducting background checks who then "resell" the data. The documentation sent out with the public data includes the following statement: "because state law (M.S. 13.87, subd. 2) states that the data are only public for 15 years following discharge from the sentence imposed, some of the data on the tape will revert to private status. Pursuant to M. S. 13.09, there could be penalties imposed for violation of the government data practices act. It is your responsibility to assure proper use of this data." This statement, while possibly providing comfort to the BCA, is not enforceable in the private community.

Discussion:

Government entities recognize that certain data is private and that they must handle the information based on that classification. Private industry, however, is not bound by the MN Data Practices Law. Because the public CCH data at the BCA reverts to private status after 15 years have elapsed since discharge from sentence, some of the public data that is disseminated to private industry today may be private data tomorrow. There is no recourse for the subject of the data if private entities obtain public data and still use it after it reverts to private status. It was pointed out that the use of public data generally has no restrictions, while the Legislature has limited the use of some public data, for example, the restrictions placed on access to drivers license record and motor vehicle registration data for some commercial purposes. Those that obtain the public CCH data are not informed of any changes (i.e. court expungement) and, in fact, there is no record of who obtained public CCH data. The BCA, however, goes to great lengths to identify any access to individual CCH records made by criminal justice agencies and all agencies (government & private) that access CCH through the informed consent or mandated background check process. Any such agency that accessed a record in the previous year is notified of a change if the record is sealed or expunged. Since the extent of any possible problem is unknown, the issue of whether it should be recommended to place restrictions on public CCH data was not resolved.

RECOMMENDATION:

The Legislature should discuss whether restrictions be placed on the use of criminal history data by private users or holders.

ISSUE 5:

In mandated background checks, should there, generally, be greater consistency with respect to the elements found in the background checks as presented in the House Research Report , "Background Check Statutes, An Overview, September, 1997?"

The House Research Report provides a chart of all of the statutorily mandated background checks and summarizes the specific requirements of each statute for the following categories: 1) scope of background check; 2) whether the background check is mandatory or optional; 3) the effect of the background check; 4) who requests or performs the check; 5) the procedure for the background check; 6) the rights of the subject; 7) the duties of the subject; 8) liability and immunity issues; and 9) data practices issues. The report suggests that policy makers may wish to use this chart when seeking to amend these provisions or to enact new laws.

Discussion:

The group discussed the report and its value to policy makers. The report is an excellent and comprehensive presentation of the current background check laws. The group did not wish to recommend any changes to current law because they believed they were not in a position to identify all of the policy reasons that shaped the statutes. They concluded that the task of reviewing these laws for possible changes should be done by the legislature. They did believe that it would be helpful if the legislature would review these statutes and sort out those inconsistencies that are based on policy reasons vs. those inadvertent inconsistencies that should be eliminated to avoid confusion and unintended consequences.

RECOMMENDATION:

The Legislature should develop a process for ensuring greater consistency in mandated background checks to eliminate confusion and unintended consequences. The Legislature should consider creating a statutory "explanation of purpose" for background checks in order to clarify the policy reasons that support the statute. They should also utilize the chart in the House Research Report that lists the features of background checks when determining whether to make changes to these statutes as well as when constructing new laws.

ISSUE 6:

In mandated background checks, should there be greater consistency with respect to the time limits when particular offenses should be used as a reason to deny employment?

Some mandated CCH checks identify specific time frames when criminal convictions preclude employment, such as no felony convictions in the previous 10 years. These time frames may be in law or in rule. The Kari Koskinen Act, for example, gives building owners

the option of hiring managers with convictions of some offenses if more than 10 years have elapsed since the date of discharge of the sentence. The Department of Human Services has very specific time frames based on the level of the crime when conviction data is no longer considered a disqualifier. Because other statutes are silent on the issue, it may be assumed that any conviction, however old, would preclude employment.

Discussion:

The group discussed whether there should be permanent disability for convictions. It was generally felt that if there were to be time limits specified, it should be for the statutorily mandated background checks only. Absent a statutory mandate, most felt that the hiring authority should have discretion in this area so that the type of offense could be weighed against the requirements of the job.

RECOMMENDATION:

When conducting mandated background checks, the hiring authorities should have discretion concerning how long convictions should impact hiring decisions.



ISSUE 7:

Should there be greater consistency with respect to whether a background check should be completed once or on a repeated schedule?

Some statutes require rechecking of subjects periodically. School bus drivers are checked each time they renew the school bus endorsement on their drivers license. The Department of Human Services was conducting rechecks each year on their licensed programs and facilities, but now the probation officers and corrections agents are mandated to report any new convictions of persons who are affiliated with these services (M.S. 245A.04, subd.3(d)). In addition, pursuant to M.S. 631.40, subd.2, a presentence investigation of any person convicted of committing a crime against a minor must include information about any professional or occupational license held by the offender. The court administrator must send a certified copy of the conviction to the board having jurisdiction over the offender's license. This alleviates the expense and workload of rechecking each year.

Discussion:

The group agreed that periodic rechecks make sense in some situations, but again, absent a statutory mandate, the discretion whether or not to conduct rechecks should be left with the hiring authority.

RECOMMENDATION:

As some agencies conduct background rechecks periodically and others checks only at initial hire, there should be no change to the current process.

ISSUE 8:

Targeted misdemeanors will soon be included in the criminal history record. Should a time limit be placed on how long these records should be used for employment decisions in statutorily mandated background checks?

In the near future the CCH record will include information on "targeted" misdemeanors. These include: 5th degree assault; domestic assault; DWI; harassment/Violation of restraining orders; stalking; indecent exposure; and violations of orders for protection. As discussed above, the group felt that unless mandated by existing law or rule there should not be time limits on when offenses could be used as disqualifiers. With the requirement to submit information on "targeted" misdemeanors, however, the specific issue of how long misdemeanors should be considered disqualifiers was discussed.

Discussion:

Currently it is not mandated that law enforcement submit prints on subjects arrested for misdemeanor offenses. If an agency wants misdemeanor offenses to be included in the CCH system, however, they can submit the fingerprints when they have the final disposition. This policy assures that we will have complete information as the BCA does not receive misdemeanor dispositions from the courts. For the most part, the misdemeanor information submitted by law enforcement has been limited to theft and 5th degree assault. Even with the implementation of the "targeted" misdemeanors (5th Degree Assaults, Violation of Order for Protection, Misdemeanor DWI, Harassment/Restraining Order Violations, Domestic Assault, Indecent Exposure, Interference with Privacy), the BCA will continue to accept other misdemeanors if agencies submit the fingerprints.

Some group members felt that even misdemeanor offenses can be important information for the hiring authority and is critical to their decision making process. For example, plea bargains often result in misdemeanor convictions for more serious offenses, and when imposition of sentence stayed, felony & gross misdemeanor convictions become misdemeanors after discharge from probation. It was also pointed out that background checks may include checking with local law enforcement or district courts where misdemeanor data is public. But, the retention of misdemeanor information in the courts

is limited, whereas the BCA CCH record is retained for many years. Other group members felt that after a specified period of time, misdemeanor data should not be disseminated.

The Criminal and Juvenile Justice Information Task Force also discussed the issue of misdemeanors and background checks and expressed some additional concerns. The Task Force believes the issue is complex, with divided views, and should be resolved by the Legislature. While professionals making hiring, housing, licensing, and other such decisions feel that any information about a person's criminal background is important to consider, should prior misdemeanors "haunt" subjects for the rest of their lives? There are already mandated background checks that require disqualification for certain types of employment if the subject has been convicted of certain prior misdemeanors. However, should the dissemination of all misdemeanors for background check purposes be unlimited? For example, should a distinction be made between the "targeted" misdemeanors which include more serious crimes against persons and other misdemeanors that might show up in the criminal history record? Also, no matter what might be done to limit the information that is provided for mandated background checks, it would be difficult to place such limits on the information when a subject gives "informed consent."

RECOMMENDATION:

Because of the conflict between the need for information on a subject's criminal background for licensing, employment, housing and other purposes, and the question of whether prior misdemeanors should "haunt" subjects for the rest of their lives, the legislature should decide the question of whether there should be any limit on how long and what type of misdemeanor information should be disseminated for background checks.

ISSUE 9:

Should information from the "suspense file" be included in a statutorily mandated background check?

Final court disposition data is transmitted to the BCA from Supreme Court Systems. The data is placed in a "suspense" file and programmatically matched and linked to arrest data in the CCH system. If no match is found, the court data remains in suspense. A separate project to address the issue of suspended court data has found that often fingerprints are not taken or submitted to the BCA, or if submitted, do not have the same linking numbers as appear on the court information. As a result, the suspense file can contain critical conviction data that does not appear in the CCH system. In the 1997 Legislative session,

299C.13 was amended to include the authority to release data from the "suspense" file to the criminal justice community.

Discussion:

The group saw the need to release suspended court data to the criminal justice community. They felt that this community is trained in making identification decisions when viewing data that is matched by name and date of birth only, and understand the difference between information that is backed up by fingerprints and information that is not. There even seemed to be consensus that government agencies conducting background checks should be given access to this data because there is the assurance of "due process". In private industry, however, there is the danger of placing the onus on the subject of the data to prove it isn't them. It may have real value but there is also real danger. The BCA has a concern about releasing a "no record" response when there truly is conviction data. Some background checks will locate additional information that is not in CCH because their research includes checking with district courts and local law enforcement. Many agencies may not have the resources to conduct that broad of a background check, however. Because there was not consensus on this issue, the group felt it should be debated by the Legislature.

RECOMMENDATION:

The issue of releasing conviction information that is not backed up by positive identification should be deliberated in the Legislature.

ISSUE 10:

Many of these "background check" statutes refer to the "level" of the crime (i.e., felony, gross misdemeanor, misdemeanor). The complexities of the criminal justice system make conviction level extremely difficult to determine. How can the requirements of the statutes be met, and is there the need for some disclaimer as to the "level" of the crime?

Many statutes differentiate between the impact of a felony conviction as opposed to other convictions. The definition of "crime of violence" includes felony violations of certain crimes (M.S. 624.712, subd.5). Apartment managers must be denied employment if convicted of certain felony-level crimes in addition to nonfelony convictions of certain crimes (M. S. 299C.67, subd.2(b)(1)). For example, security guards may not be hired if they have been convicted of a felony or any kind of theft offense, but can be hired if convicted of misdemeanor or gross misdemeanor assault. In addition, the length of time an offense will be considered a disqualifier is often based on the level of the conviction. The Department

of Human Services, for example, does not consider certain felony offenses 10 years after the discharge and certain lesser convictions 7 years after discharge.

The courts do not declare or report the level of conviction. The BCA attempts to determine the level by analyzing the sentence. Over the years, however, there have been exceptions in law where some crimes are given sentences beyond those defined in M.S. 609.02, where levels of crimes are defined. For example, this year an "enhanced" gross misdemeanor sentence was defined that allows 2 years imprisonment for certain gross misdemeanor offenses; M.S. 609.02 defines any sentence over a year as a felony sentence. While Minnesota law seems to determine the level of the offense based on the length of the sentence declared, some judges have indicated that even though they gave a lesser sentence, they would consider the conviction a felony. In addition, Federal gun laws define "felony" as a crime for which more than one year may be given.

Discussion:

The group decided that since the level of crime is so critical to some decisions and is a required element in many of the statutes, the courts should declare and report the level of conviction. This will also serve the criminal justice community by providing more precise data on convictions. The defendants often don't understand what level their conviction is and by declaring the level at sentencing it would be clarified for them.

The Data Policy Subcommittee of the Criminal and Juvenile Justice Information Task Force will continue to explore options for resolution.

RECOMMENDATION:

The courts should declare and report the level of conviction at sentencing to eliminate any misstatement of the level.



ISSUE 11:

Should anything be done on the part of the State to ensure that people are informed of the extent of the criminal history information that will be provided to the "requester" by the BCA?

Many statutes mandating background checks require "informed consent," thereby assuring that the subject is aware that a check will be done and informing them of the consequences. Some even mandate the inclusion of a listing of the data subject's rights to see and/or contest the information. The BCA, by policy, has required the elements specified in M.S. 13.05, subd. 4 for consent forms submitted by private entities not mandated or authorized

to access the information. The statutory mandate, however, only refers to data being supplied to an insurer. In addition, if the request is not for a statutorily mandated background check, the BCA also requires that the consenter's signature be notarized. These specific requirements have posed problems for private companies seeking information from numerous sources. Rather than submit a general consent form addressing all the various data they are requesting, the companies are required to have a form meeting the specific requirements of Minnesota. Some other states also require that a specific form be used. In addition, when a person gives "informed consent" to do a background check, it may be unclear to the "consenter" what information will be provided to the "requester" and how the information will be used.

Discussion:

The group felt the consent form should clearly indicate what is being authorized to be released. There is often confusion about what levels of crimes may be in the CCH system or even the difference between an arrest and a conviction. The BCA does not supply consent forms but rather distributes a sample form that incorporates the elements specified in M.S. 13.05, subd. 4. The BCA has also designed other sample forms to demonstrate the requirements of specific statutes such as the Kari Koskinen Act and the Child Protection Act. Department of Administration Rules (1205.1400, subpart 4) require that unless mandated by law, the consent must identify the consequences of giving consent. Attachment D is a draft of a suggested standard detailed consent form that clarifies what data is being released for private entities not mandated to conduct background checks.

RECOMMENDATION:

A standard detailed consent form should be developed and required with the additional requirement of providing a copy to the requestor.



ISSUE 12:

Should there be a requirement that the "consenter" be informed of whether the criminal history record had an adverse impact on the decision by the "requester?"

Discussion:

The group felt that the subject of the data should be informed of the general implications of any criminal data received. In addition, they felt the subject should be given a copy of the consent form after they signed it. The subject should also be given a copy of any record response from the CCH system. While some in the industry do spend time with a job applicant and discuss any criminal record that was accessed, some members of the

group did not feel there should be a stringent requirement that any time there is a record response, the subject be informed if it had an adverse impact on the decision to hire. Often times there are other reasons besides the data for whatever decision is made. Others felt that the subject should be informed if the CCH record was a factor in the decision, however.

RECOMMENDATION:

The data subject should be informed up front of the general implications of the data that will be requested, but there should not be a requirement to inform the "consenter" after the fact of how the data impacted the requestor's decisions.

The following other issues were discussed in a limited way and no recommendations resulted.

OTHER ISSUE 1:

Should all criminal history data at the BCA be public or should certain data remain private?

Until 1993, all criminal history data compiled and maintained by the BCA was classified as private data. In 1993, data on convictions where it has been less than 15 years from discharge of sentence was made public. Older convictions or arrests that did not result in conviction are still private data. The BCA conducts thousands of background checks every month based on state statute or informed consent. Some of the data released may be public and some may be private. If the query for CCH data is made from the public terminal in the lobby of the BCA, then only public data is obtained. Much confusion has resulted about what data is available and whether it is public or private.

Discussion:

- While certain data (such as arrests) are private in CCH, these data are public at their source and at other locations. Also, there are many exceptions to the private classification of these data such as when a background check is mandated or informed consent is given. Therefore, should these data also be public at the BCA?
- Technology exists today that gives easy access to data that is from public sources other than the BCA (such as local police departments), even though such data is classified as private in CCH. Since these data are accessible anyway, should the data also be public in CCH which could ensure positive identification?

- What are the policy reasons for keeping certain statewide criminal history data (such as arrests and older convictions) private? What are the different privacy concerns when the data involve an arrest vs. a conviction? What is the potential harm to an individual if the state decides to make public all arrest and older conviction data as opposed to allowing access only when there is a statutory mandate or the informed consent of the individual?

OTHER ISSUE 2:

~~*Should there be electronic access of public criminal history data through the "Internet?"*~~

The 1997 Data Practices Act directs the BCA to "facilitate remote electronic access to the public criminal history data by public defenders." In addition, the BCA, in conjunction with the Criminal and Juvenile Justice Information Policy Group, is to submit a "plan for making public conviction data available at locations beyond the office of the bureau of criminal apprehension." Currently public CCH data is available for free viewing only to those that can come to the BCA. Citizens in other parts of the state may request public data by mail, but there is a \$4.00 fee for that information.

Discussion:

Those that cannot come into the lobby of the BCA are not afforded the same access to public data as those that can. If access is causing problems, the Internet could be a solution for making it available throughout the State. The technology is available to accomplish that. Even citizens who do not have home access to the Internet can easily get it through local libraries. The State of Washington is currently working on a project to do that and to build in a charging mechanism to fund it. Many local agencies make data available via the Internet. One MN County Attorney's office, for example, lists all individual criminally charged by their office. They include the subject's name, date of birth, and city of residence.

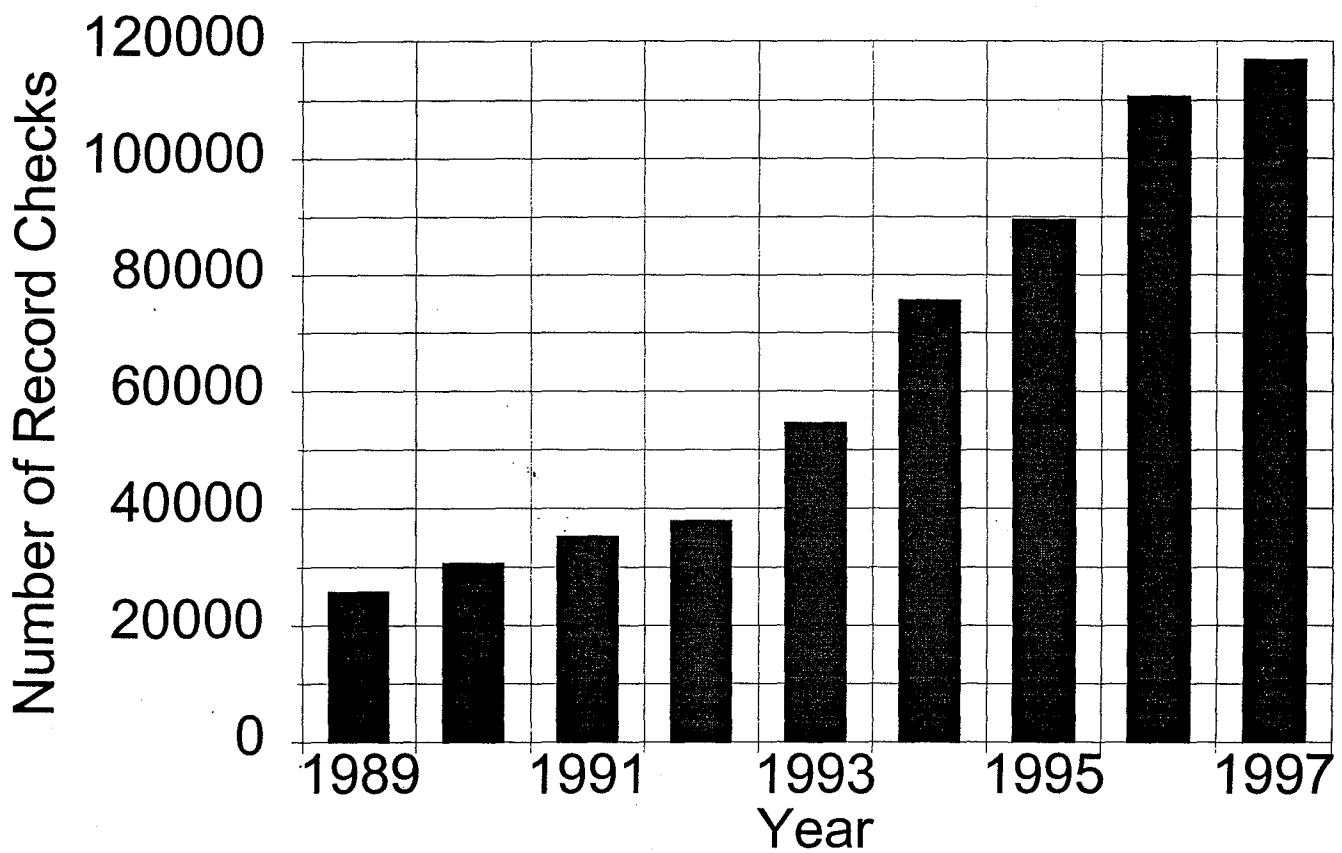
OTHER ISSUE 3:

What other ways could public criminal history data be made more widely available to the public?

Discussion:

Currently when the criminal justice community accesses criminal history data it cannot retrieve only public data. A special query could be designed to allow them to do so. Citizens could then request record checks through local law enforcement. However, this could impose a real work load problem for the law enforcement agencies.

Record Checks By Year



11/4/97

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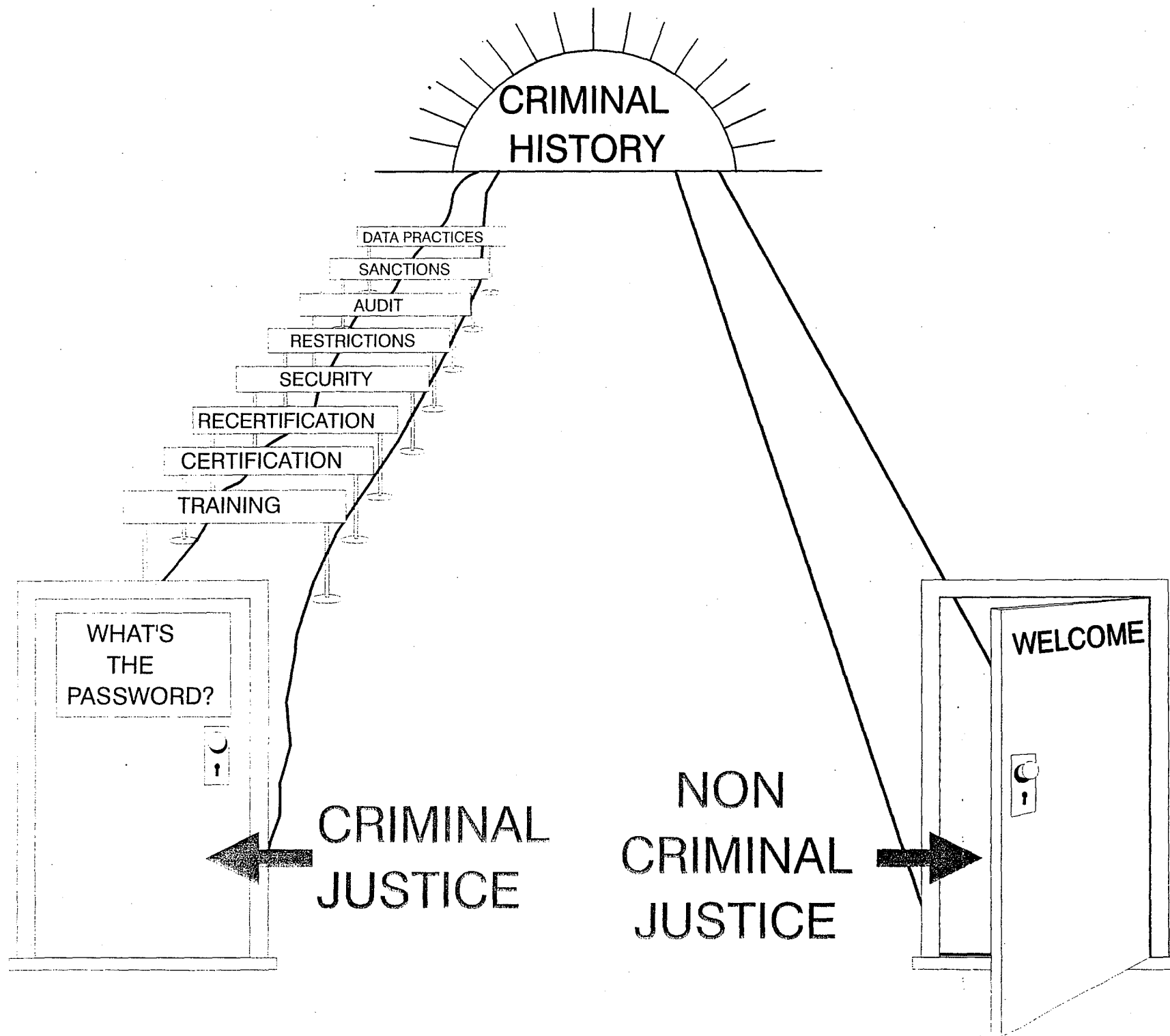
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Sample Informed Consent

Company Name
 Street Address
 City, State and Zip
 Phone

Date: _____

Last Name of Applicant (please print): _____

First Name (please print) : _____

Middle (full)(please print): _____

Maiden, Alias or Former (please print): _____

Date of Birth: _____ Sex (M or F): _____ Race: _____
 Month/Day/Year

I authorize the Minnesota Bureau of Criminal Apprehension (BCA) to disclose all criminal history

record information to _____
 (Specify person/agency/company)

for the sole purpose of making a decision about ☐ Employment ☐ Housing ☐ Volunteering or

☐ Other _____ with this person/agency/company.
 (Specify reason)

I understand that portions of the criminal history record may be private data, and in some instances public data. Private data consists of misdemeanor, gross misdemeanor and felony arrests, all court information, and confinement data in which the party was discharged more than 15 years ago. Public data consists of conviction data described in 13.87, subdivision 2. In signing this release I am consenting to the release of all data maintained by the Minnesota Bureau of Criminal Apprehension, public and private, to the person/agency/company above for the purpose stated.

 Signature of Applicant

 Date

The expiration of this authorization to obtain data from the BCA shall be one year from the date of my signature, unless earlier revoked by me in writing.

Notary:

I understand that I have the following rights:

- ▶ the right to be informed that the above named person/agency/company will request a background check on me,
- ▶ the right to be informed by the above named person/agency/company of the BCA's response to the background check and to obtain a copy of the criminal history record check that was received,
- ▶ the right to obtain from the BCA any data that forms the basis of the report,
- ▶ the right to challenge the accuracy and completeness of the information contained in the record or supporting data by writing to the Commissioner of Public Safety as outlined in section 13.04, subdivision 4,
- ▶ the right to be informed by the above person/agency/company of any consequences which may be a result of the information that is released.