

## USING STATE CRIMINAL HISTORY RECORDS FOR RESEARCH AND EVALUATION

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### Introduction

Each state across the nation tracks and compiles offender criminal records, or “rap sheets,” in repositories which are often maintained by State departments of police or public safety. These repositories hold arrest and criminal case processing information (e.g., arrest date, statutory offense type, charges filed, court dispositions, etc.) for individuals reported to the repository by law enforcement agencies, prosecutors, courts, and corrections agencies.

While criminal history record information (CHRI) is most often used for operational purposes within the criminal justice system, as well as for criminal background checks initiated by public and private organizations for pre-employment screening and firearm purchases, CHRI data also is a valuable resource for empirical research.

**This fact sheet was developed to raise awareness in the research community about the contemporary value of CHRI data for both research and program evaluation.** It briefly describes how CHRI has evolved and improved in quality over time, and it discusses the types of studies CHRI data could potentially support, as well as some of the challenges a researcher may encounter in accessing and using CHRI data.

### The Origins and Evaluation of CHRI

Criminal history records in the United States originally consisted of informal, anecdotal notes maintained by local police officers. As larger cities such as Boston and New York created formal police departments in the mid-1800s, criminal history information began to be systematically collected and centrally stored by law enforcement agencies. In the early 1900s, fingerprinting emerged as the most reliable way to establish a person’s identity, and

criminal history records began to be generated or linked to an individual based on that person’s unique fingerprint. By the 1940s, most states had developed bureaus of criminal identification, and the basic framework for State and Federal repositories of criminal history records had taken shape. By 1981, 49 of the 50 States had a State criminal identification bureau established by law, and all 50 states now have a designated agency responsible for collecting, maintaining and disseminating CHRI.<sup>1,2</sup>

Major efforts to improve the quality of CHRI began in the mid-1960s as the continuous rise in crime led to renewed efforts to reform the criminal justice process. In its 1967 report, the President’s Commission on Law Enforcement and Administration of Justice found serious deficiencies in criminal justice information in general and criminal history record systems particularly. The commission suggested that “criminal justice could benefit dramatically from computer-based information systems.”<sup>3</sup>

This recommendation helped set the agenda for subsequent legislative and administrative initiatives with respect to computerized criminal history records. Foremost among these initiatives was the passage of the Omnibus Crime Control and Safe Streets Act of 1968 and the establishment of the federal Law Enforcement Assistance Administration (LEAA), which worked closely with States and local jurisdictions to improve the administration of criminal justice at every level, particularly through the use of technology.<sup>4</sup> LEAA gave relatively high priority to grants that supported the development of computerized criminal justice information and statistical systems in the States, including computerized criminal history record systems.

For much of the life of CHRI systems at the state and federal levels, criminal history record submissions and record requests were supported by ink and paper

fingerprints. During the 1980s, however, technology was developed allowing state repositories to collect fingerprints and search against fingerprint databases digitally. As a result, the FBI and the States all established their own Automated Fingerprint Identification System (AFIS), and law enforcement agencies began to deploy and use Live Scan equipment (equipment that captures fingerprints digitally) not only to fingerprint arrestees, but also to submit and check criminal records. Together, AFIS and Live Scan enhanced the efficiency with which fingerprint-based arrests and other criminal justice case processing events were submitted to the state repository by law enforcement and other criminal justice agencies. AFIS also enhanced the efficiency with which CHRI was disseminated. These developments also improved the quality and completeness of criminal history records.

In the 1990s, efforts to improve the accuracy, completeness, and accessibility of criminal history records received a boost with the passage of various federal statutes that authorized federal grants for the improvement of state CHRI systems and criminal justice record systems operated by law enforcement agencies and courts. The most transformative improvements to CHRI systems arguably have resulted from federal funding made to the states under the National Criminal History Improvement Program (NCHIP) program, which began in 1995 and continues today. NCHIP was created as a close collaboration between the U.S. Department of Justice, Bureau of Justice Statistics (BJS), State criminal justice agencies, and the FBI. From 1995 through 2018, approximately \$742,000,000 in grant funds were awarded to state and local criminal justice agencies through NCHIP.<sup>5</sup> The program has provided direct financial and technical assistance to States to more effectively capture case disposition data from courts, prosecutor offices, and probation and parole systems. Specific measures included developing protocols and standards for transferring disposition data to the state central repository, linking disposition data to arrest records, installing electronic fingerprinting equipment in courts to identify defendants and facilitate record linkage and

updating “arrest only” records to include case disposition information.

Federal support to the States has led to significant improvements in the collection and quality of CHRI data. While CHRI data still has limitations, its value for research and program evaluation arguably is greater today than ever before. And while CHRI data has been used to support basic and applied research in the past, its potential value for research remains largely untapped.

## **The Value of CHRI for Research**

Contemporary CHRI is a rich data source for a wide range of research applications. Because of the time ordered nature of criminal rap sheets, it is useful for both retrospective analysis (subjects’ justice system contacts preceding an event of interest) and prospective analysis (subjects’ justice system contacts following an event of interest). CHRI data can be used to track an individual’s involvement in the criminal justice system, as well as the criminal justice involvement of groups (or cohorts) of offenders.

Criminal history records can provide researchers with the most comprehensive and easily accessible source of data on recidivism. Since arrest, conviction, and sentencing information is typically captured in a criminal history record, CHRI data can be used to study recidivism, regardless of how it is defined. And accessing recidivism data from a central source is far more efficient than collecting data from multiple criminal justice agencies, as was typically done in recidivism research conducted years ago. Thus, CHRI is a particularly valuable source of data for evaluation studies seeking to determine the effectiveness of programs designed to prevent new or persistent criminal behavior, as well as for criminal career and desistance research.

Recidivism studies have become more complex over the years, as more detailed measures that offer greater insights into offending patterns are increasingly being utilized. For example, it is now recognized that decreases in the frequency,

seriousness, or pace of criminal offending are often part of the criminal desistance process, and each of these can be measured using CHRI. For example, researchers can use CHRI data to measure the time elapsed between an individual's completion of a community-based drug treatment program and a new drug-related arrest, or to compare the average time to rearrest for cohorts of individuals released from prison at different time periods, such as before and after reentry reforms have been implemented.

Given its value in measuring recidivism, CHRI has the potential to support a range of empirical inquiry regarding criminal careers, desistance from crime, or what is now known as redemption research. CHRI data can be used, for example, to study how criminal careers start, progress and end, including how offending patterns change or remain stable over time. CHRI also is potentially valuable for desistance research, as it can be used to discover patterns that lead to desistance, such as reductions in the frequency, seriousness and pace of reoffending.

CHRI can also support redemption research. This type of research seeks to determine the length of time a particular type of offender needs to remain crime free to reduce the risk of recidivism to a level that is comparable to anyone in the population of a similar age. Redemption research using state criminal-history repository data has previously been conducted by Blumstein and Nakamura, whose findings helped raise awareness about the circumstances in which a criminal record becomes less relevant as an indicator of recidivism risk, thereby enhancing employment opportunities for ex-offenders.<sup>6</sup>

Finally, researchers can leverage the multiple criminal justice contact points recorded in CHRI for case processing research to better understand case attrition, and/or prosecutorial and judicial decision-making. For example, CHRI could potentially be used to analyze and compare sentencing patterns in urban vs. rural regions of a state for persons convicted of gun or drug offenses.

## Accessing CHRI

The Code of Federal Regulations contains rules pertaining to the management and dissemination of state and local CHRI.<sup>7</sup> While nothing in the regulations prevents a criminal justice agency from disclosing to the public CHRI "relating to the offense for which an individual is currently within the criminal justice system", this allowance pertains to records of persons convicted of a crime.<sup>8</sup>

Non-conviction data, however, can be directly or through any intermediary only disseminated to: (1) criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment; (2) individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; (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; and (4) individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency.<sup>9</sup>

The regulations do not mandate dissemination of CHRI to any agency or individual. Each CHRI repository, including those at the local level, determine the purposes for which dissemination of CHRI is authorized by State law, executive order, local ordinance, court rule, decision or order. CHRI repositories are required to submit a plan that sets forth their operational procedures, including those relating to record dissemination.<sup>10</sup>

For researchers wishing to access CHRI, a required agreement must specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure that the confidentiality and security of the data meet federal standards. The use of CHRI must be limited to the purpose for which it was given, and agencies disseminating CHRI are prohibited from confirming the existence or nonexistence of CHRI to any person or agency that would not be eligible to

receive the information itself.<sup>10</sup>

The required data use agreement specifies the duties of the data user and of the repository. The researcher's duties typically include receiving Institutional Review Board approval for the study, compliance with requirements to log all criminal records received from the repository, responsibility for physical security of the records and protection from unauthorized access, and record destruction upon project completion. The agreement may also specify any fees associated with record procurement. Also included are bars to secondary dissemination of the records to other entities without additional authorization from repository officials.

### Limitations and Challenges in Using CHRI for Research and Evaluation

Despite the tremendous progress made toward criminal record improvements, several shortcomings in CHRI data remain. Since the process in gathering CHRI is based on operational or administrative needs, researchers are often faced with certain data quality issues when using CHRI data for research and evaluation. Researchers' access to CHRI data is generally accomplished through an electronic transfer of the data and is therefore contingent upon the automation completeness of the records. While 96 percent of the approximately 110 million criminal history records maintained by the state criminal history repositories are automated, researchers should be aware that older criminal records may remain only in a paper format.<sup>2</sup> Automated transfers of such older records could then have a greater likelihood of missing entries. As of 2016, 28 states had fully automated criminal history files, compared to only 19 states in 1993. Also, while not technically an automation issue, researchers should be aware that records that have been expunged or sealed will no longer be accessible.<sup>2</sup>

Due to the decentralized nature of CHRI being collected and recorded by individual local, county, and state agencies, the data may be subject to additional consistency and reliability challenges. SEARCH, a non-profit membership organization

### Other Potential Issues of Data Validity

- ◆ Not all offenses are required to be reported to state CHRI repositories. While felonies are always reported, states differ on which non-felonies are reported.
- ◆ Not all criminal justice involvement begins with an arrest. Sometimes entry into the criminal justice system is initiated through a summons, citation, notice-to-appear, or criminal indictment. If jurisdictions do not make provisions to capture defendant fingerprints during the adjudication process in these cases, court dispositions, even if reported to the repository, may not be posted if they cannot be linked to a corresponding arrest or other case initiation.
- ◆ Some states will overwrite initial court dispositions if an appellate court modifies that finding.
- ◆ Some states purge records once subjects are deceased.
- ◆ Juvenile records are limited, and often inaccessible without a court order.
- ◆ Jurisdictions that employ centralized booking may fingerprint an arrestee twice – once by the arresting agency and once at a county booking facility (a custodial booking) – giving the false appearance of multiple arrests in the CHRI data
- ◆ Submissions of fingerprints by law enforcement agencies for record check purposes have at times been mistakenly submitted as an arrest event.
- ◆ In many states, criminal records do not contain ethnicity data (it is not required by the FBI)
- ◆ All offense type information is connected to a statutory citation. While citations at the paragraph and subparagraph level can provide considerable detail, this still may not be sufficient for some research. Drug statutes, for example, may categorize controlled substance offenses by their DSM-5 schedule type but not provide detail on the actual drug type or amount.

that works with state-level justice officials responsible for managing CHRI to enhance data collection, quality, and use of CHRI, defines CHRI data quality as the extent to which criminal history records are complete, accurate, and timely. Record

completeness (as opposed to automation completeness) is focused on the extent to which offenders' CHRI records include court dispositions as well as arrest and charge information. Missing final court dispositions is an ongoing concern for CHRI researchers. SEARCH found that at the end of 2016, only 68 percent of all arrests in state databases across the U.S. had final case dispositions reported, and twenty-one states – less than half – reported an 80% or higher disposition completeness rate.<sup>2</sup> There has been considerable improvement over the past two decades however, in this area. SEARCH has conducted annual surveys of state CHRI repositories since 1993. At that time, only 10 states reported that 80% or more arrests in their state databases had final dispositions recorded.<sup>11</sup>

Timeliness of data reporting is concerned with delays in delivering CHRI to state and Federal repositories and the timeliness of data entry by repositories. While the SEARCH reporting format has changed somewhat over time, there is evidence of improvement in this area as well. In 1993, most States were reported by SEARCH to be receiving disposition submissions from local courts within 20-60 days of the disposition event, and then recording the data in ten days or less. By 2016, 32 out of 41 state repositories (78%) responding to the SEARCH survey reported that court dispositions were received within 30 days of their occurrence, and 79% reported that the dispositions were entered into the CHRI database within 30 days.

Utilization of CHRI data on criminal justice events besides arrests and dispositions may also face specific challenges. A recent analysis by SEARCH found, for example, that declinations to prosecute often do not appear in CHRI data.<sup>2</sup> Further, only 15 states post indictment information, and only 27 collect charge tracking information (interim dispositions) to show cases status through the criminal justice process. Finally, there are several states that cite and release individuals without fingerprinting for certain offenses, which may result in these events not appearing in CHRI data. For thirteen states, cite and release may even include some felonies.

## Summary

While CHRI is most often used for operational purposes within the criminal justice system, as well as for criminal background checks initiated by public and private employers, this information also serves as a valuable resource for research and evaluation. Because of the time ordered nature of criminal rap sheets, CHRI data is useful for both retrospective analysis (subjects' justice system contacts preceding an event of interest) and prospective analysis (subjects' justice system contacts following an event of interest). Moreover, CHRI data can be used to conduct research on a variety of topics that are important for criminal justice policy making and practice, including: criminal careers, desistance from crime, the effectiveness of recidivism reduction programs, recidivism patterns for different types of offenders and offenses, and the factors that impact criminal case processing and attrition.

Since criminal history records were originally collected for operational uses within the criminal justice system, accessing CHRI data for research purposes can be a somewhat challenging task. Federal regulations do not mandate dissemination of CHRI to researchers, but do allow it. Each state and local CHRI repository, however, determines the purposes for which dissemination of CHRI is authorized by State law, executive order, local ordinance, court rule, decision or order – including research uses. Therefore, it is incumbent on researchers interested in using CHRI data to know the laws and regulations governing access to and the use of CHRI in their state, as well as the administrative procedures that must be followed to obtain CHRI data.

Although considerable improvements have been made in the quality and completeness of CHRI data over the past two decades, CHRI data still has limitations. Missing final court dispositions, for example, remain an ongoing concern for all users of CHRI, including researchers. SEARCH found that at the end of 2016, only 68 percent of all arrests in state databases across the U.S. had final case dispositions reported, and only twenty-one states – less than half – reported an 80% or higher

disposition completeness rate.<sup>2</sup> Despite these limitations, CHRI is a rich, robust data source with untapped potential for use in criminal justice evaluation and research.

## References

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- <sup>3</sup>President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, D. C.: U.S. Government Printing Office, 1967), p. 266.
- <sup>4</sup>Omnibus Crime Control and Safe Streets Act Of 1968 42 U.S.C. § 3789d
- <sup>5</sup> Bureau of Justice Statistics, *NCHIP Awards by Jurisdiction FY1995-2018*. Retrieved from <https://www.bjs.gov/index.cfm?ty=tp&tid=471#Activities> .
- <sup>6</sup>Blumstein, A. and Nakamura, L (2009). Redemption in the Presence of Widespread Criminal Background Checks. *Criminology*, 47(2): pp. 327-359.
- <sup>7</sup>28 CFR, Part 20, Subpart B - State and Local Criminal History Record Information System.
- <sup>8</sup>28 CFR, Part 20, Subpart B, Section 20.20.
- <sup>9</sup>28 CFR, Part 20, Subpart B, Section 20.21.
- <sup>10</sup>45 CFR, Part 46, Subpart A, Section 46.102 .
- <sup>11</sup>SEARCH, The National Consortium for Justice Information and Statistics, Survey of State Criminal History Information Systems, 1993: [www.bjs.gov/content/pub/pdf/Schis93.pdf](http://www.bjs.gov/content/pub/pdf/Schis93.pdf); 1994. Report of work performed under BJS Grant No. 92-BJ-CX-K012.