National Criminal History Record Information Audit Guide For Noncriminal Justice Agency Audits

Under Revision

Table of Contents

Introduction and Background 3
Authorities 3
Pub. L. 92-544 4
Authorized Users and Uses of FBI Identification Records 5
- **Criminal Justice Purposes (Non-User Fee)** 5
- **National Stalker and Domestic Violence Reduction Purposes (Non-User Fee)** 5
- **National Security Purposes (Federal User Fee)** 6
- **Federal Agency Noncriminal Justice Purposes (Federal User Fee)** 6
- **State/local Governmental Agency Employment/licensing Purposes (Non-Federal User Fee)** 7
- **Background Checks on Applicants For Firearm or Explosives-related Licenses or Permits (Non-User Fee)** 8
- **Background Checks on Applicants For, or Tenants Of, Public Housing and Indian Housing (Non-Federal User Fee)** 9
- **Non-Governmental Employment/Security Purpose (Non-Federal User Fee)** 9
- **Background Checks on Individuals Handling Biological Agents or Toxins (Non-User Fee)** 11
- **Emergency III Name-based Background Checks Approved by the Compact Council (Non-User Fee)** 11
- **Humanitarian Purposes (Non-User Fee)** 12
- **Subject of Record (Fee to Cover Costs)** 12
- **Court Orders for Purposes Not Otherwise Authorized (Non-User Fee)** 12

State Statutes 12
Umbrella Statutes 12
Related Agency Doctrine 13
Penalties for Unauthorized Disclosure of CHRI 13
How to Establish the Audit 14
- **Preaudit** 14
- **Preaudit Timeline** 14
- **Sample Size** 15
  - **Cluster Sampling** 15
  - **Simple Random Sampling** 15
- **Audit Cycle** 16
- **Audit Methodology** 16
- **Audit Questions** 16
  - **General and Training Information Questions** 16
  - **Fingerprint Information Questions** 17
  - **Use and Dissemination Questions** 17
  - **Retention and Physical Security Questions** 18
  - **National Child Protection Act of 1993/Volunteers for Childrens Act Example Questions** 18
  - **Outsourcing Standard Questions** 19
- **Audit Tracking Database** 19
- **User Training Manual** 20
  - **General Information** 20
  - **Use and Dissemination** 20
  - **Retention and Physical Security** 20
- **On-site and Mail Audits** 21
- **Reporting Audit Findings** 21
- **Post Audit Timeline** 22

Best Business Practices 22
- **Chain of Custody** 22
- **Employees Subject to CHRI Check** 22

Valid Secondary Dissemination of CHRI 22
Example One: 23
Example Two: 23
Example Three: 23
Example Four: 23
Example Five: 24
Invalid Secondary Dissemination of CHRI 24
Example One: 24
Example Two: 24
Example Three: 25
Example Four: 25
Public Access to CHRI 25
Public Hearing Release of CHRI 25

Introduction and Background

The National Criminal History Record Information (CHRI) Audit Guide was developed by the National Crime Prevention and Privacy Compact Council (Compact Council) in consultation with the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division. The CHRI Audit Guide is intended to be used as a resource document incorporating suggested auditing practices. The CHRI Audit Guide is *only* considered a guideline for auditing noncriminal justice agencies granted access to CHRI. Each state should adopt their own audit methodology based upon the state's operating standards and procedures.

Authorities

The noncriminal justice use of CHRI audit is based on the following guidelines, where applicable:

- Title 5, United States Code (U.S.C.), Section 552, the Freedom of Information Act, requires the records be accurate, complete, timely, and relevant.

- Title 28, U.S.C., § 534, authorizes dissemination of CHRI, and provides that access to CHRI is subject to cancellation if dissemination is made outside of the authorized recipient.

- Title 5, U.S.C., § 552a, the Privacy Act, requires that agencies maintain a system of records which establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records.

- Title 42, U.S.C., Chapter 140, Subchapter II, § 14616, the National Crime Prevention and Privacy Compact (Compact), established the Compact Council, which is authorized to establish rules, procedures, and standards for the use of Interstate Identification Index (III) for noncriminal justice purposes. Determining compliance includes, but is not limited to: assessing participation requirements; the continual maintenance; and security of CHRI.

- Title 28, Code of Federal Regulations (CFR), 20.30, cites the administration of criminal justice shall include criminal identification activities, and the collection, storage and dissemination of CHRI.

- Title 28, CFR, 20.33 (a)(2), authorizes the dissemination of CHRI contained in the III to federal agencies authorized to receive it pursuant to federal statute or Executive Order.

- Title 28, CFR, 20.33 (a)(3), authorizes the dissemination of CHRI contained in the III for use in connection with licensing or employment, pursuant to Public Law (Pub. L.) 92-544, 86 Stat. 1115, or other federal legislation, and for other uses for which dissemination is authorized by federal law.

- Title 28, CFR, 50.12 (b), references the exchange of FBI identification records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.

- Title 28, CFR, Part 906, Outsourcing of Noncriminal Justice Administrative Functions, amends the dissemination restrictions of 28 CFR 50.12 (b), by permitting the outsourcing of noncriminal justice criminal history record checks to either another governmental agency or a private contractor acting as an agent for the authorized receiving agency. Published as a final rule on December 15, 2005, this rule also established the standards, entitled the Security and Management Control Outsourcing Standard (Outsourcing Standard) that must be followed for an agency to outsource these functions.

- Title 28, CFR, Part 906, the Outsourcing Standard, requires contractors to maintain a security program consistent with federal and state laws, regulations, and standards, as well as, with rules, procedures, and standards established by the Compact Council and the United States Attorney General. The Outsourcing Standard identifies the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the III System and criminal history information are not compromised. The security program shall include consideration of site security, dissemination restrictions, personnel security, system security, and data security.

Pub. L. 92-544

Pursuant to Pub. L. 92-544, the FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General's approval authority is delegated to the FBI by Title 28, CFR, § 0.85(j). The standards employed by the FBI in approving Pub. L. 92-544 purposes have been established by a series of memoranda issued by the Department of Justice (DOJ), Office of General Counsel (OGC), Access Integrity Unit (AIU). The standards are:

- The authorization must exist as the result of legislative enactment or its functional equivalent;
- The authorization must require fingerprinting of the applicant;
- The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
- The authorization must not be against public policy; and
- The authorization must not be overly broad in its scope, it must identify the specific category of applicants/licensees.

Additionally,

- The fingerprint submission must be channeled through the State Identification Bureau (SIB) for forwarding to the FBI;
- The states must designate a governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment/licensing;
- The results of the record check cannot be released outside the receiving governmental department or related governmental agency; and
- Processing fees are either by direct payment or billed to the SIB depending on arrangements made between the FBI and the SIB, such as the execution of a Memorandum of Understanding for billing.

Authorized Users and Uses of FBI Identification Records

Criminal Justice Purposes (Non-User Fee)

- Officials of federal, state, and local criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies. [Title 28, U.S.C., § 534; and Title 28, CFR, 20.33(a)(1)]

- Officials of foreign criminal justice agencies for criminal justice purposes. [Title 28, U.S.C., § 534; Title 28, CFR, 0.85(b)]

- United States Marshal's Service when an inquiry (fingerprints or name check) activates a "Stop" placed in the fingerprint records of individuals enrolled in the Witness Security Program. [Crime Control Act of 1970, Pub. L. 91-452]

- Officials of (1) the National Center for Missing and Exploited Children (NCMEC) to be used only within the scope of the Center's duties and responsibilities under Federal law to assist or support law enforcement agencies in administration of criminal justice functions, and (2) governmental social service agencies with child protection responsibilities to be used by such agencies only in investigating or responding to reports of child abuse, neglect, or exploitation. [Adam Walsh Child Protection and Safety Act of 2006; Pub. L. 109-248, § 151]

National Stalker and Domestic Violence Reduction Purposes (Non-User Fee)

- Officials of civil or criminal courts for use only in domestic violence or stalking cases. [Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322; Title 28, U.S.C., § 534]

National Security Purposes (Federal User Fee)

- Officials of Department of Defense, Department of State (DOS), Department of Transportation, Office of Personnel Management, Central Intelligence Agency, or the FBI may submit fingerprints for the purpose of determining the eligibility of a person for: (1) access to classified information, (2) assignment to or retention in sensitive national security duties, (3) acceptance or retention in the armed forces, or (4) appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the Government or performing a Government contract. (These agencies are also permitted full access to the III for such purposes.) [Commonly known as the Security Clearance Information Act, Pub. L. 99-169, amended by Pub. L. 99-569, Pub. L. 101-246, and Pub. L. 106-398; Title 5, U.S.C., § 9101]

Federal Agency Noncriminal Justice Purposes (Federal User Fee)

- Officials of federal agencies for use in investigating the background of present and prospective federal employees and contractors. [Executive Order (E.O.) 10450; Title 28, U.S.C., § 534]

- Officials of federal agencies requiring fingerprinting and a background investigation of employees providing child-care services to those under age 18 at each federal agency and any facility operated by or under contract by the Federal Government.
  [Crime Control Act of 1990, Pub. L. 101-647; Title 42, U.S.C., § 13041]

- Officials of the DOS may submit fingerprints for the purpose of determining the eligibility of visa applicants who the DOS has determined may have a criminal history record indexed in the III. (On-line access to the III [QH only] is permitted to determine if a record may exist for visa applicant purposes.) [USA PATRIOT Act of 2001, Pub. L. 107-56, § 403;
  Title 8, U.S.C., § 1105]

- Officials of federal agencies to enable them to perform a variety of other official duties as may be required by their agency rules or regulations or E.O., etc. [Title 28, U.S.C., § 534]

- Officials of the National Indian Gaming Commission (NIGC) for use in conducting background checks on key employees and primary management officials of tribal gaming enterprises. The fingerprints are submitted to the FBI through the NIGC and the results of the criminal record checks are returned to the NIGC for transmittal to the appropriate tribal gaming commission. [Indian Gaming Regulatory Act, Pub. L. 100-497; Title 25, U.S.C., § 2701 et seq]

State/local Governmental Agency Employment/licensing Purposes (Non-Federal User Fee)

- Officials of state and local governments for purposes of investigating the background of applicants for noncriminal justice employment or licensing purposes if authorized by a state statute that has been approved by the Attorney General of the United States. The Attorney General has delegated to the FBI the responsibility for approving such state statutes. [Title 28, U.S.C., § 534, Note; Pub. L. 92-544; 86 Stat. 1115]

- Officials of state and local governments for purposes of investigating the background of current and prospective employees and volunteers who provide or will provide care to children, the elderly, or disabled persons in the absence of a state statute approved by the Attorney General under Pub. L. 92-544. [National Child Protection Act, Pub. L. 103-209, amended by Pub. L. 103-322 and Volunteers for Children Act, Pub. L. 105-251; Title 42, U.S.C., § 5119a]

  PROTECT Act Child Safety Pilot Program: officials of the NCMEC to conduct background checks on volunteers and employees with Boys & Girls Clubs of America, National Council of Youth Sports, National Mentoring Partnership, and any authorized nonprofit organization that provides care to children. The fingerprints of volunteers working with children are processed for a reduced user fee. This pilot is scheduled to run through August 2008. [Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. 108-21, as amended by Pub. L. 108-458 and Pub. L. 109-162, §1197; Title 42, U.S.C., § 5119a]

- Officials of the National Racing Compact (NRC), recognized as a governmental agency in states that have a state statute approved under Pub. L. 92-544 relating to parimutuel wagering/racing **and** have legislatively adopted the NRC, may submit to the FBI fingerprints of applicants for a national license to participate in parimutuel wagering/racing and receive the results of the record check for use in investigating the background of the applicant. [Pub. L. 92-544; Parimutuel Licensing Simplification Act of 1988, Pub. L. 100-413; 102 Stat. 1101; National Racing Compact]

- Officials of state racing commissions in states with a state statute that has been approved under Pub. L. 92-544 may submit fingerprints of an applicant for a state license to participate in parimutuel wagering to the FBI through the Association of State Racing Commissioners International, Inc., for use in investigating the background of the applicant. The results of the record check are returned to each state racing commission designated on the fingerprint card. [Pub. L. 92-544; Parimutuel Licensing Simplification Act of 1988, Pub. L. 100-413; 102 Stat. 1101]

- Officials of Indian tribal governments may submit fingerprints of applicants for employment by such tribes in a position that involves regular contact with, or control over, Indian children for use in investigating the background of the applicant. The fingerprints are submitted to the FBI through the Bureau of Indian Affairs (BIA) and the results of the criminal record check are returned to the BIA for transmittal to the appropriate tribal government. [Indian Child Protection and Family Violence Prevention Act, Pub. L. 101-630; Title 25, U.S.C., § 3205 and § 3207]

- Officials of state or local government for the purpose of investigating the background of potential employees of private prisoner transport companies. The applicant fingerprints are submitted through the state central criminal history repository to the FBI. [Interstate Transportation of Dangerous Criminals Act of 2000 (Jenna's Law), Pub. L. 106-560; Title 42, U.S.C., § 13726b; Title 28, CFR, Part 97]

- Officials of state government for the purpose of investigating the background of employees or applicants for employment as private security officers. The fingerprints are submitted to the FBI through a participating state's central criminal history record repository in the state of employment. Alternately, for opt-out states or states without a process to accept such fingerprints, fingerprints are submitted through the central criminal history record repository of an alternate participating state other than the state of employment provided the employer obtains the permission of the alternate state. [Private Security Officer Employment Authorization Act of 2004, Pub. L. 108-458, § 6402; Title 28, CFR, Part 105, Subpart C]

- Upon request of the Chief Executive Officer of a state, officials of (1) a state or local child welfare agency for the purpose of (A) conducting background checks on individuals under consideration as prospective foster or adoptive parents or (B) an investigation relating to an incident of abuse or neglect of a minor, or (2) a public or private elementary or secondary school or a local or state educational agency on individuals employed by, under consideration for employment by, or otherwise in a position in which the individual would work with or around children in the school or agency. These fingerprints are submitted through the state central criminal history record repository. [Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, § 153]

Background Checks on Applicants For Firearm or Explosives-related Licenses or Permits (Non-User Fee)

- The FBI and local/state agencies acting as points of contact for the National Instant Criminal Background Check System are permitted full access to the III for the purpose of determining if an applicant is prohibited from purchasing or redeeming a firearm from pawn as provided in the Brady Handgun Violence Prevention Act. Additionally, criminal justice officials may use III for making firearms or explosives-related background checks when required to issue firearms or explosives-related licenses or permits according to a state statute or local ordinance and when a law enforcement agency in possession of a firearm returns it to its rightful owner. (Fingerprint submissions for the noncriminal justice purpose of issuance of firearms or explosives-related

licenses or permits are processed pursuant to Pub. L. 92-544 as set out under paragraph E.1.) [Brady Handgun Violence Prevention Act, Pub. L. 103-159; 107 Stat. 1536; Title, 18 U.S.C., 922; Title 28, CFR, Part 25]

Background Checks on Applicants For, or Tenants Of, Public Housing and Indian Housing (Non-Federal User Fee)

- Officials of Department of Housing and Urban Development (HUD) housing agencies (HAs) may request criminal conviction records on applicants for, or tenants of, covered housing programs for purposes of applicant screening, lease enforcement, and eviction. Fingerprints may be submitted by the HA to the FBI through the SIB, if acceptable to the SIB, or through either the American Bankers Association or U.S. Investigations Services, Inc. for this noncriminal justice purpose. The results of the criminal record checks are returned directly to each HA. (The HA may have its local police department conduct a name check (QH) of the III. If the name check indicates a possible record match, fingerprints will be submitted to the FBI for processing.) [Housing Opportunity Program Extension Act of 1995/1996, Pub. L. 104-120 and Pub. L. 105-276; Title 42, U.S.C., § 1437d(q)]

- Officials of Indian tribes or Tribally Designated Housing Entities (TDHEs) may request criminal conviction records of adult applicants for, or tenants of, housing assisted with grants provided to such tribe or TDHE for purposes of applicant screening, lease enforcement, or eviction. Procedures for obtaining preliminary III name checks and for fingerprint submissions to the FBI are identical to those set forth in paragraph G.1. except that the results of the criminal record checks are returned directly to each tribe/TDHE. [Native American Housing Assistance and Self-Determination Act of 1996, Pub. L. 104-330; Title 25, U.S.C., § 4138]

Non-Governmental Employment/Security Purpose (Non-Federal User Fee)

- Officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions for use in investigating the background of applicants for employment. [Pub. L. 92-544; 86 Stat. 1115; Title 28, U.S.C., § 534, Note]

- Officials of Securities and Exchange Commission (SEC) and self-regulatory organizations (SRO) designated by the SEC. (The SROs are: American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, International Securities Exchange, Midwest Stock Exchange, NASDAQ Stock Market, Inc., New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and the National Association of Securities Dealers.) Every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency is required to fingerprint each of its partners, directors, officers, and employees involved in the transfer/handling of securities. [Securities Acts Amendments, Pub. L. 94-29, amended by Pub. L. 100-181; Title 15, U.S.C., § 78q(f)(2)]

- Officials of Commodity Futures Trading Commission (CFTC) and the National Futures Association. Applicants for registration with the CFTC as Commodity dealers/member futures associations, including futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, floor brokers, and associated persons may be fingerprinted for use in investigating their background. [Futures Trading Act of 1982, Pub. L. 97-444; Title 7, U.S.C., § 12a; Title 7, U.S.C., § 21 (b)(4)(E)]

- Nursing facilities and home health care agencies for background checks on applicants involved in direct patient care. Fingerprints of such applicants are submitted to the FBI through the SIB and the results of the criminal record checks are returned to the appropriate SIB for transmittal to the nursing facility or home health care agency submitting the fingerprints. [Omnibus Appropriations Act of 1199, Pub. L. 105-277,§ 124; Title 28, U.S.C., § 534, Note]

  Under a **pilot program,** officials of participating states designated by the Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services to conduct background checks on prospective employees who have direct access to a patient or resident of a long-term care facility or provider. This pilot is scheduled to run through September 2007. [Pub. L. 108-173, § 307]

- Nuclear Regulatory Commission (NRC) which requires each nuclear utilization facility (nuclear power plant) to fingerprint each individual who is permitted unescorted access to the facility or is permitted access to safeguards information for use in investigating the background of the individual. The fingerprints are submitted to the FBI through the NRC and the results of the criminal record checks are returned to the NRC for transmittal to the appropriate nuclear utilization facility. [Omnibus Diplomatic Security and Anti-terrorism Act of 1986, Pub. L. 99-399; Title 42, U.S.C., § 2169]

- Officials of the Department of Homeland Security (DHS), Transportation Security Administration (TSA) which requires airport operators and air carriers to fingerprint: persons who have escorted and unescorted access, or who may permit others to have unescorted access, to aircraft of an air carrier or to a secured area of an airport that serves an air carrier; (2) persons responsible for screening passengers or property, and their supervisors; and (3) persons who exercise security functions associated with baggage or cargo. The fingerprints are forwarded to the FBI through the TSA. Results are returned to the TSA for transmittal to airport operators and air carriers. [Aviation Security Improvement Acts of 1990 & 2000, Pub. L. 101-604 and Pub. L. 103-272, amended by Aviation and Transportation Security Act, Pub. L. 107-71; Title 49, U.S.C., § 44935 and § 44936]

- Officials of the DHS, TSA for use in conducting background checks on applicants for training in the operation of aircraft. [Flight 100 Century of Aviation Reauthorization Act of 1999, Pub. L. 108-176; Title 49, U.S.C., § 44939]

- Officials of the DHS, TSA to conduct background checks on hazardous materials (HAZMAT) endorsed commercial driver licensees. The fingerprints are submitted to the FBI through the TSA or through one of several participating state criminal history record repositories. Results are electronically forwarded to TSA which makes the fitness determination. [USA PATRIOT Act of 2001, Pub. L. 107-56; Title 49, U.S.C., § 5103a]

- Officials of the DHS, TSA for use in conducting background checks of applicants for a biometric transportation security card to permit entry to a secure area of a seaport facility or vessel. The fingerprints are submitted by TSA to the FBI and the results are returned to TSA. [Maritime Transportation Security Act of 2002, Pub. L. 107-295; Title 46, U.S.C., § 70101, Note, § 70105 and § 70112]

Background Checks on Individuals Handling Biological Agents or Toxins (Non-User Fee)

- Officials of HHS and U.S. Department of Agriculture (USDA) requiring fingerprinting and security risk assessments of individuals handling biological agents or toxins at entities such as hospitals, laboratories, universities, etc. [Agricultural Bioterrorism Act of 2002, Pub. L. 107-188; 116 Stat. 637]

Emergency III Name-based Background Checks Approved by the Compact Council (Non-User Fee)

- Officials of state or local government with a child-placement statute approved under Pub. L. 92-544 and officials of a federal law enforcement agency for a federal agency responsible for the placement of children to conduct background checks on the temporary custodian with whom a child is being placed and all adults residing in the home of the custodian. (The III name-based checks must be followed by noncriminal justice user-fee fingerprint submissions within a time frame specified by the Compact Council.) [Pub. L. 92-544; Title 28, U.S.C., § 534, Note; National Crime Prevention and Privacy Compact Act of 1998, Title 42, U.S.C., § 14611-14616; Title 28, CFR, Part 901]

- Officials of the DHS, Federal Emergency Management Agency (FEMA) to conduct pre-employment background checks on emergency workers hired by FEMA to assist in recovery efforts as a result of natural disasters or other catastrophic emergencies. (The III name-based checks must be followed by noncriminal justice user-fee fingerprint submissions within a time frame specified by the Compact Council.) [Title 28, U.S.C., § 534; E.O. 10450; The Compact, Title 42, U.S.C., § 14611-14616; Title 28, CFR, Part 901]

Humanitarian Purposes (Non-User Fee)

- Officials of local, state, federal and foreign government agencies for humanitarian purposes, e.g., identifying disaster victims. [Title 28, U.S.C., § 534; Title 28, CFR, 0.85(b)]

Subject of Record (Fee to Cover Costs)

- The subject of an FBI identification record may obtain a copy of his/her record by submitting a written request, fingerprints, and the appropriate fee. The subject of the record can also challenge the accuracy or completeness of the record. [D.O. 556-73; Title 28, CFR, 16.30-16.34 and 20.34]

Court Orders for Purposes Not Otherwise Authorized (Non-User Fee)

- Any entity or person for various noncriminal justice purposes upon the issuance of a court order by a federal court.

- State/local courts for various purposes upon the issuance of a court order by a state/local court. (Although state/local courts do not have jurisdiction over the FBI, the FBI honors state/local court orders as a matter of comity.)

State Statutes

Pub. L. 92-544 provides that the funds provided for salaries and expenses may be used hereafter, in addition to those uses authorized hereafter, for the exchange of identification records with officials or federally charted or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by state statute and approved by the Attorney General, to officials of state and local governments for purposes of employment and licensing, and any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as provided for under the aforementioned appropriation.

The Attorney General's approval authority is delegated to the FBI by Title 28, CFR, § 0.85(j).

Prior to fingerprint submission and access to CHRI under Pub. L. 92-544, a state statute must be submitted to and approved by the FBI, OGC, AIU. When changes to an approved state statute occur, the statute must be re-submitted to the OGC, AIU for approval.

Umbrella Statutes

The attractiveness of the Umbrella Statute approach is that, upon enactment by state legislatures, local authorities can determine what occupations should be criminally back grounded, particularly in light of particularized or exigent circumstances, including natural disasters. City councils and county commissions/boards of supervisors meet much more frequently when compared to annual or biennial sessions of state legislatures. Lastly, there may be fewer political impediments to

adopting local ordinances than enacting statutes dealing with a particular profession. For an umbrella statute, the state legislature enacts a state statute delegating to city/county governments the authority to enact a county code/city ordinance meeting the requirements of Pub. L. 92-544.

When a county/city ordinance meets Pub. L. 92-544 requirements, they can use related agency and commonality of purpose. However, if a county/city enacts an ordinance without the prerequisites required to authorize the request for CHRI, they can not request CHRI from another county/city, even for the same purpose. An umbrella statute requires the same approval process.

Related Agency Doctrine

The *CJIS Security Policy* defines "Related Agency Doctrine" as "a legal principle providing for the re-dissemination of CHRI by an authorized recipient. Agencies that have a commonality of purpose and (typically) congruent responsibility, authorized by federal statute or executive order, or approved state statute pursuant to Pub. L. 92-544, can receive CHRI and exchange that information with each other for the authorized purpose originally requested." The agencies must have a unity of purpose and typically, concurrent regulatory responsibility.

If a board or association for the state has approved statutory authority to receive information for licensing/employment and an additional entity <u>is part</u> of the licensing/employment process, that entity is allowed access to the CHRI for adjudication and/or <u>final</u> decision. Authorized Recipients (state and local governmental agencies and their governmental subunits that review FBI identification records to make employment and licensing suitability determinations) can not share CHRI <u>across state lines</u>. There is no related agency or commonality of purpose across state lines. The term "related agencies" does not apply to out-of-state governmental agencies.

Penalties for Unauthorized Disclosure of CHRI

Title 28, U.S.C., § 534, Pub. L. 92-544 and Title 28, CFR, 20.33(b), provide that the exchange of records and information is subject to CANCELLATION if dissemination is made outside the receiving departments or related agencies. Furthermore, depending upon the nature of the offense and the identity of the offender, federal or state crimes may be charged for the willful, unauthorized disclosure of CHRI. Depending on the authority to which the CHRI was authorized for dissemination, penalties may be different according to the authority.

How to Establish the Audit

Preaudit

It is recommended that state repositories or federal agencies establish a preaudit process. The preaudit is a broad-based appraisal of the standard operating procedure of the agency to be audited. The preaudit materials are used to assist in gathering pertinent information prior to the on-site visit. Information gathered in the preaudit materials is used to formulate additional questions to be asked during the visit. Additionally, information gathered from the preaudit materials is used to validate answers from the on-site interview and to assist in determining compliance with applicable laws, policies, rules, and regulations.

The preaudit can provide a fingerprint submission survey to the agency for data quality review. The information gathered for this survey is based on the fingerprint submissions requested by the agency. Information gathered is used to determine the use and dissemination of the CHRI. The preaudit may include notification to the selected agency, audit date and time, and audit procedure overview.

Preaudit Timeline

Days Prior To Audit	Description of Task
130 Days	Request and Review fingerprint submissions; review federal and state statutes
120 Days	Select agencies and create a master audit schedule of agencies
110 Days	Contact the agencies selected; schedule date and time of on-site audit; create itineraries
100 Days	Prepare preaudit packets, agency confirmation letters and surveys
90 Days	Mail preaudit packets, agency confirmation letters and surveys
80 Days	Contact agencies to ensure receipt of preaudit packets, agency confirmation letters, and fingerprint submission surveys
50 Days	Receive preaudit packets and fingerprint submission surveys
49 Days	Prepare travel paperwork and make travel arrangements
45 Days	Perform analysis for preaudit packets and fingerprint submission surveys
15 Days	Reconfirm audit date and time with agencies
10 Days	Conduct internal preaudit meeting

Sample Size

Sampling is that part of statistical practice concerned with the selection of agencies to yield knowledge about an area of concern. The sample should be representative of the agencies and ensure the all agencies are adequately represented.

Cluster Sampling

Cluster sampling and risk analysis are used when choosing the noncriminal justice agencies for the audit. Cluster sampling is a two-stage or multistage sampling. In the first stage a sample of areas are chosen; in the second stage a sample of agencies within those areas are selected. The following are compared when selecting agencies for audit:

- Number of auditors available;
- Time frame for sampling data to be used (3 months, 6 months, etc.;
- Geographic location of agencies;
- Number of fingerprint submissions per agency;
- Number of fingerprint submission rejects per agency;
- Number of fingerprint submission idents per agency;
- Number of fingerprint submission non-idents per agency; and
- Risk Analysis:
  - Does the agency disseminate to non-governmental agencies?
  - Does the agency use multiple authorities for the submission of fingerprints?

Simple Random Sampling

A simple random sampling provides a logistically feasible and statistically valid baseline to compare information regardless of size or record count. The simple random sampling formula is:

$$n = \frac{Npq}{(N-1)D+pq}$$

The following indicates what each letter in the equation represents:

n = sample size to be computed for auditing
N = total number of records
p = ranges from 0.10 to 0.50 (based on an estimate of the highest error rate)
q = 1 - p
D = $B^2/4$ (assumes a 95 percent confidence interval)
B = 0.05; margin of error (conservatively set to 0.05)

Audit Cycle

The CJIS Division began auditing the use of CHRI by noncriminal justice agencies in October 2004. The audits are conducted in conjunction with the National Crime Information Center triennial audit schedule. The purpose of the audit is to assess compliance with noncriminal justice use and the appropriate rules pertaining to the security, maintenance, and dissemination of CHRI. The first audit is an informational audit for the purpose of educating nontraditional users and should be used to establish proper procedures and policies for the access, use, and dissemination of CHRI. The CJIS Division has established a tracking method or audit cycle. The first audit is considered informational or cycle zero. Subsequent audits are cycle one, two, etc.

Audit Methodology

The audit methodology defines the purpose, scope, and objective(s) of the audit. This is the suggested baseline for the audit methodology:

- Audit Program
  - Audit objectives
  - Audit criteria and their sources
- Overview of the audit processes
- On-site/Mail Audit
- Reporting
- Follow-up

Audit Questions

Interview questions should be tailored to ascertain the most relevant information from agency personnel in order to make an assessment on the processes and procedures of the agency. It is important to know the specific authority used for the fingerprint submission and the receipt of CHRI by the agency. Questions should reflect the specific requirements of that authority. Compliance is evaluated with appropriate laws, policies, and regulations pertaining to the use, security, maintenance, and dissemination of CHRI. In order to investigate the use of CHRI, a system security, as well as, case files and other relative documentation should be reviewed to justify criminal history inquiries. The following example questions are provided for consideration:

General and Training Information Questions

General questions are used to document basic information about the agency. This information is used for administrative purposes and to determine the areas where training could be given to strengthen the agency's policies and procedures.

- Is the agency a federal, state, or private agency?
- List the contact personnel for the agency, title, telephone number and e-mail address.

- Who maintains the contact information with the SIB?
- What type of access/user agreement does the agency have? (What type of authority?)
- Has the agency been properly trained on how to read CHRI?
- If an access/user agreement is required between the SIB and the agency, does the agreement reflect the current agency's head signature?

Fingerprint Information Questions

The fingerprint information details the fingerprint process, from the beginning stage (printing the applicant) to the receipt of the fingerprints by the SIB and/or FBI. This allows determination of the Compact Council's best business practice, chain of custody, as defined in the *Identity Verification Program Guide*, and detection of the Pub. L. 92-544 requirement for fingerprint submission through the SIB.

- Explain the agency's process for applicant fingerprint submissions.
- Does the agency take the fingerprints? If no, who takes the fingerprints?
- Who sends the applicant's fingerprint card to the agency?
- Are photographic or other approved forms of identification required when taking the fingerprints?
- If a photographic or other approved form of identification is not required, how does the agency ascertain positive identification of an applicant?
- How does the agency submit prints to the SIB/Repository?

Use and Dissemination Questions

The use and dissemination questions can be asked to determine compliance with Pub. L. 92-544, and Title 28, CFR, 50.12 (b). CHRI must be used solely for the purpose requested and can not be disseminated outside the receiving departments, related agencies, or other authorized entities. If passing CHRI to a third party contractor, for the administrative of noncriminal justice, the Outsourcing Standard identifies the duties and responsibilities with respect to adequate internal controls within the contractual relationship so that the security and integrity of the III System and CHRI are not compromised.

- What is the agency's authority for use and dissemination of CHRI?
- If a state statute, has the authority been approved by the OGC, AIU? Obtain copy.
- Confirm the Originating Agency Identifier (ORI) the agency uses for fingerprint submission.
- Identify the specific reason(s) for which the agency is authorized to receive CHRI.
- Does the agency ensure CHRI is used only for the official purpose for which requested?
- After the initial determination is made, is CHRI reused for any purpose? If yes, explain.
- Is CHRI used for any other purpose other than determining suitability of the applicant?
  - Is CHRI given to the applicant?
- How does the agency receive the results of the CHRI?
- Does the agency grant access to CHRI to another agency?
- Does the agency disseminate the disposal of CHRI to another agency?

- Does the agency archive CHRI through another agency?
- How does the agency ensure record disclosure is only to authorized persons?
- Does the agency receive CHRI for subsequent promotions, transfers, or hiring decisions?
- Does the agency grant access to CHRI to another agency?
- Does the agency disseminate CHRI outside of the receiving agency?
- Does the agency insure that CHRI is disclosed only to authorized personnel?
- Who receives CHRI supplied by the SIB?

Retention and Physical Security Questions

The retention and physical security questions can be asked to determine compliance with Title 5, U.S.C., § 552a. The agencies must maintain a system of records which establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records.

- Does the agency have procedures regarding record storage of CHRI? If so, review.
- Does the agency have procedures regarding record retention of CHRI? If so, review.
- Does the agency have procedures regarding record destruction of CHRI? If so, review.
- Who is responsible for the physical security of CHRI?
- How is physical access to the CHRI controlled?
- Does the agency maintain CHRI in an electronic format/database?
- If so, who has access to the database that maintains CHRI?
- Is the database, password protected, standalone, etc.?
- Does the contractor(s) have access to the database for maintenance or other means?
- Does the agency allow visitors to be unaccompanied in the building where CHRI is stored?
- Is access to CHRI granted on a “need to know” basis?
- What type of personnel screening is conducted prior to access to CHRI?
- Does the agency have written policies regarding disciplinary action taken for the misuse of CHRI?

National Child Protection Act of 1993/Volunteers for Childrens Act Example Questions

The following are two example questions when an agency’s authority to submit fingerprints and receive CHRI is through the National Child Protection Act of 1993 (NCPA)/Volunteers for Childrens Act (VCA). As stated earlier, it is important to consider the specific authority used for fingerprint submission and the receipt of CHRI by the agency and adapt interview questions accordingly. Review the Authorized Users and Uses of FBI Identification Records Section for other examples of federal authorities which may need additional consideration. Questions should reflect the specific requirements of that authority.

- Does the authorized agency, upon receipt of CHRI, report lacking disposition data, conduct research in whatever state and local record keeping systems are available in order to obtain complete data?

- Does the authorized agency make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and convey that determination to the qualified entity?

Outsourcing Standard Questions

The following are examples of Outsourcing Standard questions which can be used in the assessment of the Outsourcing Standard.

- Did the Authorized Recipient request and receive written permission from the State Compact/Chief Administrator of the Repository or, if a regulatory/channeling agency, the FBI Compact Officer to outsource CHRI?
- Is the Contractor given direct access to CHRI?
- Does the Contractor maintain hard copy CHRI?
- Does the Contractor log the dissemination of CHRI?
- What support is the Contractor providing to the authorized recipient?
- Who is responsible for training Contractor employees?
- Does the Contractor have a security program?
- Describe the screening process for contract personnel with access to CHRI?

Audit Tracking Database

It is recommended that state repositories or federal agencies establish an audit tracking database that contains data regarding the audits performed. The following are provided as suggestions for inclusion in the database:

- Name of agency;
- Corrective actions;
- Recommendations;
- Responses from agencies;
- Point of contact information;
- Audit cycle;
- Data reviewed; and
- Additional information, as necessary.

User Training Manual

It is recommended that state repositories or federal agencies establish a user manual which describes and contains all essential information for the user to correctly adhere to local, state, and federal policies and procedures. The manual should also include the description of how CHRI will be provided to the agency, the penalties for misuse of CHRI, and point of contacts for assistance. The following are provided as suggestions for inclusion in the manual:

General Information

- Audit Methodology
- Point of Contacts
- Description of On-site and Mail Audit
- Taking legible fingerprints procedures and fingerprint submission procedures
- Chain of custody procedures

Use and Dissemination

- Procedures for the use of CHRI
- Statutory authority for submission of fingerprints and access to CHRI
- Information on reuse of CHRI
- Screening personnel and disciplinary written policy for misuse
- Procedures for the dissemination of CHRI
- Outsourcing Standard for CHRI
- Information and duties of outsourced agencies
- Authority granted and agreements for outsourcing
- Dissemination of CHRI to a different agency (not outsourcing)
- Dissemination logging/tracking (electronic and/or manual)
- Dissemination methods
- Receipt of CHRI by authorized personnel

Retention and Physical Security

- Physical security methods
- Access to and Disclosure of CHRI
- Electronic format and technical security
- What information is retained
- System audit trail
- Prevention of unauthorized access
- Procedures for the Retention of CHRI (Hard Copy/Soft Copy)
- Length of time retained and exact location retained
- Procedures for the Record storage
- Procedures for the Record disposal/destruction
- Security of CHRI (Physical/Personnel)
- Safeguards for insurance of security and confidentiality

On-site and Mail Audits

Audit programs are designed to determine compliance with applicable system rules, regulations, policies, and guidelines. The CJIS Division bases the audit on generally accepted government auditing standards, which can be found in the United States Government Accountability Office's, Government Auditing Standards, issued by the Comptroller General of the United States. During the audit, auditors may conduct on-site administrative interviews with appropriate representatives for the selected agencies. Interviews may also be conducted with entities to which the SIB/Repository and selected agencies have outsourced third-party support services for noncriminal justice administrative functions. The interview may include a contract/agreement review, and when applicable, a physical security review of CHRI. Depending on the cost analysis and sampling sizes for the SIB/Repository, it is encouraged that all agencies which receive CHRI for noncriminal justices purposes be audited. Consideration must be given to data sampling, travel expenses, budget, time constraints, etc., and therefore, the use of on-site audits and mail audits will be necessary. The on-site and mail audits should be similar in nature and should incorporate questions that ascertain the most relevant information from the agency personnel.

Reporting Audit Findings

After an audit is conducted, whether it is an on-site or mail audit, an audit findings letter/report addressing noncompliance issues for corrective action and recommendations should be completed. The draft audit findings letter/report should be completed and forwarded to the appropriate administrative authority for review and comment. Each audit should result in a report that clearly communicates: the objectives, nature, time period covered by the audit, and scope of the audit, including limitations. Examples include:

- The authorities, policies, laws, and practices used.
- The level of assurance provided by the report.
- A description of the program that was audited, including management's responsibilities.
- The criteria used and their source.
- The observations made.
- The noncompliance issues and recommendations made to point to the direction in which positive changes can be made.
- Responses to noncompliance issues (corrective actions) and recommendations, including the planned action in response to the audit.
- The conclusions reached against each audit.

The SIB/Repository should establish and provide procedures to the agencies for report responses. The procedures should include how to respond, date due, and what information is required. Penalties should also be established and explained for failure to return the audit response within the approved time frame. The SIB/Repository should also establish procedures to provide final responses to the agencies, approval of corrective action and recommendation responses, and re-audit procedures.

Post Audit Timeline

After Audit	Description of Task
5 Days	Review agency questionnaires and determine noncompliance issues
10 Days	Data entry of all necessary information
20 Days	Draft and Mail audit findings letters/reports
40 Days	Contact agencies to ensure receipt of findings letters/reports
90 Days	Findings letters/reports responses due from agencies
100 Days	If responses have not been received, contact agencies
100 Days	Incorporate responses in finding letters/reports
110 Days	Mail final audit findings letters/reports to agencies
120 Days	Contact agencies to ensure receipt of final findings letters/reports

Best Business Practices

The demand for fingerprint-based background checks for noncriminal justice purposes has increased significantly over the past few years. Best business practices have been implemented, and do not require corrective actions, which have a clear violation of regulation, statute, policies, or law.

Chain of Custody

Fingerprinting agencies and contractors have expressed concern that applicants with a criminal history record may have someone pose as the applicant for fingerprinting purposes. Therefore, the Compact Council prepared the *Identity Verification Program Guide* in response to these concerns. This guide is for voluntary use in the development of policy, procedures, and practices for applicant identity verification. It also includes a listing of primary and secondary identification, data support documents, and chain of custody procedures. An agency may employ a process to protect the integrity of the fingerprints when they are forwarded to the SIB and/or the FBI. Proper chain of custody procedures increases the possibility of an accurate record search.

Employees Subject to CHRI Check

Currently there is not a requirement for employees of a noncriminal justice agency, which receives CHRI, to be subject to a CHRI check if not statutorily authorized. Although there is not a requirement, the CJIS Division recommends as a best business practice for noncriminal justice agency employees be subject to the CHRI check, prior to having access to CHRI. In order to support the implementation of this best business practice, a state must enact an approved state statute, which requires the national fingerprint-based background check for employees.

Valid Secondary Dissemination of CHRI

Example One:

The State Department of Education (DOE) is authorized to conduct state and national fingerprint-based CHRI checks under an approved Pub. L. 92-544 state statute. Mr. Doe applies to work for the Wonder County Board of Education (BOE). The BOE conducts a state and national fingerprint-based CHRI check on Mr. Doe. The results of the national CHRI check are disseminated to the SIB. The SIB disseminates the record to the State DOE, who in turn disseminates the record to the Wonder County BOE.

Example Two:

The State Department of Health and Human Services (DHHS) conducts state and national fingerprint-based CHRI checks on all nursing home employees under Pub. L. 105-277. Mrs. Doe applies to work as a Nurses Aide at the We Care Nursing Home. The We Care Nursing Home submits a request for a state and national CHRI check through the DHHS. The results of the CHRI check are disseminated to the state DHHS. The DHHS disseminates the results to the We Care Nursing Home.

Example Three:

The Chief Executive Officer of the State of Pennsylvania has requested authorization to conduct national fingerprint-based criminal background checks on all private school employees and volunteers under the Adam Walsh Child Protection and Safety Act of 2006. North Catholic High School requests the Pennsylvania State Police (PSP) to conduct state and national criminal history checks on all of its employees. The results of the national criminal history record checks are disseminated to the PSP. The PSP disseminates the CHRI to the Director, Human Resources, North Catholic High School.

Example Four:

The Michigan State Police (MSP) has established a statewide contract with the ACME Corporation (ACME) to provide live-scan fingerprint services to governmental and non-governmental agencies authorized to conduct state and national criminal history record checks for employment and licensing purposes. The Michigan DHHS enters into an agreement with the ID Corporation to outsource its noncriminal justice administrative function of performing suitability determinations on individuals that work with the children. The Just For Kids Child Care Center sends all of its employees and volunteers to the ACME to be processed for a state and national criminal history record check. The results of the national criminal history record check are disseminated to the MSP. The MSP disseminates the results to the DHHS, which provides it to the ID Corporation.

Example Five:

West Virginia Department of Child and Family (DCF) denies an applicant's license/employment based upon disqualifying information in his/her FBI identification record. The applicant requests that DCF send a copy of the record to his/her attorney. West Virginia DCF informs the applicant that (a) they can only release the CHRI to the applicant and (b) confirmation of identity must be made. Once DCF verifies that the applicant is the subject of the CHRI, a paper copy of the CHRI is released **directly** to applicant. This dissemination is acceptable. The applicant has a right to challenge the CHRI, or have someone in his/her presence (a personal representative, such as his/her attorney) view the CHRI. However, the record may be released only to the applicant/subject of the record. West Virginia DCF should also log the dissemination of the CHRI and stamp "COPY" on any CHRI released.

Invalid Secondary Dissemination of CHRI

Example One:

The State DOE is authorized to conduct state and national fingerprint-based CHRI checks under a Pub. L. 92-544 approved state statute. Mr. Doe applies to work for the Madison County BOE. The BOE conducts a state and national fingerprint-based CHRI check on Mr. Doe. The results of the national CHRI check are disseminated to the SIB. The SIB disseminates the record to the State DOE, who in turn disseminates the record to the Madison County BOE. Mr. Doe also applies to become a licensed Insurance Agent in the State. The State Insurance Commission requests the State DOE to provide a copy of Mr. Doe's CHRI check. The State DOE verifies that the State Insurance Commission is an authorized recipient and disseminates the results of Mr. Doe's CHRI check to the State Insurance Commission. *This is an invalid procedure because the State BOE and the State Insurance Commission do not have concurrent regulatory responsibility.*

Example Two:

The Chief Executive Officer of the State of Pennsylvania via the Pennsylvania State Police (PSP) has requested authorization to conduct national fingerprint-based CHRI checks on all private school employees and volunteers under the Adam Walsh Child Protection and Safety Act of 2006. North High School requests the PSP to conduct state and CHRI checks on all of its employees. The results of the CHRI checks are disseminated to the PSP. The PSP disseminates the CHRI records to the Director, Human Resources, North High School. The Allegheny County Child Welfare Service is also authorized to conduct state and CHRI checks under the Adam Walsh Child Protection and Safety Act of 2006. The Child Welfare Service is assessing the suitability of an employee at North Catholic High School to become an adoptive parent, and requests North High School to provide a copy of the results of the employee's CHRI check. North High School verifies the Child Welfare agency is an authorized recipient and disseminates the results of the employee's CHRI check to the Child Welfare Service. *This is an invalid procedure because the North High School and the Child Welfare Service do not have a unity of purpose.*

Example Three:

The MSP has established a statewide contract with the ACME to provide live-scan fingerprint services to nonprofit organizations that provide care to children, the elderly, and individuals with disabilities. Later, the MSP enters into an agreement with the ID Corporation to outsource its noncriminal justice administrative function of performing suitability determinations on individuals that work with the elderly. The Boys & Girls Clubs of Flint sends all of its employees and volunteers to the ACME to be processed for a state and national CHRI check. The results of the CHRI check are disseminated to the MSP. The MSP disseminates the results to the ID Corporation. The ID Corporation disseminates the results to the Boys & Girls Clubs of Flint. *This is an invalid procedure because the Boys & Girls Club of Flint is not an authorized recipient.*

Example Four:

The West Virginia DCF denies an applicant's license/employment based upon disqualifying information in his/her FBI identification record. The applicant requests that DCF send the FBI identification record to his/her attorney. West Virginia DCF complies. *This is an invalid procedure because the attorney is not an authorized recipient. The DCF may provide a copy of the record to the subject of the record. The subject of the record may then provide a copy of the record to his/her attorney.*

Public Access to CHRI

CHRI obtained pursuant to Pub. L. 92-544 is not available for public access and may not be released in any form to the public. Information found as a result of a "lead" furnished by CHRI may not be released to the public. The specific disqualifying arrest or conviction data may not be released to the public. The following can be released, "The denial of licensing/employment is due to disqualifiers found during a background investigation."

Public Hearing Release of CHRI

The OGC, AIU, states that there is no legal objection to releasing CHRI to the subject of the record. Once given to the subject, the subject may include the CHRI in public discussion and may disseminate as widely as the subject desires. The public discussion must be initiated by the subject of the CHRI and CHRI can only be released to the subject. If the subject requests the CHRI to be released to the subject's attorney, the CHRI must be released to the subject and the subject may give to their attorney.

Examples
Of
Noncriminal Justice Agency
Forms

GENERIC PREAUDIT QUESTIONNAIRE

Answer the following questions. If more space is necessary, write "see attached" in the space provided and answer the question on a separate page. If a question does not apply, write "N/A" to signify *not applicable*.

- Who is responsible for the administrative authority oversight/management of the agency?
- Who is responsible for the daily operations of the agency?
- What is the specific statutory authority which allows the agency to obtain fingerprint-based national criminal history information (CHRI)? Provide a copy.
- Explain the agency's fingerprint process for applicants and/or current employees.
- How does the agency submit fingerprints to the State Identification Bureau/Repository?
- What is the Originating Agency Identifier, if applicable, used by the agency to submit fingerprints?
- How are the fingerprint submission results received at the agency?
- What is the average monthly volume of fingerprint submissions for the agency?
- Are fingerprint submission results maintained in a database?
- What is the agency's process if a fingerprint rejection is received?
- Does the agency conduct or have access to conduct name-based checks on applicants?
- Explain the agency's process for the storage of CHRI.
- Explain the agency's process for the retention of CHRI.
- Explain the agency's process for the destruction of CHRI.
- Does the agency outsource or have a contact with another agency to perform the noncriminal justice administrative functions? (Destruction, record retention, fitness/suitability determinations, etc.)
  If Yes, Provide the name(s) of the other agency(s) and copy(s) of the contract(s).
- Provide a copy of the agreement between the agency and Repository granting permission for the agency to outsource noncriminal justice administrative functions.

GENERIC FINGERPRINT SURVEY

AGENCY:
ORI:
DATE OF AUDIT:

RN	SUBJECT	OCA	DATE CARD RECEIVED BY FBI	DATE FBI RESPONSE SENT	CONTROL NUMBER	REASON FOR FINGERPRINT CHECK AND APPLICABLE STATUTORY AUTHORITY	RECORD MAINTAINED YES / NO	METHOD OF DESTRUCTION
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								

GENERIC AUDIT METHODOLOGY

Audit Objective(s):
Defines the purpose and objective(s) of the audit. Describes the scope of the audit.

Background:
Cites the applicable federal and state laws, policies, and regulations for which compliance issues are assessed.

Overview of the Audit Process:
Review state system for fingerprint submissions from authorized noncriminal justice agencies (NCJs) for a national fingerprint-based background check.

Review enacted state statutes to the submissions' reason fingerprinted to ensure submissions are only for authorized reasons.

All state statutes granting national fingerprint-based background checks require the approval of the FBI Office of General Counsel, Access Integrity Unit prior to enactment by state's legislature.

Review agreements to ensure each is up-to-date for all NCJs approved to receive CHRI.

Perform analysis to determine audit schedule. (Assess geographic location, type of agency, number of unauthorized reasons, volume of submissions, out-of-date agreements, repealed state statutes, etc.)

Contact NCJs appropriate administrative authority to discuss and schedule the audit.

Extract fingerprint submission data for each NCJ, review and prepare a sampling of data into a fingerprint survey.

Send NCJs schedule confirmation letters and surveys to the appropriate administrative authority.

Conduct audit per state and federal regulations, policies and procedures for the use, dissemination, maintenance and security of CHRI.

Document audit findings and recommendations in a written format and forward to the appropriate administrative authority for review and comment.

Provide audit findings and suggested recommendations to the Repository Administrator and if applicable, the state Compact Officer.

Receive response letter which should include a time-line for corrective action and incorporate response letter into a final audit findings document.

GENERIC AUDIT TRACKING DATABASE

State:	West Virginia	Audit Manager:	Doe, John Kenneth.

Audit Cycle:	0	Audit Date:	2008/03/24
Draft Report Date:	2008/04/12	Final Report Date:	2008/09/02

Agency Name:	Department of Health and Human Services
Agency Mailing Address:	PO BOX 45390, Bridgeport, WV 23459-0987
Agency Physical Address:	1435 Mundy Mill Road, Great Heights, WV 23459-0987
Agency Point of Contact:	Mr. James F. Happiness
Agency POC Telephone:	333-444-8888 ext. 2212
Agency POC Fax:	333-444-9977
Agency POC Email:	jameshappiness@xxx.com

Fingerprint Submissions	Month One	Month Two	Month Three
Idents	3456	3477	3456
Non-Idents	1234	1233	1122
Rejections	34	55	37
Total Submissions	4724	4765	4615

Corrective Action 1:	submitted fingerprints for custodian; not part of statute
Agency Response 1:	will no longer submit fingerprints for custodian
Recommendation 1:	fingerprinted without asking for photo id
Agency Response 1:	will ask for photo id

NAME
TITLE
ADDRESS
ADDRESS
ADDRESS

Dear NAME:

On September 12, 2008, the State Bureau of Identification(SIB)/Repository conducted the noncriminal justice use of national criminal history information (CHRI) Audit. The auditors interviewed Ms. Jane Doe, Assistant Director, Human Resource Division, to review the Department of Human Services' (Department) fingerprint submission procedures and security protocols. Compliance determination is based on state statutes and applicable federal regulations.

The SIB/Repository conducts the CHRI Audit at agencies which have access to CHRI for noncriminal justice purposes by means of civil fingerprint submission through the SIB/Repository. The purpose of the audit is to evaluate compliance with state statutes and applicable federal regulations. The SIB/Repository reviews and analyzes methods used by the agencies to achieve compliance with Title 5, United States Code (U.S.C.), Section 552 and 552a; Title 28, Code of Federal Regulations (CFR); Public Law (Pub. L.) 92-544; the National Crime Prevention and Privacy Compact (Compact); state statutes; and SIB/Repository policies and procedures.

Beginning in August 2008, the SIB/Repository implemented informational audits for access to CHRI for noncriminal justice purposes. During the audit, the Department was assessed for statutory authority, appropriate dissemination, and security of the CHRI. The SIB/Repository auditor reviewed the Department's fingerprint submission procedures and protocols based on Pub. L. 92-544 and the State General Statute § xxx.xx for the purpose of performing fingerprint-based background checks for teachers, janitors and coaches. Mr. John Snyder, Director, was responsible for the administrative oversight of the Department, to include the daily operations.

The following noncompliance issues were identified:

- Use and Dissemination of CHRI, reference Title 28, CFR, § 50.12 (b). The regulation requires that records obtained under this authority may be used solely for the purpose requested and can not be disseminated outside the receiving departments, related agencies, or other authorized entities.

  The Department performed fingerprint-based background checks for the bus drivers and school secretaries, which is not included in the State General Statute approved by the FBI's Office of General Counsel, Access Integrity Unit.

- Retention and Physical Security of CHRI, reference Title 5, U.S.C., § 552a. This regulation requires agencies maintain a system of records which establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records.

  The Department maintains CHRI in a filing cabinet out in the common office area. Although the cabinet is locked during evening hours, it is left unlocked during regular business hours.

The SIB/Repository auditor wishes to thank the Department for their assistance during the audit. A response, with corrective actions for the aforementioned violations, should be sent to Mr. William Wonka, SIB/Repository Director by December 21, 2008. A final report will be provided upon receipt of corrective actions. Questions regarding state and/or federal regulations, policies and procedures should be sent to Mr. Albert Dixon, SIB/Repository Audit Supervisory, at (111) 222-2222. Additional audit questions should be directed to Mr. Brian Doe, CHRI auditor, at (111) 222-2225.

Sincerely yours,