

Identification Newsletter Crime Information Bureau



Director's Corner

Previous newsletters and efforts by the Department of Justice (DOJ) staff have been to obtain open disposition data. Open dispositions are arrests that are reported to DOJ and added to the Wisconsin criminal history record without receipt of a disposition of the case. Open dispositions are normal during the arrest and prosecution process but these were arrests still open after dismissal or conviction.

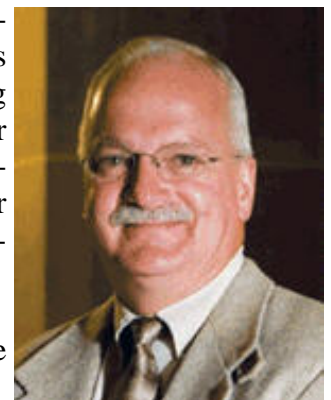
You and the automated processes have been doing such a good job of forwarding dispositions that we have discovered a new problem, dispositions without an arrest. Much of this newsletter concentrates on this new issue and how we working together can try and resolve it. Crime Information Bureau (CIB) staff will be attempting to obtain arrest ten print fingerprint cards by identifying dispositions that have arrests not reported to DOJ. The foundation of the Wisconsin criminal record database is to have a fingerprint card on file for each arrest to ensure positive identification. Therefore, dispositions without an arrest are not posted to a criminal history record. We will begin with the felony convictions first.

In the mean time, I encourage you to review your departmental procedures to ensure individuals arrested or taken into custody are fingerprinted and submitted to DOJ in accordance with statutes 165.83 & 165.84. I request your cooperation and assistance in addressing this new issue.

The upgrade of the Automated Fingerprint Identification System (AFIS) is completed. As mentioned in previous articles one of the significant enhancements will be increased lights out processing (without manual intervention). This processing now allows for the availability most current criminal record to everyone as soon as possible. Another enhancement is email notification if a fingerprint submission is rejected upon submission allowing you to reprint while the subject is still in custody. This will require that your agencies create and designate a generic mailbox email address, visible to all booking staff, to ensure timely notifications. An additional email will be sent to your mailbox once the fingerprint submission has been processed and include the assigned State Identification Number (SID).

You can read more about each of these items in this month's newsletter. Please feel free to contact me or any of the CIB staff with your ideas and suggestions.

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Unmatched Dispositions

The Problem: In the past the primary outstanding issue with records in the criminal history database was arrest records without dispositions. These are a result of final disposition information not being received from prosecutors or courts for each arrest charge reported by law enforcement.

Today due to interfaces with PROTECT and CCAP, another area of utmost concern has developed. This issue is dispositions received from PROTECT and CCAP where no arrest fingerprint card has been submitted by law enforcement. This issue become especially troubling when the dispositions being reported are convictions for felonies or other offenses that would disqualify individuals from employment or licensing in certain professions or from legally purchasing or possessing a firearm.

Disposition data reported by PROTECT or CCAP without a matching arrest fingerprint card to associate with the disposition information is not added to anyone's Wisconsin criminal history record. CIB does not maintain a database of disposition information that can be queried as part of any type of background check. Disposition information received electronically simply sits in error queues waiting for the arrest information to be received. Without the associated arrest information these dispositions are not available to those persons who must rely on the criminal history information contained in the Wisconsin criminal history database or the Interstate Identification Index. Of primary concern are criminal justice uses such as officer safety, criminal investigations, charging and sentencing decisions. Non-criminal justice uses include caregiver or day care entities for employment or licensure, the Department of Public Instruction for teacher licensing, the Department of Regulation and Licensing for any of their 75 licensed occupations, the Transportation Safety Administration for hazardous materials drivers, Wisconsin's Handgun Hotline, the National Instant Background Check System and other state programs for firearms transfers.

The following table indicates the severity of the problem. These counts are as of September 30, 2010.

CCAP Conviction reports without corresponding Arrest Fingerprint Card	
Felony	15,763
Misdemeanor	62,440
PROTECT Charge Issued reports without corresponding Arrest Fingerprint Card	
Felony	12,166
Misdemeanor	35,884

These numbers indicate there are over 78,000 criminal convictions for which no arrest card was submitted by law enforcement. Over 20% of these convictions are felonies and automatically disqualify a person from possessing a firearm. However without an arrest fingerprint card this felony conviction information remains unavailable for use in making an eligibility determination. Some percentage of the misdemeanor convictions undoubtedly include domestic violence and drug convictions which also may represent a firearms disqualification.

PROTECT also reported over 12,000 instances where felony charges have been issued by the District Attorney where no arrest card exists at CIB. While some of these cases may involve an unmatched disposition received later from CCAP many involve currently pending cases. The sole fact that a felony charge has been issued against an individual serves as a firearms disqualifier. But lacking the corresponding arrest fingerprint card the charging information is unavailable for use in firearms eligibility decisions or for any other potential purpose. PROTECT reported another 35,000 misdemeanor cases being filed against defendants where CIB had not received arrest fingerprint cards from law enforcement.

For 1 out of every 5 charging decisions received from PROTECT in 2009, no arrest fingerprint cards were submitted by law enforcement. There are no available reports from the PROTECT system to indicate how many cases are not forwarded to CIB as the case lacks the linking information required to trigger transmittal of the PROTECT file to CIB. That would tend to indicate that law enforcement is only capturing fingerprints in 80% of criminal referrals at best. Any additional numbers of charging decisions not forwarded due to missing data would only further degrade that percentage.

While a similar comparison to dispositions received from CCAP is less drastic the reason is simple. PROTECT is designed to report charging decisions for all arrests involving fingerprint capture, CCAP reports only those adjudicated by the circuit courts. If no criminal charges are filed or the case referred to a municipal court, no disposition data is received via CCAP. Still, in 2009 12.4% of the dispositions forwarded by the CCAP interface found no corresponding arrest fingerprint card at CIB.

While these numbers are sobering it does not paint the entire picture. Both PROTECT and CCAP submit information to CIB only when certain data fields are complete and a triggering event takes place. Those data fields and triggers are discussed further in the *Disposition Transmission Triggers* article later in this issue. In addition to the felony conviction dispositions reported by CCAP for which arrest fingerprint cards were not found, in 2009 another 9,000 felony dispositions and 17,000 misdemeanor dispositions were not forwarded by CCAP to CIB. This is caused by required linking data missing from the CCAP record. There are three causes for this information missing; 1) no arrest fingerprints having been captured; 2) the ATN or other linking information not being provided to PROTECT or CCAP by the booking agency or; 3) the ATN or other linking data not being entered in PROTECT and/or CCAP. Percentage of CCAP dispositions sent to CIB range from 23.2% to 99.85% (Kenosha County) for misdemeanors and 38.2% to 99.7% (again Kenosha County) for felonies. Overall Kenosha County reported 99.78% of all felony and misdemeanor dispositions to CIB in 2009.

The Solution: We need to do a better job of submitting arrest fingerprints. All charging or disposition data must refer back to an arrest submission. Charging or disposition reports without an original arrest fingerprint card on file are useless as the information they contain is unavailable unless linked to arrest fingerprints.

In order to capture the missing arrest information CIB will be mailing lists of CCAP felony convictions without supporting arrest fingerprints. These lists will be mailed to the arresting and/or booking agencies as indicated in the CCAP record. We will be asking agencies to check their files for the arrest fingerprints that correspond to the conviction. If such fingerprints exist the agencies will be requested to send them to CIB for processing. If the agency requests the fingerprint cards be returned, CIB will send them back once processing has been completed.

Submission of the arrest fingerprint cards will end the participation for the arresting or booking agency. However staff at CIB must then manually link the arrest information to the PROTECT and/or CCAP information currently stored in error queues to complete the arrest cycle. While this process is arduous it is the only method of maintaining confidence in the criminal history database.

Once the process has been completed for unmatched felony dispositions the process will be undertaken for the unmatched misdemeanor convictions. It has yet to be determined if this will include all misdemeanors or be limited to those causing ineligibility for firearms possession, certain employment or licensure. DOJ will explore the possibility of distribution of similar lists of unsupported disposition information to law enforcement on a regular basis to keep the criminal history database updated and current.

If your agency is in possession of any arrest fingerprint cards that have not previously been submitted, feel free to send them to CIB in advance of this mailing seeking missing arrest cards. Please contact Joan Wolfe at wolfejk@doj.state.wi.us or (608) 264-9490 prior to sending to CIB. Advise the approximate number and age of the arrest fingerprint cards and whether or not they need to be returned. You may also contact Joan if you have any other questions about this process.

Statutory Changes

2009 Wisconsin Act 258 made significant changes relating to adjudications for involuntary commitments, appointment of a guardian and protective placement or protective services with regards to background checks for the purchase of firearms. Enactment of this legislation moves Wisconsin toward compliance with the NICS Improvement Act (Public Law 110-180).

Under the previous involuntary commitment statute [s. 51.20(13)(cv) Wis. Stats.] a person is prohibited from possessing a firearm if involuntarily committed by a court AND ordered not to possess a firearm. Only under those circumstance was the person prohibited and only then may courts report that information to DOJ. The statute further permitted DOJ to use the data only as part of a firearms restriction search pursuant to s. 175.35 (2g) (c). This effectively prohibited DOJ from sharing the information with the National Instant Background Check System for use in a federal firearms or explosives background checks.

2009 Act 258 (effective July 1, 2010) made significant changes to the law. Courts are now required to determine if an individual is prohibited from possessing a firearm under 18 USC 922 (g)(4) and subsequently order the person to not possess any firearm plus order the seizure of any firearms owned by the individual. This applies to involuntary commitments under s. 51.20(13) and 51.45(13), guardianships under s. 54.10(3) and protective placement under s. 55.12. Pursuant to federal law the individual is then permanently prohibited from possessing a firearm. Act 258 also permits DOJ to share this information with the federal National Instant Criminal Background Check System (NICS). These mental health records are then available to the federal system and other states accessing records in the NICS Index for the purposes of firearms restriction searches only. This information is not available for any other purpose, including criminal justice.

However, Act 258 also creates a process under which an individual may petition a court for relief from the firearms disability. A court in granting relief must consider the circumstances regarding the commitment, guardianship or protective placement. The person's record and reputation must indicate the person is not likely to act in a manner dangerous to public safety and that granting of the request would not be contrary to public interest. The provisions of the relief program were submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives for review. Granting of relief by a circuit court will remove the mental health restriction at both the state and federal level for firearms possession. Relief can not be granted for explosives.

Initially courts in Wisconsin will be reporting involuntary commitments, guardianships and protective placements to DOJ by mailing, faxing or emailing reporting forms to DOJ. An interface is being developed with CCAP to automatically report these adjudications along with any granting of relief. DOJ will then be responsible for forwarding the information to the NICS system.

2009 Wisconsin Act 76 greatly expanded the list of serious offenses for which an individual can be denied being licensed, certified or contracted to provide child care in addition to being employed or permitted to reside at a premises where child care is provided. However DOJ can only provide such arrest and conviction information when agencies submit arrest fingerprint cards for these offenses. Criminal justice agencies should review this list of offenses in s. 48.685 (1)(c) and s. 48.685 (5) (br) Wis. Stats. as amended by Act 76 to make sure all applicable arrests are being reported. These offenses apply to both adult and juvenile arrests. Day care background checks include juvenile criminal history information where appropriate. The law also prohibits a person charged with any of the disqualifying offenses from being licensed and requires more frequent background checks for day care providers. DOJ is also working with CCAP to develop an interface to report the filing of a complaint or petition alleging any of the disqualifying offenses in order to comply with the Act. Pursuant to statute the information maintained in the daycare adjudication database is not available to law enforcement. Corresponding information reported via fingerprints is available for criminal justice purposes.

Frequent Arrest Submission Errors

When an arrest fingerprint card is submitted a search is conducted against the fingerprints contained in the Automated Fingerprint Identification System (AFIS) to determine if the individual has an existing state identification number (SID). If yes the arrest event is added to the existing record, if no a SID is assigned and the arrest information added.

If the arrest information contained on the arrest fingerprint card contains no errors the record is updated automatically. If the data contains errors staff at the Crime Information Bureau must resolve the errors prior to the adding of arrest information to any record. This error resolution may greatly increase the amount of time necessary to add arrest information to a criminal history record. Any such delays are unacceptable when it comes to the use of criminal history information for officer safety, firearms eligibility, licensing or employment decisions.

In an effort to lessen these errors, the following are the most common errors in arrest data. Please make any effort necessary to ensure the arrest data your agency submits does not contain these errors.

- **Jail Intake submission without required sentence information.** Jail and prison intake submissions were intended to be used when an individual was booked to begin serving a sentence imposed by a court. If an individual is not reporting to serve a sentence then the submission type should be AR not JL.
- **Improper reporting of ordinance violations.** When reporting county or municipal ordinance violations the offense must be entered in the Arrest Charge Ordinance Literal field of the fingerprint submission. All data in the statute fields is validated when received at DOJ. Placing ordinance information in the statute fields will cause the record into error. Do not enter ORD, CITY ORD or COUNTY ORD in the statute number field or enter ISSUE OF WORTHLESS CHECKS ORD in the statute literal field. ISSUE OF WORTHLESS CHECKS ORD should be entered in the Arrest Charge Ordinance Literal field, which is not validated at DOJ and will accept data as submitted.
- **Missing NCIC Code.** All arrest charges must have a corresponding NCIC code. NCIC codes are assigned to all offenses in the standardized state statute table. Local agencies must assign NCIC codes to their ordinance violations.
- **Severity code errors.** Severity code is required, one alpha character in length and must be one of the following: F - felony, M - misdemeanor or N - Non-criminal.
- **Date Errors.** Date printed, disposition date or sentence date cannot be before the date of arrest. No date can be prior to the date of birth.
- **Alias or Nickname errors.** Any alias or nicknames submitted must have a value in both the last and first name fields. If a single name alias or nickname is entered use the last name field and an X should be entered in the first name field.
- **Arresting or Booking Agency ORI.** The agency indicated as either the arresting or booking agency must be a law enforcement agency, not a court or prosecutor. The arresting agency is the law enforcement agency seeking the charges reported on the fingerprint card. The booking agency is the entity capturing and submitting the fingerprints.
- **Source code.** The source of the information being reported. For arrest fingerprints this is always the arresting law enforcement agency. Prosecutors and courts do not submit arrest fingerprints only charging and disposition data. P does not stand for police and C does not stand for criminal justice. The codes are:
 - A - Arresting Agency
 - P - Prosecutor
 - C - Court

Please review your submissions to determine if you are making any of these errors and take steps to correct.

Firearms Prohibition Spotlight

Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance

The following guidelines defining the federal disqualifier were published in the Federal Register: Volume 62, Number 124, Rules and Regulations, Page 34636, June 27, 1997:

As proposed in Notice No. 839, the terms “*controlled substance*” and “*unlawful user of or addicted to any controlled substance*” are defined as follows:

Controlled substance. *A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.* **Unlawful user of or addicted to any controlled substance.** *A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year, or multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year.*

The DOJ Office of Policy Development inquired whether the proposed definition includes persons found through a drug test to use a controlled substance unlawfully, provided the test was administered within the past year. In response, ATF agrees that this information would give rise to an inference of unlawful drug use. Accordingly, the final regulations are being amended to identify these persons in the definition as an example of unlawful drug user.

While this disqualifier is temporary (one year from the date of conviction or last arrest) 9.4% of denials in 2009 were based on this federal disqualifier ranking it as the fourth most common reason for denial statewide. In 2008 nationally 7.54% of all denials were due to controlled substances making it the third most common reason for firearms denial nationally.

The following are the guidelines used to establish the Inference of Unlawful Use of a Controlled Substance:

- Conviction for use or possession of a controlled substances within the past year; or
- Multiple arrests for use or possession of a controlled substance within the past five years if the most recent arrest occurred within the past year; or
- A person found through a drug test to use a controlled substance unlawfully provided the test was administered within the past year; or
- A person who admits to use or possession of a controlled substances within the past year; or
- Evidence of possession of a controlled substance within the past year provided a field or chemical test was administered to establish the substance was a controlled substance.

This last guideline would also apply to any drug arrest within the past year without a conviction if it can be

proven the individual or the substance in their possession tested positive. Also included would be any arrest for drug paraphernalia where the residue tested positive.

Lastly while alcohol is not considered a controlled substance for this purpose, any person operating a motor vehicle while under the influence of a controlled substance would be disqualified for one year from the date of conviction or one year from the arrest date if there was a positive evidentiary test for the presence of controlled substances in their blood. This also applies if the controlled substance is not being used in the manner prescribed by the physician.

All drug arrests that could potentially be disqualifiers are researched as part of a firearms restriction search whether at the state or federal level. However there are steps that can be taken by law enforcement to reduce or remove the need to such research. The most effective method is to include additional information in the arrest comments field of arrest fingerprint cards. These comments could be similar to:

- Admitted use of methamphetamine
- Positive drug test for cocaine
- Residue tested positive for THC
- Misuse of prescribed oxycontin
- Positive evidentiary test for amphetamine

The other important point to note is that the offense charged or convicted need not be a felony or misdemeanor but also includes forfeitures such as municipal ordinance violations. This would include violations for possession of controlled substances, possession of drug paraphernalia (where the residue tested positive) and any arrest or conviction for operating a motor vehicle while under the influence of a controlled substance.

The underlying issue is how information becomes available for use in making firearms determinations by Wisconsin's Handgun Hotline, the federal National Instant Background Check system and all other state firearms Programs. The only method of making sure all drug arrest and conviction information is available is through the submission of arrest fingerprint cards for all drug offenses of any severity and all arrests for Operating a Motor Vehicle while under the influence of controlled substances.

Arrest statistics for 2009 demonstrate the underreporting of arrests for drug offenses. Agencies reported making 25,259 adult drug arrests in 2009 to the Office of Justice Assistance in their uniform crime reports. This number represents only arrests where a drug offense was the most severe offense for the arrest event. For the same year, 21,187 adult drug arrests were submitted to DOJ on arrest fingerprint cards. This indicates a minimum of 16% of drug arrests are not being booked, making this data unavailable for firearms restriction searches. s. 165.83 (2)(a)2 Wis. Stats. requires arrest fingerprints be submitted for all drug arrests.

Positive Drug Tests & Firearms Eligibility

One question that inevitably arises out of the federal prohibition for unlawful users of controlled substances is whether a positive drug test conducted as a condition of probation or a court-ordered restriction prohibit an individual from firearms possession. The answer as provided by the Bureau of Alcohol, Tobacco, Firearms and Explosives is yes, the subject is prohibited for a period of one year from the date of the positive test.

The issue is how this information can be reported to the Department of Justice for use in firearms restriction searches. There is currently no method in place to report such violations of bond, deferred prosecution agreements or conditions of probation. Until such time as a reporting system is in place this information cannot be routinely used in making firearms eligibility determinations.

AFIS Upgrade Changes

The Department of Justice worked with MorphoTrak to replace Wisconsin's automated fingerprint identification system with a new system utilizing lights out technology. Lights out allows the AFIS to make the majority of identification decisions based on established parameters for those fingerprint submissions not requiring operator intervention. For fingerprint submitters lights out means fingerprint comparisons can be made 24 hours a day, seven days a week on ten print cards similar to other systems, such as Fast ID.

To utilize the full advantages of lights out for local law enforcement DOJ will be changing the system currently used to access search results of arrest fingerprint submissions. The Fingerprint Data Router (FDR) included with the new AFIS now pushes an identification message out to fingerprint submitters. In addition notice of any rejected fingerprints will be sent including the reason for the rejection. This reject message allows the submitting agency to correct the errors in the submission and resubmit immediately. This is extremely important if the error involves fingerprint images. By receiving the error message immediately upon transmission any fingerprint errors can be corrected by recapture while the subject is still in custody. Unlike communicating with the old email server, the FDR will communicate with each agency's email address via the public internet. Any workstation and email address designated to receive these messages from the FDR does not need access to BadgerNet.

Example of identification response message to be implemented late in November:

From: fdr-reply@fdr.wdoj.afis.local
[mailto:fdr-reply@fdr.wdoj.afis.local]
Sent: Monday, October 25, 2010 7:41 AM
To: Fingerprints
Subject: Results for TCN XX1101022008

Sent by ORI: WVIAFIS0Z The message is:

-- SRE ---

SID: WI977666

Name: TEST, GEORGE T

Date of Birth: 01/01/1950

Date of Arrest: 10/25/2010

Search Results: Fingerprints matched to existing record *or* No matching fingerprints found

The search results are sent when all fingerprint searches have been completed. For adult submissions this means the message is sent when both the CIB and FBI searches are complete. **No matching fingerprints found** indicates the fingerprint search produced no matches at either CIB or the FBI. **Fingerprints matched to existing record** indicates the subject already has a criminal record at CIB, the FBI or both. CJIS Security Policy prohibits return of any indication of the existence of an FBI criminal history record via the public internet so providing separate search results is not possible. A criminal history inquiry may be performed to obtain the FBI number and any associated record. The response for juvenile submissions will be similar but will be sent by ORI: FDR. As juvenile submissions are not sent to the FBI the results are of a state search only.

In order to implement this system every agency submitting fingerprints electronically provided DOJ with an email address for the routing of these messages. In addition to the email address the destination address for fingerprint submissions changed and live scans should be updated accordingly. This is the DOJ destination email address your live scan is currently configured to send to. **fdr@fdr.wdoj.afis.local** is the new email address and 10.113.188.16 is the new IP address. Agencies may need to work with their vendor to update the address.

If you have any questions on the upgrade contact Joan Wolfe at wolfejk@doj.state.wi.us or (608) 264-9490.

Other CIB System Upgrades

In addition to the AFIS upgrade, CIB is also upgrading or replacing several other systems used for criminal record purposes. An upgrade of the Criminal Document Archive and Retrieval Information System (CDARIS) used to store images of criminal history source documents has been completed. This was funded through regularly budgeted maintenance fees and involves replacement of hardware and software that has reached its end of life.

Another system currently being redesigned is the background check application utilized by CIB staff and the internet public to access criminal history information as authorized in s. 165.82 Wis. Stats. Both this upgrade and the AFIS upgrade are funded through an increase in background check fees effective July 1, 2009. This upgrade should be completed in 2011.

Finally CIB has received funding under the NICS Improvement Act to replace the current system used to conduct firearms restriction searches for handgun transfers. The new system will include an internet portal for firearms dealers to launch their own searches as part of the transfer process. It will also allow Wisconsin to forward certain disqualification information automatically to the NICS Index to be used nationally for authorized firearms restriction searches by NICS and other similar state programs.

Non-fingerprint Supported DNA Samples

As a part of the ongoing collaboration with the Department of Corrections to obtain DNA from those required by law to provide samples, the Department of Justice has also taken a look at the supporting documentation for those samples already on file. In doing so it was found 3,240 individuals have submitted DNA samples but no arrest fingerprint card exists in the criminal history database. The only fingerprints available at DOJ are the two finger impressions submitted on the DNA submission form. Those fingerprints are not retained in the AFIS and are not searched when subsequent arrest fingerprint cards are submitted.

These arrest cards that have not been submitted represent incomplete criminal history information as the arrests and convictions for these individuals requiring them to provide the DNA sample are not in the criminal history database. These lapses in reporting for the most part involve felony convictions. The result of this missing data could potentially mean that a convicted felon could purchase a firearm or gain employment or licensure where the conviction information would otherwise result in their disqualification.

Staff at the Crime Information Bureau have reviewed each of these 3,240 cases using various resources to determine where the conviction requiring a DNA sample was adjudicated and the associated charges. CIB will assemble lists of missing arrest fingerprint cards sorted by county of adjudication. Each list will be forwarded to the sheriff of the appropriate county with a request to search their files for the arrest fingerprint cards for those individuals on the list. If the sheriff has the arrest fingerprint card they will be asked to send it to CIB where it will be scanned into the criminal history database and then returned. Instructions will also be provided for those instances where the sheriff does not have the arrest fingerprint card for the offense sought.

Once the arrest information is in the criminal history database CIB staff will undertake the task of adding the appropriate disposition information to complete the arrest cycle. Depending on the age of the case the disposition information may be sitting in an error queue waiting for the arrest information or staff may need to re-search the disposition and enter manually.

While this may prove to be a daunting task for both sheriffs and CIB, it is necessary to support DNA information in the criminal history database and provide the most complete and accurate information for the criminal justice community and the public users of criminal history data.

Disposition Transmission Triggers

In previous issues of the newsletter routing of final disposition forms (DJ-LE-249) has been discussed. The information from this form is critical in providing those systems sending charging or disposition data to CIB to allow such data to match with an arrest fingerprint card. In addition to the name of the defendant, either of the following sets of information must be in the PROTECT or CCAP data to permit either system to transmit the data to CIB; 1) Arrest Tracking Number [ATN] or, 2) Date of Birth, Arrest Date and Booking Agency ORI.

It is not only required that one of these datasets be in the PROTECT or CCAP file in order to transmit, but when the data is entered into each system is critical as there are only a certain number of circumstances that trigger the sending of charging and/or disposition information.

When the required data is entered into the District Attorneys' PROTECT System is perhaps the most critical. Receipt of charging information from PROTECT not only provides no prosecution decisions but information on charges issued. This is extremely important when felony charges are issued as while those felony charges are pending the defendant is federally disqualified from purchasing a firearm. PROTECT will only transmit charging data to CIB when the required data is present and one of the following occurs:

- All referred charges are set to *NO PROSECUTE*.
- At least one charge set to *ISSUED* and one charge set to *NO PROSECUTE*.
- At least one charge set to *ISSUED* and filed electronically with CCAP.
- At least one charge previously reported as *NO PROSECUTE* is now set to *ISSUED*.

CCAP will transmit court disposition data to CIB when the required data is present and one of the following occurs:

- Court case closed with disposition and sentence data on all charges.
- Court case sealed or expunged.
- Court case reopened.
- ATN or Arrest Date and Booking Agency added to closed case.

One important difference in triggers between PROTECT and CCAP is the only opportunity for the transmission of charging data from PROTECT requires the presence of either the Arrest Tracking Number or Arrest Date and Booking Agency prior to the charging decisions being finalized. PROTECT does not transmit charging information if the required matching fields are provided after a charging decision has been entered.

Receipt of charging information from PROTECT is critical as this information is vital in maintaining current case status during the pendency of the charges. In other instances such as *No Prosecution*, PROTECT is the only means of that decision by the district attorney being sent to CIB. If the linking data is missing the information is not sent by PROTECT the case will appear to remain open.

Law enforcement should make every effort to include the final disposition forms with their referrals to the district attorney in order to provide all data necessary to link arrest, charging and disposition data. If the data is already contained in PROTECT any electronic filing of charges will send the data to CCAP, relieving the court from having to reenter the information.

We encourage law enforcement to discuss methods to improve or formalize the process of forwarding the information contained on final disposition forms with their local district attorneys and clerks of court. Only when this information is added at the creation of the PROTECT case can it be assured that sufficient information is contained in both PROTECT and CCAP to link charging and disposition data to the original arrest.

Secure Communities

The Department of Justice has signed a Memorandum of Agreement with the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) for the implementation of the Secure Communities initiative related to biometric interoperability. Secure Communities is a comprehensive initiative that focuses on the identification and removal of aliens who are convicted of a serious criminal offense and are subject to removal. This program enhances fingerprint-based biometric technology used by local law enforcement agencies during the normal booking process. This enhanced technology enables adult fingerprints submitted during the booking process to be checked against FBI criminal history records and DHS records to include immigration status. This process applies to all adults arrested and booked, not just suspected foreign nationals and is accomplished by the FBI sending criminal arrest fingerprint submissions to the DHS US Visitor and Immigration Status Indicator Technology (US-VISIT) Program's Automated Biometric Identification System (IDENT) to conduct a fingerprint search.

When searches of the IDENT System produce a match, ICE is notified and promptly determines if enforcement action is required. Secure Communities does not authorize local law enforcement to enforce immigration laws. ICE prioritizes the removal of criminal aliens by focusing on the most dangerous and violent offenders. This includes those offenses considered to be level 1 offenses. Those offenses are: National security violations, Homicide, Kidnapping, Sexual Assault, Robbery, Aggravated Assault, Threats, Extortion, Sex Offenses, Cruelty toward Child or Wife, Resisting an Officer, Weapons offenses, Hit & Run and Drug offenses with a penalty of more than one year. When an alien is identified with prior Level 1 convictions and is subject to removal or is charged with a level 1 offense and is subject to removal, ICE will take the alien into custody after completion of sentence or release from local custody and institute removal proceedings as necessary.

Implementation of Secure Communities will be statewide. No additional effort is required for local law enforcement beyond continuing with their normal booking procedures. If an alien is subject to removal under the Secure Communities program, ICE will contact local law enforcement to arrange transfer of custody. ICE will begin conducting outreach sessions in many jurisdictions and ultimately offer briefings to all law enforcement organizations. Any release of information to the media and other third parties regarding Secure Communities should be coordinated with the ICE Public Affairs Office.

Two Finger Search Devices

MorphoTrak has indicated, due to a lack of replacement parts, support for the current Fast ID devices will cease in the future. There are currently two replacement options.

RapID - A wireless rugged mobile biometric identification terminal capable of conducting two finger searches of a central AFIS. The device also contains a camera to capture photos. Wireless communications options include WiFi, cellular and Bluetooth.

DigiScan Web - A web-based fast ID system providing real-time searches against the state's AFIS. This system utilizes a standard workstation to connect to the state's AFIS.

The new AFIS supports both devices. There are currently no grant funds to pay for replacement of the current Fast ID devices. Limited grant funding may be available in 2011 for a limited number of RapID devices. Any details will be provided in future newsletters.

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The *Identification Newsletter* is distributed to over 800 law enforcement, criminal justice and support agencies throughout Wisconsin. The purpose of the newsletter is to provide up-to-date information on the people, programs, events and technological advancements of the TIME System. The newsletter is published quarterly as a service of the Crime Information Bureau, Walt Neverman Director. Writers will receive byline credits for submitted articles. Articles for publication and letters to the editor are welcomed. Log onto <http://doj.state.wi.us/dles/cib/forms> for past issues of the *Identification Newsletter*. Send all correspondence to Wisconsin Department of Justice, Crime Information Bureau, P.O. Box 2718, Madison, WI 53701-2718; Fax 608/267-1338; Email wolfejk@doj.state.wi.us.