

Identification Newsletter Crime Information Bureau



Director's Corner

Congratulations to the agencies that made CIB's fingerprint timely submission and minimal error honor rolls. The Ashland County Sheriff's Department is commended for making both lists. Having accurate data in a timely fashion is critical for you to do your jobs. The Honor Roll article has more information on who else made the honor lists.

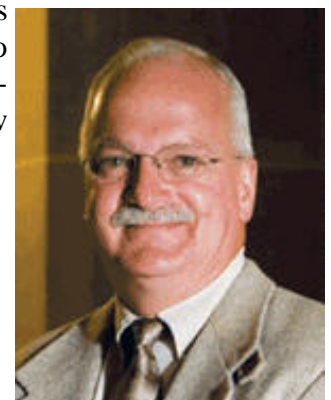
In January, Wisconsin joined numerous other states in a joint effort between local law enforcement, the FBI and U.S. Immigration and Customs Enforcement (ICE) called Secure Communities. The Secure Communities program has been around for some time but what changed in January was that Wisconsin fingerprint submissions are now automatically forwarded to ICE by the FBI. ICE determines the individual's immigration status, if any, and weighs the seriousness of the current offense. If appropriate based on immigration status and seriousness of the offense, ICE will contact the arresting agency directly. ICE allows your agency to proceed with prosecution and if convicted, sentencing. See the Secure Communities article for more information.

The AFIS upgrade completed in September 2010 has proven to be extremely beneficial in reducing DOJ's processing time of fingerprint submissions. Prior to the AFIS upgrade approximately 88% of the submissions required AFIS technician manual intervention. This has been reduced to approximately 17% requiring AFIS technician intervention. This means criminal history records are being updated 24 x 7 providing the most up-to-date accurate criminal record as possible.

The AFIS upgrade will also allow new ways to perform two finger fingerprint checks against the Wisconsin AFIS database. This will include wireless devices and enhanced desktop functionality to replace the existing MorphoTouch two finger devices that are being phased out. This newsletter contains more information on this topic but you will be hearing more as we move forward with this new technology.

WALT NEVERMAN

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Immediate Submission of Arrest Fingerprints

As previously discussed in the November 2009 Identification Newsletter, it is critical that law enforcement agencies submit arrest fingerprint cards as soon as possible. Arrest fingerprint submissions are meant to be just that; a report of the charges for which a subject is arrested by a law enforcement agency. It is irrelevant for the arrest segment of a criminal history record of the charges eventually filed by the prosecutor or those adjudicated in court. That information is reported in the prosecutor and court segments of the record accordingly.

CIB understands delays in submission for purposes of quality control and urges law enforcement to submit correct and valid data. However as we discussed in the 2009 article some agencies were delaying submission until the prosecutor filed charges or the case was adjudicated in court. These delays are totally unnecessary and actually hinder the processing of arrest fingerprint and associated disposition information. If prosecutor or court data is received prior to the arrest fingerprint being submitted, the information goes into a queue to wait for the arrest card. Or if the law enforcement agency waits until a complaint is issued and changes the charges on the arrest fingerprint card and submits, the criminal history/PROTECT interface will look to match the charging information to the original arrest charges as referred by law enforcement and entered into PROTECT. As the law enforcement agency has now changed the arrest card, the original charges from PROTECT will not match the card. This change then prohibits the automatic matching of charging data to the arrest submission.

However there is one more critical reason for immediate reporting that has to do with firearms eligibility. This refers back to the article from the November 2010 newsletter concerning persons who are *unlawful users of or addicted to any controlled substance*. The following guidelines for the inference of unlawful use shows a firearms denial may hinge on whether or not an arrest fingerprint for a controlled substance violation was submitted in a timely manner.

- Multiple arrest for use or possession of a controlled substance within the past five years if the most recent arrest occurred within the past year.
 - The denial can be based on the fact that there were two arrests as long as the latest is within one year, conviction not required.
- A person found through a drug test to use a controlled substance unlawfully provided the test was administered within the past year.
 - In this instance, the appropriate agency (Wisconsin Handgun Hotline, the National Instant Background Check System or any other state firearms program) would contact the agency submitting the arrest fingerprint card to determine if a test was administered and use that information on which to base a denial.
- A person who admits to use or possession of a controlled substance within the past year.
 - Again in this instance the appropriate agency would conduct follow-up with the arresting agency to determine if there was any admission of use or possession.
- 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.
 - Likewise in this instance the appropriate agency would contact the arresting agency to determine if a test of the suspected controlled substance was conducted.

The key to any of these potential disqualifiers is the presence of an arrest fingerprint card in the criminal history database. If the submitting agency waits and does not submit at time of arrest a potentially disqualified person could obtain a firearm. These prohibitions are not contingent on the level of the offense. Any felony, misdemeanor or non-criminal (ordinance) drug offense could lead to disqualification for the purposes of obtaining a firearm.

Submit all arrest fingerprints when quality control procedures are complete without waiting for any decision in the charging or adjudication phases. Any later changes will be obtained through interfaces with PROTECT and CCAP.

The Importance of Testing Live Scans

There is a reason CIB requires implementation plans and test transactions for new installations of major configuration changes of live scan devices. That reason is to eliminate error before the agency begins submitting live data to the Department of Justice and the FBI.

While no amount of testing will uncover all potential issues as each submission is unique, testing does allow CIB to confirm each device is properly configured and submitting appropriate data. This testing should be coordinated between the vendor installing or supporting the live scan and CIB. Some vendors have been failing to submit test transactions, schedule testing with CIB or even notifying CIB of a device installation.

Due to a failure to test, these are a few of the recurring errors being found on arrest fingerprint submissions:

- Failure by the vendor to default the booking and/or controlling agency ORIs to the owner of the live scan device. If the live scan operator simply pages through these data entry screens the arrest is normally submitted using the first agency listed in the agency table, the Adams County Sheriff's Department. A similar situation occurs if the vendor does not narrow down the table of potential arresting agencies to those situated within the jurisdiction of the owner of the live scan. Again in this case if the operator pages through the arresting agency screen without making changes again Adams County will be submitted at the arresting agency.

While these issues affect the accuracy of the data on the arrest fingerprint card if other device identifiers are correct CIB is able to determine what device submitted the fingerprints. CIB will begin researching these types of errors and contact the agency identified by the Transaction Control Number prefix to determine the correct booking and arresting agencies.

One other problem found and directly related to a vendor's failure to test has dire consequences.

- Some vendors have a practice of copying a live scan configuration file from one device and copying to other devices. This is not a problem unless the vendor does not make the necessary changes to properly display controlling, booking and arresting agency ORIs and make the necessary changes to generate TCNs and ATNs correctly for the device the file is being copied to.

In these instances there is no way for CIB to determine which agency actually submitted the arrest record as all identifiers point to the device from which the configuration file was copied. This means the agency identified in the arrest submission will be listed in both the CIB and FBI criminal history records as the booking and/or arresting agency. This may also lead to other criminal justice agencies or the public contacting the listed agency even though they had no involvement in the arrest.

Due to the potentially grave consequences of these types of errors, live scan agencies should insist their vendor follow proper guidelines when installing or upgrading their live scan capture stations. Installations, upgrades, and the associated testing must be coordinated with Joan Wolfe. Joan will schedule testing for a time when the proper resources are available. Vendors are required to send a sample ETFS (Electronic Fingerprint Transmission Specification) file to Joan for review prior to live testing. This file will be reviewed for both correct data and data field edits prior to allowing live scan devices to go live. Joan can be contacted at wolfejk@doj.state.wi.us or (608) 264-9490.

Live Scan Destination Email Address

All agencies should follow-up with their vendors to make sure the email destination address for their live scan submissions has been updated since the installation of the new AFIS on September 26, 2010. As indicated in the letter sent to all agencies providing information regarding this change the old device will be taken out of service shortly. Failure to submit to the new email address will result in arrest fingerprint cards not being received at DOJ. All live scan agencies and their vendors were advised of the new destination address in September. Contact Joan Wolfe if you have any questions.

Secure Communities Activates in Wisconsin

The following is the Immigration and Customs Enforcement press release dated January 11, 2011.

All Wisconsin counties to benefit from ICE strategy to use biometrics to identify and remove aliens convicted of a crime

MADISON, Wisconsin—On Tuesday, U.S. Immigration and Customs Enforcement (ICE) began using a federal information sharing capability in all Wisconsin counties that helps federal immigration officials use biometrics to identify aliens, both lawfully and unlawfully present in the United States, who are booked into local law enforcement's custody for a crime. This capability is part of Secure Communities—ICE's comprehensive strategy to improve and modernize the identification and removal of aliens convicted of a crime from the United States.

Previously, biometrics—fingerprints—taken of individuals charged with a crime and booked into custody were checked for criminal history information against the Department of Justice's (DOJ) Integrated Automated Fingerprint Identification System (IAFIS). Now, through enhanced information sharing between DOJ and the Department of Homeland Security (DHS), biometrics submitted through the state to the FBI will be automatically checked against both the FBI criminal history records in IAFIS and the biometrics-based immigration records in DHS's Automated Biometric Identification System (IDENT).

If fingerprints match those of someone in DHS' biometric system, the new automated process notifies ICE. ICE evaluates each case to determine the individual's immigration status and takes appropriate enforcement action. This includes aliens who are in lawful status and those who are present without lawful authority. Once identified through fingerprint matching, ICE will respond with a priority placed on aliens convicted of the most serious crimes first—such as those with convictions for major drug offenses, murder, rape and kidnapping.

"The Secure Communities strategy provides ICE with an effective tool to identify criminal aliens in local custody," said Secure Communities Assistant Director David Venturella. "Enhancing public safety is at the core of ICE's mission. Our goal is to use biometric information sharing to remove criminal aliens, preventing them from being released back into the community, with little or no additional burden on our law enforcement partners."

With the expansion of the biometric information sharing capability statewide in Wisconsin's 72 jurisdictions, ICE is using this capability in 969 jurisdictions in 37 states. By 2013, ICE plans to be able to respond nationwide to all fingerprint matches generated through IDENT/IAFIS interoperability.

"Brown County is fortunate to partner with ICE in an effort to accurately identify criminal illegal aliens in our community," said Sheriff John Gossage, Brown County Sheriff's Office. "Enhanced information sharing and increased communications with ICE will greatly aid in our effort to identify, apprehend and reduce the number of criminal illegal aliens within Brown County."

Since ICE began using this enhanced information sharing capability in October 2008, immigration officers have removed from the United States more than 54,500 aliens convicted of a crime. ICE does not regard aliens charged with, but not yet convicted of crimes, as "criminal aliens." Instead, a "criminal alien" is an alien convicted of a crime. In accordance with the Immigration and Nationality Act, ICE continues to take action on aliens subject to removal as resources permit.

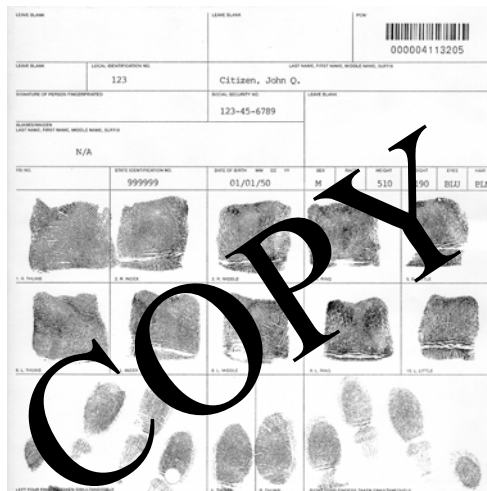
The IDENT system is maintained by DHS's US-VISIT program and IAFIS is maintained by the FBI's Criminal Justice Information Services (CJIS).

New Fingerprints Needed for Each Arrest

All entities capturing, submitting or receiving responses from fingerprint-based background checks should take the necessary steps to comply with these requirements as soon as possible.

Section 165.84(1) Wisconsin Statutes states: *All persons in charge of law enforcement and tribal law enforcement agencies shall obtain, or cause to be obtained, the fingerprints of each person arrested or taken into custody for an offense of a type designated in s. 165.83 (2) (a), of all persons arrested or taken into custody as fugitives from justice.*

s.165.84(2) Wis. Stats states: *Fingerprints and other identifying data required to be taken under sub. (1) shall be forwarded to the department within 24 hours after taking*



As fingerprints are required to be submitted within 24 hours of capture, the statute appears to require that a new set of fingerprints is to be obtained for each arrest event reported to DOJ. Each set of fingerprints is to bear a unique Transaction Control Number (TCN) and Arrest Tracking Number (ATN) assigned by the fingerprint capture device. Transaction Control Numbers are assigned by utilizing the capture device identifiers, date fingerprinted and a sequence number. The date code in the TCN and the date fingerprinted should match in all cases. The Arrest Tracking Number is identifier unique to one individual for a single arrest event. The ATN contains an agency identifier, a variable local sequence number and a check digit.

It is critical that each arrest submission have its own unique TCN and ATN. As the ATN is used to link prosecutor and court data to the arrest record, reusing an ATN may cause disposition data to link to the wrong arrest event. Reuse of a TCN causes the date fingerprinted and the date in the TCN to be mismatched.

CIB has determined some agencies continue to reuse the TCN/ATN. As discussed in previous articles this reuse causes issues with criminal history records. This is normally attributed to an existing fingerprint record being pulled from the live scan queue, arrest information changed and the record resubmitted. As the TCN/ATN are generated only when a new set of fingerprints are captured, the new arrest information is submitted with both the old fingerprints and TCN/ATN. Several agencies have submitted arrest events reusing the TCN/ATN combination hundreds of times. If this second submission of the ATN occurs when the first submission is still in the fingerprint data router (FDR) the second submission is automatically rejected. This means the new arrest is never processed and posted to the criminal history record. If the first submission is out of the FDR the record will not error at that point, but will go to error in the criminal history database when the duplicate ATN is found. DOJ staff must then change the ATN in order for the arrest to post. This change then means any disposition data from interfaces with PROTECT or CCAP will not automatically post to the arrest event due to the ATN mismatch. Staff intervention is required delaying the updating of the record.

Agencies are asked to cease the process of reusing arrest fingerprints. Individual fingerprint characteristics may change over time due to injury and this information is only available if new fingerprints are submitted. AFIS systems also store a compilation of the best individual fingerprint images on which to base a comparison. This means any set of fingerprints stored in AFIS may be from any number of arrest fingerprint cards, with an improved image of a single finger replacing a poorer image.

Please obtain a fresh set of fingerprints for each arrest submission. The only reason for an individual TCN/ATN to be resubmitted is at the request of DOJ. If you have any questions or concerns about reuse of TCNs and ATNs, please contact Mary Meyer at meyerma@doj.state.wi.us or (608) 266-9561.

The Impact of Act 258

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 moved Wisconsin into 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 was prohibited from possessing a firearm if involuntarily committed by a court AND ordered not to possess a firearm. Only under these circumstance was the person prohibited and only then were the courts permitted to report the information to DOJ. The statute further permitted DOJ to only use the data 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) now requires courts 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 in addition to ordering 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 now 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.

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 this relief program were approved by the Bureau of Alcohol, Tobacco, Firearms and Explosives. 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.

Since the firearms prohibition for involuntary commitments was first enacted in 1994, DOJ has received an average of 2 such orders a month. Since the enactment of Act 258 in July that number has increased to 338 a month. By the end of 2010 the number of persons prohibited in the database has increased by 596%.

Wisconsin courts were reporting these firearms prohibitions to DOJ by mailing, faxing or emailing reporting forms to DOJ. An interface was developed with CCAP to automatically report these adjudications along with any granting of relief and is being implemented in stages. DOJ is then responsible for forwarding the information to the NICS system.

The enactment of Act 258 brought Wisconsin into compliance with the requirements of the NICS Improvement Act in two critical areas: 1) reporting persons prohibited from possession a firearm pursuant to 18 USC 922 (g)(4) [adjudicated as a mental defective or committed to a mental institution] and 2) implementation of a Relief from Disabilities procedure. Compliance also provided an opportunity for funding of certain programs under the NICS Improvement Act. Under the 2010 grant opportunity, the Wisconsin Department of Justice has received funds to rewrite our firearms restriction search program to incorporate additional data sources and provide an internet portal for firearms dealers. In addition, the courts have received funds to support the relief of disabilities program and the Department of Corrections has be awarded funds to expand their use of two-finger identification.

Privacy Notification for Applicant Fingerprints

In order to comply with the requirements of the Privacy Act of 1974 and the E-Government Act of 2002, the FBI provides public notice of the categories of records it maintains in the Fingerprint Identification Records System. The FBI has implemented a procedure to notify applicants of potential fingerprint retention and subsequent uses of noncriminal justice fingerprint submissions. The FBI does not retain noncriminal justice fingerprint submissions for those individuals applying for license or employment governed by Public Law 92-544 (teachers, gaming, school bus drivers, security guards or other state licensed professions). The FBI retains noncriminal justice fingerprints submitted pursuant to federal law (Volunteers for Children Act, Adam Walsh Child Protection Act, Hazardous Materials drivers, etc.) only at the request of the submitting state. Wisconsin has not authorized the FBI to retain these fingerprints.

However a component of the Next Generation IAFIS will be a system called Rap Back. This option will allow entities submitting applicant fingerprints to the FBI to register for notification of future activity on the criminal history record of a previously submitted applicant. While this will eliminate the need for rechecks it also requires retention of applicant fingerprints to match against new arrest fingerprints being received.

It is the responsibility of the agency collection or capturing the fingerprints and associated descriptive data to inform the person being fingerprinted of the authority to collect the information and its potential use. Therefore FBI has added a privacy notification statement to the back of the blue FBI applicant fingerprint card (form FD-258 revised 12-10-07) to alert applicants of the potential of fingerprint card retention and subsequent uses of noncriminal justice fingerprint submissions. Persons being fingerprinted on this form are required to provide a signature for verification and authorization at the time of fingerprinting. Any official capturing these fingerprints should advise the subject being fingerprinted to read the reverse side of the fingerprint card.

If an agency uses a livescan device to capture fingerprints for noncriminal justice purposes, the CJIS Division recommends the agency implement an electronic signature capability, provide a copy of the back of the FD-258 or a similar notice for the applicant to sign. For those agencies capturing applicant fingerprints using a livescan device, CIB has developed a *Privacy Statement* form containing all the required notifications. This form is available online at www.doj.state.wi.us/dles/cib/forms. From the list of forms select *Privacy Statement*. These forms are to be retained by the entity requesting the fingerprint capture and are not to be sent to CIB.

In order to assist agencies in complying with this requirement CIB has requested a supply of the new FD-258 applicant fingerprint cards from the FBI bearing the privacy notice. Agencies submitting applicant fingerprints using blue FBI applicant fingerprint cards should request a supply of updated cards, destroying the old cards when the new forms are received. Criminal justice agencies seeking new applicant cards may contact Carol Brown at brownc@doj.state.wi.us or (608) 266-9585. Noncriminal justice agencies needing replacement applicant fingerprint cards should contact Kevin Sime at simeka@doj.state.wi.us or (608) 266-9398.

In addition persons being fingerprinted must be provided notice of their right to complete or challenge the accuracy of the information contained in either the FBI identification record or the Wisconsin Criminal History record. A second form has been developed advising applicants of their right to challenge the information returned. This form is also available at www.doj.state.wi.us/dles/cib/forms and is called *Challenge Notice*. For those entities using the Privacy Statement this information has been incorporated on the reverse of that form.

All entities capturing, submitting or receiving responses from fingerprint-based background checks should take the necessary steps to comply with these requirements as soon as possible.

2010 Live Scan Submission Honor Roll

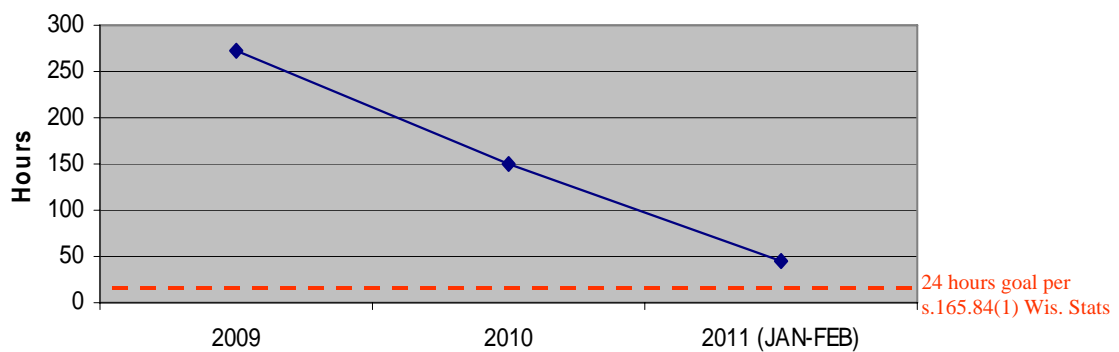
During calendar year 2010 fifteen agencies submitted their live scan fingerprints in an average time of 24 hours or less. This is down from twenty five agencies in 2009 but this reduction is undoubtedly influenced by the unavailability of the state's AFIS system during the upgrade. During a time in September agencies were asked not to submit their cards but to queue them from the time the old AFIS was taken out of service and the new AFIS became operational.

Agencies on the 2010 submission time honor roll, followed by their ranking for number of fingerprint submissions are (* indicates agency was also on the 2009 honor roll):

- *Milwaukee County Sheriff (1)
- *Brown County Sheriff (3)
- *Waukesha County Sheriff (4)
- *Marathon County Sheriff (23)
- *Oneida County Sheriff (29)
- *Douglas County Sheriff (31)
- *Oconto County Sheriff (38)
- *Shawano County Sheriff (40)
- Ashland County Sheriff (48)
- *Juneau County Sheriff (59)
- *Marinette County Sheriff (67)
- *Brookfield Police (69)
- *Green Lake County Sheriff (75)
- *Grant County Sheriff (79)

While these agencies are to be congratulated on their accomplishment, overall the submission time for live scan fingerprints decreased 45% from 2009. Even more impressive, during the first two months of 2011 submission time decreased another 70%, down to a statewide average of 45 hours. The number of agencies with an average time of 24 hours or less for that same period is 45. The following chart indicates the sharp reduction in average submission time.

Average Live Scan Submission Times



Of equal importance is the following honor roll of agencies submitting a minimum of 200 live scan arrest fingerprint cards while maintaining an error rate of less than 2%. That is the acceptable error rate as established by the FBI. Again an asterisk indicates the agency has maintained this error rate for at least two years.

- Ashland County Sheriff
- *Bayfield County Sheriff
- *Buffalo County Sheriff
- Burnett County Sheriff
- *Crawford County Sheriff
- *Eau Claire County Sheriff
- *Greenfield Police
- *Hartford Police
- La Crosse County Sheriff
- *Mequon Police
- Monroe County Sheriff
- *Richland County Sheriff
- Vernon County Sheriff
- Waukesha Police

Error rates for live scan submissions run from a high of 61% going to error to one error-free agency. The 2010 overall agency error rate was 11.6% which was only a slight improvement from 2009's 12.5%. Agencies should continue to strive to eliminate data errors for all arrest fingerprint submissions. Error-free submissions working in conjunction with the state's updated AFIS allow arrest records to update both Wisconsin's criminal history database and the FBI's Interstate Identification Index in just a matter of minutes. Any errors require criminal history records specialists to contact the submitter to determine the correct information with which to update the arrest record.

Based on these numbers, two agencies require special recognition. The first agency is the Crawford county Sheriff's Department which submitted all arrest cards in 2010 without error. The second is the Ashland County Sheriff's Department which made both honor rolls. Congratulations to those agencies and all agencies making the 2010 honor rolls.

AFIS Upgrade Produces Results

The upgrade of Wisconsin's Automated Fingerprint Identification System (AFIS) in September of 2010 has produced drastic improvements in processing times. In January of 2010 the median AFIS processing time was 182 hours (7.6 days) and 88% of fingerprint submissions required AFIS operator intervention or quality control. One year later in January of 2011, the median processing time is down to 5 minutes and 73% of arrest fingerprint submission are handled lights out, needing no operator intervention.

This change has resulted in submitting agencies receiving AFIS responses within minutes of fingerprint submission from both the state and FBI. A scheduled replacement of the FBI's IAFIS with the new Advanced Fingerprint Identification Technology (AFIT) in March should decrease processing time at the FBI as well. During the FBI's parallel operation transition period agencies may be contacted if the AFIT finds a fingerprint match not found located IAFIS. During this parallel operation period, responses will still be returned from the IAFIS and the FBI will notify DOJ of any AFIT only responses. DOJ will then notify the submitting agency.

Two Finger Search Devices

As reported in the last issue of the newsletter MorphoTrak has indicated they will be phasing out support for the existing Fast ID devices. This is due to a lack of replacement parts and the age of the devices. Since the last issue MorphoTrak has introduced a third option for agencies seeking to replace their current two finger search devices or add this functionality. All of these options are designed to submit two fingerprints for a search of the state's Automated Fingerprint Identification System and receive a response.

For those agencies looking for mobile device MorphoTrak offers the following options:



Morpho RapID

Morpho RapID - An all-in-one ruggedized device for in-the-field identification such as spot ID checks or suspect identification. The device also includes a 2 mega-pixel digital camera. Wireless communication options include WiFi, cellular and Bluetooth connectivity.



MorphoIDent

MorphoIDent - The latest in handheld mobile identification, it enables real-time identification. MorphoIDent offers an intuitive user interface and a large color screen that is clearly visible outdoors. Its compact size will fit into a shirt pocket. All data from the device is transferred via Bluetooth or USB to a PC, smart phone or PDA running the MorphoMobile application.

For those installations where an in-house, wired connection is feasible the following option is available.



Morpho DigiScan Web

Morpho DigiScan Web - A web-based fast ID system that enable agencies to perform a real-time search of Wisconsin's AFIS. Fingerprint capture is easy and includes real-time quality checks allowing effective use by non-fingerprint experts. The search is conducted lights out in real-time and requires no AFIS operators. This device needs to connect via Bluetooth to a PC, smart phone or PDA .

The Department of Justice requested funding under the 2010 National Criminal History Improvement Project (NCHIP) for a limited number of RapID devices to be awarded to local agencies. When this funding becomes available the Office of Justice Assistance will be responsible for the awards under this grant. Additional federal funding opportunities are being explored to pilot the DigiScan Web devices and enhance the capability of this device to display the entire rap sheet when a search finds a state record. However, due to limited funding sources, agencies may wish to explore other funding to replace their existing Fast ID devices or add two finger search devices for their agency.

Criminal History Database Needs Your Help

Complete and accurate criminal history information continues to be the goal of the Department of Justice. With the ever-growing requests for criminal history records, the completeness and accuracy of arrest, prosecution and court data can be the deciding factor as to whether or not an individual is hired or licensed. With additional sources of similar information readily available, such as CCAP, it is equally important the state criminal history repository contain all arrest and disposition information as required by Wisconsin Statutes.

For those background checks required by state law the legislature has mandated those checks be done through the Department of Justice. While other data sources may be used in addition to the DOJ search, only the DOJ search satisfies the statutory requirements. Likewise when searches are being performed to determine firearms eligibility, it is the data contained in the appropriate criminal history database, either Wisconsin's and/or the Interstate Identification Index, on which both Wisconsin's Handgun Hotline and the federal NICS program based their determinations.

Missing dispositions continues to be an issue affecting criminal history records. In most cases determinations must be based on the outcome of an arrest and missing dispositions require additional follow-up work in order to obtain the final disposition of the charges. This delays decisions on employment, licensing, firearms eligibility or housing.

Additionally now with interfaces to PROTECT and CCAP, DOJ routinely receives charging and conviction information on cases for which no arrest fingerprint cards have been submitted. Many of these missing arrest cards include charges that would be disqualifiers for firearms, such as felonies or misdemeanor crimes of domestic violence. DOJ has determined we need to work on obtaining not only these missing arrest fingerprint cards but any missing disposition information.

In the near future DOJ will be sending reports to law enforcement agencies seeking missing arrest fingerprint cards for conviction data received from CCAP in addition to disposition data for open arrests. We look forward to working with local agencies to improve the criminal history database.

Criminal History Improvement Meeting

The Crime Information Bureau will be hosting a criminal history improvement meeting at the Best Western Midway Hotel (2901 Hummingbird Road) in Wausau on Wednesday April 20th. The meeting will commence at 9:30 AM and should conclude by 3 PM. Lunch will be on your own. The hotel is located across the street from State Patrol District 4.

While we will discuss some all encompassing topics, the majority of the meeting will be used to discuss missing arrest and disposition information referenced in the previous article and those issues you bring to the meeting. We will try to offer solutions to any local issues regarding the submission of criminal history information. We recommend you extend invitations to your prosecutors and courts to attend this meeting.

In order to have arrest and disposition reports available for those in attendance, we ask that you register for the meeting by contacting Joan Wolfe at wolfejk@doj.state.wi.us or by calling (608) 264-9490. The only information needed is the name of your agency and an estimate of those attending from your agency. We look forward to seeing you in Wausau on the 20th.

The DNA Collection Statute

Introduction Over the years many convicted offenders have failed to provide biological specimens for DNA analysis as required by statute. The Department of Corrections (DOC) responded to this problem by identifying the offenders and by requiring those who remain under DOC supervision and control to produce a biological specimen. However, this still leaves the predicament of what to do about those many offenders who are no longer under DOC supervision but who remain statutorily required to produce a specimen and have not done so. The solution has been codified in the recent passage of 2009 Wisconsin Act 261 (Wis. Stat. § 165.76), which provides law enforcement and prosecutors with additional legal authority to facilitate the collection of biological specimens. While this new legislation does burden law enforcement with additional procedures, it is a fair exchange for the benefit of increasing the bank of DNA samples which enables law enforcement to more readily include or exclude individuals suspected of perpetrating serious crimes.

This article is designed to give law enforcement a handy guide to the new DNA collection statute and to clarify the options available when confronted with a subject who was supposed to produce a specimen and has not done so.

Obtaining specimens from offenders who have not produced a DNA specimen and are no longer under DOC supervision DOC and the Office of Justice Assistance (OJA) continue to identify and locate offenders who have not produced a sample. DOC notifies the offender in writing of his or her failure to produce a specimen and the notice includes instructions to the offender on how to voluntarily submit a biological specimen at the local sheriff's office.

When an offender ignores the notice, the new legislation allows the district attorney to petition the circuit court for an order requiring the offender to appear in court and show cause as to why they did not produce a specimen. The order offers two options to the offender:

1. To report to the local sheriff and provide a specimen at least 10 days prior to the scheduled hearing; or
2. To appear in court on the scheduled hearing date.

If at the court hearing the offender cannot demonstrate a reason for not providing a specimen, the court may issue an order requiring the offender to provide a specimen. If the offender declines to provide the specimen, the court may issue a warrant or *capias* expressly authorizing a law enforcement officer to detain the offender for the purpose of procuring a specimen. The warrant may also authorize the reasonable use of force to obtain the specimen. See Wis. Stat. § 165.76. As the TIME system will use the term "warrant" to describe either a warrant or *capias*, the term "warrant" will be used hereinafter.

How will law enforcement know if an offender has complied with an obligation to provide a sample?

The Wisconsin criminal history database as reflected in the CCH query response has a field which indicates whether a specimen is on file for the subject or whether the subject is obligated to produce a specimen. If a subject has provided a DNA sample, the Wisconsin criminal history response (CCH) will indicate "DNA sample available." If the subject has been identified as required to provide a DNA sample but has not, the Wisconsin criminal history response will indicate "DNA sample needed." If there is a warrant authorizing the detention of the offender for not producing a specimen, that will be noted on the TIME system just as any other wanted person.

Common situations A number of situations may arise in which law enforcement encounters an offender who has failed to provide a required specimen. These situations include:

What may law enforcement officers do with an offender whom they encounter on the street and who has not produced a required specimen? When the criminal history reflects that a warrant has been issued authorizing an offender's detention for failure to provide a specimen, the officer may detain the offender and transport him or her to the jail. If there is no warrant but the criminal history reflects noncompliance with the obligation to provide a specimen, then the officer should attempt to obtain a specimen through consent. If the officer lacks the training or equipment to personally obtain the specimen, the officer may request the offender to follow him or her to the jail or police facility to obtain the specimen. Finally, if the subject refuses to consent, the officer should encourage the person to report to jail to provide a specimen. The officer should obtain the necessary information to identify and locate the subject for the purpose of obtaining a court order to produce a specimen. Officers should obtain a current photo, verify the home and any work/business address, and phone numbers along with other demographic information that will help locate this person in the future - presumably after the warrant has been issued. The officer should also refer the matter to the district attorney for intentionally refusing to provide a specimen, but should not arrest or further detain the subject until consulting with the district attorney. See Wis. Stat. § 165.765.

What may jail officers do with an offender whom they encounter in jail? During the booking process, a jail officer may discover through a criminal history check that the offender has failed to provide a required biological specimen. If the check reveals a warrant requiring the production of a specimen, the officer should request the offender to provide the specimen. If the offender refuses to comply with this request, the officer may, pursuant to the warrant, detain the offender and use reasonable force to procure the specimen. Officers should consult their agency's policies on procedures for collection and use of force.

However, if the criminal history check (CCH) shows noncompliance with the obligation to provide a specimen but no warrant has been issued, the officer should attempt to obtain a specimen through consent. If the offender refuses to consent, the officer should refer the matter to the district attorney for issuance of a court order to compel production of a specimen pursuant to Wis. Stat. § 165.76. In addition, an offender who refuses to provide a specimen may also be referred to the district attorney for prosecution for intentionally failing to provide a specimen. See Wis. Stat. § 165.765. Absent a warrant authorizing collection of a biological specimen, officers may not use force to procure the specimen.

Caution: A failure to produce a specimen suggests, among other things, that an offender may be wary of producing evidence that could link him or her to a serious, potentially violent and dangerous crime. Therefore, officers should exercise caution when dealing with an offender who has not produced a required specimen.

Conclusion If a warrant has been issued, law enforcement should attempt to obtain a specimen through consent. However, if the offender refuses, then law enforcement may use force to obtain the specimen as authorized in the warrant.

If no warrant has been issued, but the criminal history shows that a person has failed to produce a required specimen, law enforcement should attempt to obtain a specimen through consent. If consent is denied, the law enforcement may refer the matter to the district attorney for issuance of a warrant and the issuance of criminal charges.

Naturally, this guide is only for the collection of specimens pursuant to the new legislation. The new legislation does not alter law enforcement's ability to obtain evidence through traditional investigatory means such as a search warrant.

Law enforcement should confer with their district attorney as to the preferred course of action in these situations.

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