



PRIVACY POLICY SUBCOMMITTEE MEETING NOTES
9 March 2006

Present at the eighth meeting of the IIJIS Privacy Policy Subcommittee were:

- Robert Boehmer, Institute for Public Safety Partnerships;
- Kathy deGrasse, Illinois State Police;
- Sid DeLair, Illinois Probation and Court Services Association;
- Paul Fields, Law Office of the Cook County Public Defender;
- Jim Hickey, Chicago Police Department;
- Ronald Lewis, McLean County Public Defender's Office (via telephone);
- Mike McGowan, Office of the Chief Judge of the Circuit Court of Cook County;
- Wil Nagel, Illinois Criminal Justice Information Authority;
- Jim Redlich, Office of the Illinois Attorney General;
- Marcel Reid, Illinois State Police, Bureau of Identification;
- Lyn Schollett, Illinois Coalition Against Sexual Assault (via telephone);
- Art Sebek, Illinois State Police;
- Scott Sievers, Illinois Press Association (via telephone);
- Scott Slonim, Law Office of the Cook County Public Defender;
- Martin Typer, Office of the Clerk of the Circuit Court of Ogle County.

Introductory comments and organizational matters

Mr. Boehmer explained that the goals of the meeting were to identify the members' concerns raised by the text of the Privacy Policy Guidance document and, if time allowed, to begin addressing those concerns. He stated that it was important to address everyone's concerns before the document was published and that the document would not be published before everyone came to a consensus on its contents.

Document Review:

Privacy Policy Guidance for Illinois Integrated Justice information Systems. Volume 1

Mr. Nagel stated that the *Privacy Policy Guidance for Illinois Integrated Justice Information Systems Volume 1* is the first in a series of documents that will guide justice practitioners and system designers in the appropriate collection, use, and dissemination of information throughout the Illinois justice system. When it is complete, the document will set forth the structure and components of the comprehensive privacy policy; announce six principles of responsible use of justice information in Illinois; and contain provisions that conform to existing federal and state requirements concerning the proper treatment of justice information and reflect the subcommittee's recommendations where those laws are silent.

The remainder of the meeting was spent listing areas that will be the subject of further discussion before the document can be finalized.

GENERAL CONSIDERATIONS

- Retention provisions may be impractical and are inconsistent with existing practices; state and local records acts should be incorporated in these provisions as well.
- Transparency provisions may go too far.

- Several provisions are, in practice, resolved on a case-by-case basis and may require additional limiting language.
- Additional attention should be paid to the proper use of “offender” and “alleged offender” throughout the policy.
- Expungement may need to be clarified to explain that it does not extend to police case reports.
- While general rules that certain categories of information are not available to the general public may be proper, the exceptions to these rules do not go far enough.
- References to defense counsel access should be revisited to take into account case-by-case determinations without being too weakly worded.
- The sharing of information with victims and witnesses in order to advance an investigation seems to have been overlooked.
- Provisions concerning public access to justice information should incorporate the freedom of information act.
- Strengthen the fact that this volume only addresses adult information and that juvenile justice information will be addressed in later volumes.

TITLE I. GENERAL PROVISIONS

- A general principle about the public’s right to justice information is lacking.
- The first principle may be improved by adding reference to compliance with all laws and constitutional limitations.
- The fifth principle regarding access and review may require a limiting timeframe so as to protect ongoing investigations.

SECTION 201

§ 201(b)(2)-(3) – the use of “probable cause” in these sections may be different than the legal definition; consider the use of “to determine the authority to arrest” instead.

§ 201(c)(1) – “Information” may be too broad and should probably be limited to personally identifying data.

§ 201(c)(2) – Incorporate Rule of Professional Conduct 3.6 into the section instead of just the commentary.

Cmt. 7 – Probable cause is an in-court determination; seek out more recent language defining probable cause.

SECTION 202

- Utilize the full text of Illinois’ Terry-stop statute.
- The code of criminal procedure requires the transfer of case information from law enforcement to prosecutors for purposes of prosecution; these statutory provisions should be incorporated.
- The court clerk’s role in information sharing seems to be neglected in this section.
- Better explain the interrelationship between this section and the section dealing with prisoners because arrestees can simultaneously be prisoners.

§§ 202(b)(3), (d)(1) – Include reference to pre-trial reports being provided to counsel of record.

§§ 202(b)(7)-(9) – “May”, “should”, and “must” should parallel the statutory provisions of the uniform conviction information act.

§ 202(b)(10) – The conversion of an arrestee to a convicted person may need to be revisited; consider waiting until a final order of conviction is entered.

§ 202(d)(1) – Incorporate additional provisions from the pre-trial services act regarding the sharing of pre-trial investigations with counsel of record.

§ 202(e)(3) – Reconcile the statutory expungement of pre-trial services records with the expungement section of the uniform conviction information act.

Cmt. 5 – Consider adding photographs, palm prints and DNA here.

Cmt. 8 – Strike the last sentence of this comment.

SECTION 203

- Public access – Address access to conviction information via various offender registries.
- **§ 203(d)(1)** – Clarify that there is a difference between conviction information collected from court records and conviction information collected under the uniform conviction information act.
- **Cmt. 6** – Add loss of driving privileges to this comment.
- **Cmt. 12** – Explain that those circuits who consider pre-sentence investigation reports may violate HIPAA if they fail to redact physical and mental health portions of the PSI.

SECTION 204

- Defense access – Consider that communication between defense counsel and probation officers may be beneficial to the probationer and the justice system; moreover, it may be current practice in some jurisdictions to share information with defense attorneys even though it is not expressly included in the existing statutes.
- Clarify what access a victim may have to probation information.
- There may be instances where secondary dissemination of a PSI is authorized.

SECTION 205

- **§ 205(d)(1)** – Indicate the authority for imposing a duty to warn upon the department of corrections.

SECTION 206

- Address how sex offenders fit into this section.
- **Cmt. 3** – Rephrase this so as to not insult prisoners eligible for parole.

SECTION 207

- Revisit this section to better address the implications of victim searchability in existing and future information systems.
- Consider that if victims are to be afforded special treatment, there may be some distinction between victims and those who falsely claim to have been victimized.
- **§§ 207(c)(1)-(2)** – These provisions may be too broadly drafted; they don't take into consideration that victims of ordinary property crime and corporate victims may not have the same interests to protect as victims of sexual violence.
- **§ 207(d)(3)** – Revisit these retention standards.
- **Cmt. 11** – This comment needs clarification.
- **Cmt. 13** – Is it necessary to wait until suspicions arise before inquiring into an individual's victimization history or may an individual's victimization history be investigated as a matter of routine practice?
- **Cmt. 17** – Other states' policies have been included for discussion purposes only; they should be deleted in the final, published version of the document.

SECTION 216

- Generally the section limits the sharing of juror information too severely.
- Retention of juror information is addressed in the ILCS and should be revisited.

Adjourn

The meeting adjourned at 12:35 p.m.

Respectfully submitted.