



Comparison of official and unofficial sources of criminal history record information

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In February 2005, the Illinois Criminal Justice Information Authority, in collaboration with the Illinois Integrated Justice Information System initiative, conducted a review of two private providers of conviction records. This review compared six subjects' criminal history information as compiled by two private providers with the subjects' official rap sheets and discovered that the quality of those records varied depending upon their source. In addition to recommending further research in this area, several recommendations are presented to increase the accuracy of privately compiled criminal history records and warn users of the disparity between the official and unofficial compilations.

In 1999, an estimated 43.8 million persons age 16 or older had at least one face-to-face contact with a police officer.¹ This means that about 21%, or 1 in 5, of all persons in this age group had a contact with the police that most likely resulted in some written record. Whether an individual is issued a traffic ticket, is arrested and convicted for committing a crime, or simply reports a

crime, personal information is collected and stored. Since many records maintained by the justice community are available to the public, these records are often collected, compiled, and resold by private companies as criminal history records with little, if any, accountability. The potential for inaccuracies in privately compiled information, combined with the absence of accountability, has raised the public's concerns.

The Illinois State Police maintain the State's official criminal history repository.² An official criminal history record, sometimes referred to as a "rapsheet," is a cumulative listing of an individual's arrests, state's attorney charging decisions, court dispositions, and custodial information.³ In Illinois, all conviction information that has not been sealed or expunged is available to the public.⁴ While rapsheets contain personally identifying information such as the subject's name, date of birth, sex, race, and physical descriptions, each piece of information is linked to the subject's fingerprints or his fingerprint-based State Identification (SID) number. To illustrate this point, the State's criminal history repository contains over 12,000,000 names but only 4,292,245 subjects' fingerprints.⁵ The official repository, like court records, contains millions of aliases.

Background

The privacy implications of combining information technology with criminal history record information have been extensively discussed elsewhere in the literature. Several authors point out the difference between paper-based public records gathered as a result of a diligent search and a computerized summary of those records located in a database.⁶ These authors explain that before the advent of computerized databases, individuals' privacy rights were protected because publicly available paper records were inaccessible to all but the most determined – the paper records were practically obscure.



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There is also a wide variety of literature discussing the proliferation of commercial data brokers and their collection of criminal history and financial records.⁷ Furthermore, federal and state governments have noticed the increasingly common use of criminal history information by private employers and other non-criminal justice entities.⁸ Despite the volumes of privacy-oriented commentary available regarding the new uses of criminal history information and its computerized accessibility through private compilers, there is a gap in the empirical literature comparing the unofficial sources of criminal history information to the records maintained by states' official criminal history repositories.

This is not to say that official criminal history repositories are free of errors; on the contrary, official repositories do contain errors. However, the justice system and society have deemed these official records reliable enough to base decisions affecting individuals' liberty interests upon them. This is because criminal history repositories are required by federal and state law to maintain accurate records,⁹ and substantial federal grant money has been made available to help states meet these mandated goals.¹⁰ Furthermore, audits are routinely conducted of state criminal history repositories to establish their current levels of accuracy, completeness, and timeliness.¹¹ These accountability provisions lend weight to the reliability of official compilations of conviction information and are also why the official repository provided the standard to which private compilations were compared.

The lack of research into the accuracy of unofficial compilations of criminal history records is significant because records concerning criminal activity have traditionally been among the most difficult to access and compile electronically. This difficulty is due to the local nature of the criminal justice system in which records are created and maintained at local police departments and courthouses in a manner that meets local demands. As a result, justice records are kept at many different local agencies in different formats. In the past, a person would have to collect each local reporting agency's data in order to perform a comprehensive background check – a daunting task at best. These records often contained different types and amounts of identifying information making it difficult to connect different documents to the same person.

However, in the past decade, the Internet has enabled companies to collect records from local agencies and compile them into a single database.¹² While the Internet has made access to criminal history information easier, it is not yet known how accurate these unofficial compilation efforts actually are.

The accuracy of criminal history information is important because incorrect information can unduly influence the distribution of society's benefits and burdens.¹³ Criminal history records are now being reviewed for many significant non-criminal justice decisions such as determining an individual's qualifications for employment, granting an individual a professional or business license, evaluating potential tenants, and even in determining voter eligibility. In 2000, for example, a private company was hired to remove felons from the Florida voter rolls in accordance with state law. However, the company, using information gathering and matching criteria that has never been disclosed, mistakenly struck thousands of eligible voters who had been convicted of misdemeanors.¹⁴ Whether that company did not understand the nature of its own data or just improperly compiled it, these voters were almost denied their right to vote in the 2000 presidential election.¹⁵

Incorrect criminal history records can even impact less significant decisions. For example, a prominent matchmaking website is using unofficial criminal history records to weed out felons, and is lobbying state legislatures to pass laws making criminal background checks part of the online dating process.¹⁶ However, the accuracy of privately compiled criminal history records takes on its greatest significance when they are being used as the basis for justice-related decisions. One prominent provider of compiled criminal history records has recently sold access to its database to FedLink, the federal government's secure private network, so government employees can run searches on it.¹⁷

With so many decisions being based upon unofficial sources of criminal history information, it is no wonder that 85% of adults feel that commercial companies maintaining and distributing criminal history records should follow the same rules and procedures regarding fair information practices as those which bind government criminal history repositories.¹⁸ There is substantial public support for allowing access to conviction records, and almost half of Americans support a "partially open system" where conviction records are freely available to everyone, but access to arrest records is limited.¹⁹ However, 69% of Americans were worried that commercial organizations were maintaining and distributing criminal history records and favored this being done only by the government.²⁰

A recent study conducted by Shawn Bushway, a criminologist at the University of Maryland, indicated that the public's concerns might be justified. Last year, Bushway obtained the criminal backgrounds of 120 parolees in Virginia. He then submitted the

parolees' names to a popular Internet background check company. Sixty of the reports about parolees came back showing no record at all, while many of the remaining reports were so difficult to read that it was hard to decipher the parolees' offenses.²¹ The Chicago Tribune followed up on Bushway's study by submitting to a private provider the names of 10 Illinois offenders whose sentences were reported in the media for crimes ranging from drunk driving and fraud to possession of child pornography. The results: although the provider flagged one as a sex offender (based upon his entry on the Illinois State Police's sex offender registry), the provider found no criminal convictions on any of the offenders.²²

Methodology

This review compared six subjects' criminal history information as compiled by two private providers with the subjects' official rap sheets. Record subjects for this review fell into three categories: two persons convicted of felonies, two sex offenders, and two individuals with expunged records. The two felons were randomly selected from a list of the three most common last names found in the repository. This was done because it can be difficult to accurately distinguish between individuals with similar names when compiling conviction records. Another two subjects were registered sex offenders randomly selected from the Illinois State Police Sex Offender registry posted on the Internet.²³ Finally, the Illinois State Police Bureau of Identification randomly selected two subjects who had had their records expunged in 2003 and provided those subjects' names and dates of birth to research staff.

Two commercial providers of criminal history information were selected based upon how easy they were to find and use, whether they published their sources of information, and their ability to provide an electronic response within 24 hours. Both providers were easily discovered on the Internet, provided information concerning the sources of their information, stated that they would provide an electronic response within 24 hours, and were comparably priced at just under \$25 per search.

Criminal histories were requested from the Illinois State Police and the commercial providers, for each subject, on the same day. All the subjects' records were collected within 24 hours. Authority researchers manually compared the records provided from all the sources to determine (a) whether the providers accurately collected and compiled each subject's convictions as reflected in the official repository, and (b) whether expunged records appeared in the unofficial compilations.

Results and analysis

According to the official repository, the first subject with felony convictions ("Felon 1") had been convicted of four offenses: (1) attempted possession of a controlled substance, (2) delivery of a controlled substance to a minor, (3) criminal trespass to a vehicle, and (4) manufacture or delivery of a controlled substance. The unofficial sources, however, only returned disposition information regarding the fourth offense of manufacturing or delivering a controlled substance. This is likely because Felon 1 used an alias name and date of birth when he was arrested for the three other offenses.

Table 1
Comparison of felon responses

Felon 1		
State Repository	Provider A	Provider B
Attempted possession of a controlled substance	Missing information	Missing information
Delivery of a controlled substance to a minor	Missing information	Missing information
Criminal trespass to vehicle	Missing information	Missing information
Manufacture or delivery of a controlled substance	Manufacture or delivery of a controlled substance	Manufacture or delivery of a controlled substance

Felon 2		
State Repository	Provider A	Provider B
Possession of a controlled substance	Missing information	Missing information
Delivery of a controlled substance to a minor	Missing information	Missing information
Manufacture or delivery of a controlled substance	Missing information	Missing information
Delivery of a controlled substance to a minor	Delivery of a controlled substance to a minor	Delivery of a controlled substance to a minor
Manufacture or delivery of a controlled substance	Manufacture or delivery of a controlled substance	Manufacture or delivery of a controlled substance

Felon 2’s official criminal history included two convictions for delivery of a controlled substance to a minor, two convictions for the manufacture or delivery of a controlled substance, and a fifth conviction for possession of a controlled substance. Similar to the results provided for Felon 1, both providers failed to acquire three of Felon 2’s convictions. As Felon 2’s three missing convictions occurred approximately one month before the review, it is possible that the providers had not yet updated their files with recent information.

The official criminal history record for Sex Offender 1 contains convictions for violating the Sex Offender Registration Act, forgery, and possession of cannabis. While Provider A could not find any records on the subject, Provider B was able to match the forgery and registration convictions and also reported two additional convictions: attempted criminal sexual assault and manufacturing or delivery of a controlled substance. It is likely that the attempted sexual assault was the underlying conviction necessary for the subject to violate the Sex Offender Registration Act and is a missing disposition from the ISP official rapsheet. Interestingly, while Provider B reported convictions not on the official rapsheet, the provider missed the subject’s conviction for possession of cannabis.

The results for Sex Offender 2 were also interesting. No records were found regarding Sex Offender 2’s convictions either in the official repository or any of the providers. While Provider A identified the subject as a registered sex offender, the provider essentially repeated the information that was already available on the Illinois State Police’s Sex Offender Registry; Provider A did not provide any facts about the underlying conviction.

It is important to note that the Illinois criminal history repository will not contain information regarding any offenses (sex or otherwise) that occurred in other states. Thus, even though sex offenders register with the Illinois State Police when they move into Illinois, their criminal history records may not be contained in the Illinois repository.

No records were returned from either the official or the unofficial sources when information concerning the subjects with expunged records was requested. This was a welcome result since a person who has successfully completed the Illinois expungement process should not continue to have a criminal record.²⁴ While the review here did not result in any findings, the subjects whose information was requested had their records expunged in 2003, providing ample time for these orders to be reflected in the private provider’s records. If the results for Felon 2 are an indication, the private providers’

criminal history information may not be as recent as the official repository’s.

Table 2
Comparison of sex offender responses

Sex Offender 1		
State Repository	Provider A	Provider B
Violation of Sex Offender Registration Act	No records were found regarding this sex offender	Violation of Sex Offender Registration Act
Forgery		Forgery
Possession of cannabis		Missing information
Missing information		Attempted criminal sexual assault
Missing information		Manufacture or delivery of a controlled substance
Sex Offender 2		
State Repository	Provider A	Provider B
Missing information	Missing information *	No records were found regarding this sex offender

* Provider A flagged Sex Offender 2 as a sex offender but did not provide information about the underlying conviction.

Potential policy implications

Additional research into this area is highly recommended. No one questions the importance of ensuring that the public has access to accurate information about an individual’s criminal history. However, the source from which the public acquires criminal history records can dramatically impact the quality of those records and the speed with which they are available. Understanding how official and unofficial compilations compare is an important step toward ensuring that the public has efficient access to accurate conviction records.

Although the small sample size limits the generalizability of the data, the results demonstrate what has been commonly known for years – that matching and compiling criminal records based on an offender’s self-reported name and date of birth is a poor way to ensure accurately compiled criminal

histories. Compiling criminal records based on an offender's fingerprints is favored because fingerprints are a unique characteristic that remains constant throughout a person's life, unlike the self-reported information of an individual who has an interest in lying to avoid harsh punishment.

The results suggest that consumers of privately compiled records may unknowingly rely on inaccurate criminal history information. This is significant because decisions that impact people's lives are based upon this information. Policies that address such risks to the public fall into two categories, they can either [1] fix the problem, thereby eliminating the danger, or [2] warn the public that a danger exists so that individuals can take actions to protect themselves.

Reliance on poorly compiled unofficial criminal history records can be repaired through greater reliance on fingerprints. In Illinois, every person whose fingerprints are submitted for an arrest or licensing background check is assigned a unique state identification (SID) number.²⁵ This fingerprint-based number is often included in state court records. If private providers compiled criminal history records through the use of SID numbers, the quality of unofficial criminal history compilations might improve. In fact, Provider B in our study collected and provided each subject's SID number but apparently did not understand their significance since the SID numbers were not used to compile records. All providers need to implement this recommendation is a better understanding of the data they can already collect. As an added bonus, compiling criminal records on the basis of SID numbers would give providers another piece of information to market – known aliases.

Another way to stop the public from relying on poorly compiled conviction records is to designate a preferred source of accurate criminal records. The criminal history information maintained by the Illinois State Police is already used by the justice system to determine an individual's eligibility for bail, whether charges should be enhanced, and the severity of the sentence to be imposed. If this information is accurate enough to impact an individual's liberty, then it should also be accurate enough to make decisions regarding employment and dating eligibility. Furthermore, much is already known about the timeliness, accuracy, and completeness, of the data maintained in the State's criminal history repository;²⁶ the same cannot be said about the records maintained by private compilers. If the State does not want to formally require individuals to make decisions based upon the official records, then making Uniform Conviction Information Act responses competitive with unofficial sources by

making them available over the Internet within 24 hours may help resolve this problem.²⁷

Finally, allowing individuals to access and review their unofficial rapsheets can help correct poorly compiled criminal histories. Sex Offender 1's reported conviction for manufacturing or delivering a controlled substance may be a false positive response. In other words, Provider B may have erroneously associated that conviction with Sex Offender 1 because the individual actually convicted of the crime had a similar name or date of birth. These types of errors can happen by mere chance,²⁸ but they also occur when an offender provides another person's name and personal information to the police upon arrest.

Court orders sealing or expunging a conviction add to the complexity of these false positive errors, especially when a conviction has been sealed or expunged in the official repository but has not been erased from a provider's files. While no records were returned on the subjects who had their records expunged, Felon 2's response indicated that the private providers' information may lag behind the data maintained at the official repository. Timely updating the unofficial compilation and purging previous versions can reduce the number of false positives created by sealing and expungement orders.

Errors caused by chance and deceit, however, can be remedied by allowing subjects to review and challenge the contents of their unofficial rapsheets²⁹ or by using SID numbers to compile the records. Some providers do allow subjects to challenge their rapsheets,³⁰ but it is unknown to what extent an individual can successfully challenge the information maintained about them. Moreover, this recommendation may be impractical because of the number of companies that offer criminal record searches.³¹ It might not be fair for an individual to bear the burden of fixing what he did not break, and as such, providing a right of review and challenge should supplement other policy changes.

In addition to addressing the problem directly, there are several practices that can warn those who use unofficial sources of criminal history information that they may not be complete. First, private providers can conduct audits of their records. Audits help providers understand the quality and types of information they sell. Not only would publishing the audit results inform consumers of the provider's ability to accurately compile information, but the widespread publication of audit results would lead to more accurate compilations. For example, as providers with the highest levels of accuracy boast in advertisements about their data quality, people may

begin choosing the most accurate source of information. As competitors lose business, they may attempt to improve their accuracy to win back customers.³²

Explaining that name and date of birth inquiries are unreliable for any number of reasons ranging from the subject's use of an alias or nickname to clerical error is another practice that can reduce reliance upon inaccurately compiled conviction records. Burying these warnings inside pages of user agreements and warranty disclaimers should not be acceptable.

Finally, communicating to consumers the age of the information they are purchasing places them on notice that more recent activity, possibly an arrest or expungement, may have taken place. The results for Felon 2 suggest that there might be a currency lag between the official records and the unofficial compilations. Merely telling requestors that regular updates occur every 90 days is not enough – he doesn't know whether the data is 1 day old or 89 days old.

Conclusion

Because the use of criminal history records is widespread, ensuring that decisions are based upon accurate compilations is of vital importance. The results of this and similar reviews reveal that unofficial compilations of criminal records may not be as complete as the records contained in a state's official repository. Additionally, fingerprint searches are highly preferable to name and date of birth searches.

These facts do not mean that private providers can't be a valuable source of conviction information. Using fingerprint-based SID numbers to compile conviction records and implementing procedures to review and challenge the data can improve the accuracy of unofficial sources of criminal history records. Additionally, making the information in the State's criminal history repository competitively available via the Internet may drive providers to improve their compilations and possibly even attempt to accurately compile more dispositions than the repository. The danger that consumers may unknowingly rely on inaccurately compiled conviction records can be mitigated by providing adequate warnings and informing purchasers of the information's age. Finally, the use and publication of audits should seriously be considered. Some form of accountability may be appropriate and the public is likely to support policies that help make sure decisions are based upon accurate criminal history information.

Notes

1. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *Contacts between Police and the Public* 1 (2001).
2. 20 ILCS 2630/1 (West 2005)
3. See 20 ILCS 2630/2.1 (West 2005)
4. 20 ILCS 2635/2, /5 (West 2005); 20 ILCS 2630/5 (West 2005).
5. ILL. STATE POLICE, *Guide to Understanding Criminal Background Check Information* (2004).
6. See *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 352 (1976) and a number of articles commenting on the eventual (or present) decline of practical obscurity as a form of privacy protection that are too numerous to list.
7. See, among others, Robert W. Holloran, et al., Nat'l Background Data, LLC, *Special Issues Associated with Using Public Records in FCRA-Compliant Criminal History Background Checks* (2002).
8. See, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *Report of the National Task Force on Privacy, Technology, and Criminal Justice Information* (2001) and ILL. CRIM. J. INFO. AUTH., *Criminal History Records Information Audit Report* 16 (2003).
9. See 28 CFR § 20.
10. The U.S. Dep't of Justice's Bureau of Justice Statistics administers the National Criminal History Improvement Program to improve the quality and availability of criminal history records and their accessibility. See U.S. GEN. ACCT. OFF., No. GAO-04-364, *National Criminal History Improvement Program: Federal Grants Have Contributed to Progress* (Feb. 2004).
11. See ILL. CRIM. J. INFO. AUTH., *Criminal History Records Information Audit Report*, (2003).
12. One private provider, who was not a part of this spot-check, boasts a database with 50 million records from 36 states.
13. See Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 STAN. L. REV. 1193, 1214 (1998) (commenting that misuse of information can unduly influence the distribution of benefits and burdens; it is argued here that

the attribution of incorrect criminal history information can have the same effect).

14. Gregory Palast, *Florida's flawed "voter-cleansing" program*, Salon.com (Dec. 4, 2000) available at: http://dir.salon.com/story/politics/feature/2000/12/04/voter_file/index.xml.
15. Florida officials moved to put those falsely stricken back on the voter rolls before the election. *Id.*
16. See www.true.com and *Dating site weeds out philanderers*, CNN.com (Jul. 27, 2004), in which the CEO of True.com admits that the screening system is not foolproof. Interestingly, the website doesn't carry that same admission, opting instead to explain that it is the criminals themselves who "circumvent even the most sophisticated background search technology."
17. Leslie Walker, *Privacy in America: Police Records for Anyone's Viewing Pleasure*, WASH. POST (May 23, 2002).
18. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *Public Attitudes Toward Uses of Criminal History Information* 6 (2001).
19. *Id.* at 5. (Only 12% of the public favored a completely open State criminal history repository in which arrests and convictions were openly available.)
20. *Id.* at 6.
21. Greg Burns, *Holes found in cheap background checks*, CHI. TRIB., April 11, 2004.
22. *Id.*
23. The Illinois State Police Sex Offender Registry can be found at <http://www.isp.state.il.us/sor/>.
24. The Illinois expungement statute can be found at 20 ILCS 2630/5 (West 2005).
25. Fingerprints submitted under the Uniform Conviction Information Act, 20 ILCS 2635/1 *et seq.*, are not permanently posted to the criminal history repository and thus a SID number is not assigned to them.
26. Since 1979, the Illinois Criminal Justice Information Authority has conducted thirteen audits of the CHRI repository and the next audit report is due this fall.
27. The Illinois State Police does administer an electronic system that accepts e-mailed requests for criminal history information and provides a response within 24 hours. However this system is not as convenient and user friendly as web-based systems, requires the requestor to register with the Illinois State Police and maintain an escrow account, and does not accept credit card transactions.

The Washington State Patrol's WATCH (Washington Access To Criminal History) system, available at <https://watch.wsp.wa.gov>, is a web-based system comparable to private sector criminal history records sites. The Pennsylvania State Police have a similar system with a similar name, PATCH (Pennsylvania Access to Criminal History), available at <https://epatch.state.pa.us/Home.jsp>.
28. The Illinois State Police will not post a conviction record without an underlying arrest to avoid just this situation.
29. The Illinois State Police are required to provide individuals with a right of access and review, see 28 C.F.R. § 20.21(g); 20 ILCS 2630/7 (West 2005); and ILL. ADMIN. CODE tit. 20 § 1210 where the State of Illinois has outlined its administrative appeals procedures to hear an individuals' claim of inaccuracy and provide necessary correction of the record where appropriate. Similar access and review provisions applicable to credit reporting agencies can be found in the Fair Credit Reporting Act at 15 U.S.C. § 1681i.
30. See Jim Krane, *Tracking U.S. Fugitives With Commercial Data*, CHI. DAILY L. BULL. (Apr. 14, 2003) and *Job boards unveil self-checks*, CNNMoney (Feb. 16, 2004).
31. *Supra* note 21 (stating that at the time of publication approximately 465 companies offered criminal records checks on the Internet).
32. This public feedback regulation is a way to increase accountability without fostering bureaucracy; an example is the publication of airline on-time arrival records. See David Brin, *The Transparent Society* 252 (1998).