

On Good Authority

Illinois
Criminal Justice
Information
Authority



An executive briefing on trends and issues in criminal justice

June 1997

The effects of notices to appear (NTAs) and summonses on criminal history reporting

Introduction

Criminal justice officials rely on state criminal history records to determine how to handle repeat offenders (for example, to increase an offender's bail, upgrade charges, or recommend longer sentences upon conviction). A complete record includes the offender's fingerprints, which are taken after the accused has been arrested. However, under Illinois law, law enforcement agencies can give an accused person a notice to appear in court (NTA) instead of arresting him. Also, state's attorneys can request, and judges can issue, a summons instead of an arrest warrant to bring an indicted person to court. In many of these cases, the individual is never fingerprinted, the offense is not reported to the Illinois State Police (ISP), and the information is not added to a person's state criminal history record.

An NTA/summons lists the alleged offender's name, address (if known), and charges against him and orders the person to appear in court at a specific time and place to answer charges.¹ Law enforcement officers, state's attorneys, and judges issue NTAs or summonses when they are considered sufficient responses to the alleged crime and are adequate to assure the defendant's presence in court.

This *On Good Authority* examines the use of NTAs and summonses on felony and Class A or B misdemeanors, its effect on state criminal history records, and several issues that policy-makers need to address to ensure uniform reporting procedures.

Why do jurisdictions use NTAs and summonses?

Generally, upon the commission of an offense, local law enforcement agencies take the suspect's fingerprints to:

- conduct a fingerprint-based check of the person's criminal history record. This helps judges to decide

bail and sentences, and state's attorneys to upgrade charges if necessary;

- establish grounds for positive identification in case the person fails to appear in court;
- confirm that they have arrested the right person named on an outstanding warrant; and
- match the alleged offender's fingerprints with prints left at the scene of a crime.

If agencies do not need fingerprints for any of these purposes, they may issue an NTA instead of making an arrest.

Under Illinois statutes, a state's attorney can upgrade charges against a person with a prior criminal record who commits certain offenses. In such instances, the state's attorney requests arrest warrants to ensure that a fingerprint-based background check is conducted. Otherwise, he or she may request a summons to bring the person to court. Also, if the state's attorney decides that bail is unnecessary to obligate the defendant to appear in court, he or she may request a summons instead of an arrest warrant.

The survey

In 1996, the Illinois Criminal Justice Information Authority conducted a survey of law enforcement agencies, state's attorneys, and circuit clerks to determine how often NTAs and summonses are used on felony and class A or B misdemeanor offenses. The Authority received responses from 407 law enforcement agencies, 74 state's attorneys, and 71 circuit clerks. Based on the responses, the Authority found that jurisdictions interpret the reporting requirements of the Criminal Identification Act in two ways when NTAs and summonses initiate felony and Class A or B misdemeanor cases. One group treats all offenses, charges, and

Figure 1: Use of NTAs and summonses in Illinois

| Agency and procedure used | Number surveyed | Number responding | Number using | Percentage using |
|----------------------------|-----------------|-------------------|--------------|------------------|
| Law enforcement (NTA) | 748 | 407 | 121 | 30 |
| State's attorney (summons) | 102 | 74 | 62 | 84 |

final dispositions as reportable to the ISP, whereas the other group considers offense, charge, and final dispositions as reportable only in cases where a person was convicted.

The different interpretations affect the completeness of state criminal history records. Based on survey tabulations, at least 65,000 NTAs or summonses were issued in felony and Class A or B misdemeanor cases between 1993 and 1996. (Felonies make up the most serious crimes in Illinois, and Class A and B misdemeanors are lesser offenses that can be punishable for up to one year in jail.) They were usually issued for offenses such as deceptive practices, retail theft, criminal damage to property, and battery. Of the 65,000 incidents, charges filed were not reported in 15,000 instances and final dispositions were not reported in the other 50,000 incidents.² Therefore, when law enforcement officers, state's attorneys, and judges review the criminal history records of the individuals involved, they will not learn about these incidents.

Figure 1 indicates the extent to which NTAs and summonses are used in Illinois.

In addition, the Authority's survey suggested three possible factors that prevent fingerprints from being taken and convictions from being reported:

- Some police departments may complete the arrest copy of the state five-part arrest card when issuing an NTA, but do not take the person into custody for fingerprinting. The five-part form is distributed to the state's attorney, who may not realize that fingerprints were not taken on that case;
- Some jurisdictions may not have a well-established process for law enforcement agencies to notify state's attorneys about cases initiated by an NTA; and
- Seventeen circuit clerks responding to the survey noted that they do not always receive their copy of the state five-part reporting form. As a result, 18,920 final

dispositions were not reported to the ISP between 1993 and 1996.³

The Criminal Identification Act's reporting requirements

The Criminal Identification Act states:

"(a)ll policing bodies of this State shall furnish to the Department (ISP), daily, in the form and detail the Department requires, fingerprints and descriptions, of all persons who are arrested on charges of violating any penal statute of this State, for offenses that are classified as felonies and Class A or B misdemeanors..."⁴

Seventeen state's attorneys require all offense and final disposition information to be reported to the ISP in cases initiated by an NTA or summons. They treat the final clause of the section above as requiring them to report *all* felony and Class A or B offenses and subsequent case information to the ISP. Otherwise, offense, charge, and outcomes other than guilty will be "missing" from the person's state criminal history record. To rectify the omissions, defendants are fingerprinted at their first court appearance, the offenses and charges are immediately reported to the ISP, and the final disposition is reported upon completion of the case.

In contrast, the other state's attorneys in the survey apply the reporting requirements to cases initiated by an arrest. They note that judges order defendants who have been convicted to be fingerprinted if they have not been previously fingerprinted on that case, in accordance with the Act, and the conviction is reported to the ISP.⁵ The offense, state's attorney filing, and final disposition are only reported if the person is convicted.

Figure 2 illustrates the difference in state criminal history records when an arrest and either an NTA or summons initiates a case.

Figure 2: Content of state criminal history records when arrests, NTAs, or summonses initiate cases

| Information on a state criminal history record | Means to bring defendant to court: Arrest | Means to bring defendant to court: NTAs or summonses |
|------------------------------------------------|--------------------------------------------------|---------------------------------------------------------|
| Offense | Yes | Only if sentenced and convicted |
| Charge | Yes | Only if convicted and sentenced |
| Final disposition | Guilty, not guilty, discharges, dismissals, etc. | Guilty, some types of probation |
| Custodial receipt | Upon receipt into custody | Upon receipt into custody |
| Custodial status changes | Upon change in custody | Upon change in custody |

Why are fingerprints needed to permit reporting to the ISP?

An offense cannot be recorded on a person's criminal history record unless fingerprints are submitted to the ISP with every reportable offense. Since many criminals use alias names, phony birth dates, and other false information to disguise their identities, police take fingerprints. Fingerprints provide an accurate way to link an individual to an existing criminal history record.

To report offenses and subsequent dispositions to the ISP, a law enforcement agency must take a person into custody, where he is fingerprinted, photographed, and booked. The arresting agency submits offense information and fingerprints to the ISP on the state five-part arrest card.

In NTA or summons cases, the offense can be reported to the ISP when the person is fingerprinted. However, jurisdictions disagree about whether Illinois statutes permit detaining a defendant to acquire his fingerprints if he is not found guilty. The 17 counties that fingerprint defendants at first court appearance believe detention is permissible because an NTA or summons is an alternative to "immediate arrest" by law enforcement agencies for that offense.⁶ The remaining counties believe that defendants who receive an NTA or summons cannot be detained unless they are arrested for failing to appear in court for that offense.⁷

Issues

The Criminal Identification Act can be interpreted to require all felony and class A or B misdemeanor offenses to be reported to the ISP. But when NTAs and summonses are used, nonconviction information is not reported because the defendant goes directly to court instead of being taken into police custody, where he would have been fingerprinted. Also, Illinois statutes are vague as to whether defendants can be fingerprinted prior to a verdict if they are given an NTA or summons.

To ensure a common understanding of the reporting requirements when NTAs and summonses are used, the following question needs to be resolved:

- should felony and Class A or B misdemeanor offenses with dispositions other than guilty be reported to the ISP in cases initiated by an NTA or summons?

If the answer is yes, fingerprints need to be acquired in such cases to permit reporting of offense information. Among the possible ways are eliminating the use NTAs or summonses on felony and Class A or B misdemeanor offenses or fingerprinting defendants at first court appearance. If the second option is selected, then three other issues may need to be addressed in light of the survey findings:

- whether detention subsequent to release on an NTA or summons is permissible under statute;
- whether the offense should be recorded as an "arrest," an NTA/summons or by another term; and

- whether the marginal increase in information recorded on the CCH database outweighs the costs of acquiring the information.

In addition, policy-makers need to consider ways of improving the reporting of conviction information in cases initiated by an NTA or summons.

For more information

For more information about the use of NTAs and summonses on felony and class A or B misdemeanor offenses, please contact the Research and Analysis Unit at the Illinois Criminal Justice Information Authority.

— *This On Good Authority was written by Jim D'Archangelis, auditor. It was edited and formatted by Kristi Turnbaugh and Dan Dighton, public information officers.*

Notes

¹ See 725 ILCS 5/107-12 and 725 ILCS 5/107-11 for NTA and summons procedures, respectively.

² The final dispositions on these cases are unknown.

³ The 18,920 dispositions are in addition to the estimated 50,000 felony and class A or B misdemeanors cases that were not reported to the ISP between 1993 and 1996 and are known to have been initiated by an NTA or summons. One can conclude that 68,920 final dispositions were not reported during the four-year period.

⁴ 20 ILCS 2630/5

⁵ 20 ILCS 2630/2.1 (d)

⁶ See Marvin E. Aspen, "Arrest and Arrest Alternatives: Recent Trends," *1966 University of Illinois Law Forum*, Summer 1966, p. 249. "The drafters of the Code of Criminal Procedure sought to 'provide procedures for getting a person into court without the necessity and inconvenience of an immediate arrest.'" The phrase "immediate arrest" can be interpreted to mean that future detention on that case is permissible.

⁷ This view appears to be based on a clause in the NTA statute, "Upon failure of the person to appear, a summons or warrant of arrest may issue" [725 ILCS 5/107-12].

For more information, extra copies of this report, or copies of previous On Good Authority reports, write or call the Illinois Criminal Justice Information Authority.

The Crime Control Act of 1990 amended Part E of the Omnibus Crime Control and Safe Streets Act to require each state that receives Edward Byrne Memorial State and Local Law Enforcement Assistance formula grant funds to allocate at least 5 percent of its total award for the improvement of criminal justice records. This project was supported by these criminal justice record improvement funds, under Grant #95-DB-VX-0017, awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

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