

Protecting Criminal Records

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ON SOME SUBJECTS, optimism is perennially premature. Among them is the complex and important problem of controlling the collection, exchange and use of arrest records and criminal history files. Five years ago, when computerized records systems were just being launched, it seemed that Congress might step in at an early stage to protect people against being hurt by records that are incomplete, inaccurate, obsolete or wrongly used. Again, a year ago, it seemed that key legislators and the Justice Department were nearing an accord on legislation in this field. But those negotiations collapsed. Sen. John V. Tunney (D-Calif.) and Rep. Don Edwards (D-Calif.) are trying again this year, but hearings on their latest proposals last week showed that, while the areas of argument have been narrowed, substantial disagreements remain.

The slow pace of progress is especially discouraging because technology is marching right along. The FBI, which already operates a computerized criminal history system as part of the National Crime Information Center, has embarked on an elaborate campaign on behalf of a message-switching plan, discussed by Steve Hirsch in an article on this page today. The bureau is also moving steadily toward automation of its fingerprint files, a vast collection of old and new records, mostly of arrests, which are used as the basic means of identifying people on whom some criminal record exists. FBI spokesmen emphasize that the bureau is not seeking to gather all the nation's criminal files unto itself. Instead, the present plans would leave the states in charge of maintaining records of state offenders—and insuring the accuracy of those records and controlling their use. The FBI's role, as the bureau envisions it, would be to run the

interstate communications system and set the nationwide rules.

These plans obviously raise questions of public policy concerning the management of crime data, federal-state relations and the protection of individual rights. Besides the competition between the states and the FBI, there are tensions within the Department of Justice and disagreements between departmental officials and members of Congress over who should make final decisions on the message-switching plan and other technological initiatives.

Similar arguments over control now seem to be the major barrier to legislation in this field. The latest Tunney-Edwards bill, like earlier drafts, would establish quite detailed rules for all federal and interstate criminal records systems. The Justice Department, on the other hand, has consistently maintained that Congress should not go too far into the field, but should content itself with laying down general standards and leaving the specifics to the executive branch and the states.

In our view, this is clearly an area in which Congress should make the rules. Millions of citizens are affected in substantial and often permanent ways by the exchange and use of law enforcement records. There is a long list of serious abuses in the past, and every technological advance makes consistent nationwide safeguards more necessary. Moreover, in an area with such a large impact on individual rights, policies should be set and responsibility assigned by the legislature, not by administrators—and certainly not by prosecutors and police. Finally, the rules should be established before new networks are plugged in, not afterward. All this means that Congress is running out of time. It would be foolish to wait until all the contentious agencies involved have reached some kind of unanimity. What is required is a prudent and perceptive law.