WXPost

FEB 3 1974

FBI Opposes Justice's Privacy Bill

By Susanna McBee
Washington Post Staff Writer

The Federal Bureau of Investigation has declined to endorse the Justice Department's bill to regulate the way local, state and federal agencies deal with criminal information.

FBI Director Clarence M. Kelley has made it known that he cannot give a full endorsement to the bill because state and local police have voiced serious opposition to one of its key provisions.

That provision requires criminal records to be sealed after seven years following a person's release from custody in felony cases after five years in misdemeanor cases. Seals could be broken upon subsequent arrest but only under a court order or a directive from the Attorney General.

Police believe that the requirement will inhibit them in tracking down leads on criminal suspects because they wll not have ready access to old crime files. Computerized criminal history (CCH) records are kept by the FBI at its National Criminal Information Center (NCIC) here.

Kelley and several members of his staff have worked with Justice Department officials who drafted the proposed legislation, and some department sources expressed shock when he would not endorse it.

Another factor in his refusal, sources said, is that the FBI itself is still split over the issue although it has cooperated in the law-drafting process. Mason G. Campbell, the bureau's assistant director in charge of the computer systems division, has strong objections to the bill, but two subordinates—Norman Stultz, chief of the NCIC, and Frank Stills, who is in charge of the manual, or noncomputerized, files—are willing to accept the measure, the sources said.

Kelley' asked by The Washington Post to comment on the bill, said, "I welcome legislation regarding the security of the NCIC system so as to insure the maximum protection of individual rights and the information contained in the system. The FBI has been consultd by the Department of Justice on its legislative proposal concerning the computer system, and my views on it have been made known to the Attorney General."

The statement was seen as cool by department sources, but it is considered significant that Kelley says he welcomes some kind of law on the rapidly expanding criminal information system. The FBI has more than 21 million arrest records, including some 450,000 in the computerized system.

"Kelley's only reservation concerns the sealing of records," said one source, "and he's reflecting police concerns across the country. But they all objected to the Miranda decision, and now they've found they can live with it."

In the 1966 Miranda vs. Arizona decision the Supreme Court held that a confession is invalid unless a defendant is fully informed of his rights, including that of free counsel if he cannot afford one, before he is interrogated.

The Justice Department and Sen. Sam J. Ervin Jr. (D-N.C.) unveiles privacy bills yesterday. Details of the department's bill has already become known.

Both bills will be introduced in Congress Tuesday. Sen. Roman L. Hruska (R-Neb.) will sponsor the Justice Department bill and is expected to co-sponsor Ervin's bill while Ervin will co-sponsor the department's bill.

CLARENCE M. KELLEY
. . . differs on bill.

Both bills would regulate the kinds of information on citizens that police can collect and disseminate. Both would give citizens the right to see what information police computers have on them and the right to correct any inaccuracies.

But there are important differences in the bills. The department's measure would empower the Attorney General to make policy and enforce the law while the Ervin bill would give those functions to a federal-state board, called the Federal Information Systems Board. It would consist of nine members named by the President and approved by the Senate, including the Attorney General and two other federal agency representatives, three representatives of state data bank boards, and three private citizens.

The department's bill provides that unless an arrest record has a final disposition or a notation that a prosecution is pending added to it within one year, it cannot be distributed by a police force to a noncriminal-justice agency such as a school board or a state licensing board.

Ervin's bill goes further and says that unless the arrest has resulted in a conviction, it cannot even go to a criminal justice agency unless the suspect is rearrested within a year or seeks employment with that agency.

The department's bill says that intelligence information, which is background or raw data, must be kept strictly separate from criminal records, such as arrest, conviction and imprisonment notations.

It also says that intelligence may be distributed to law enforcement agencies but not noncriminal-justice agencies unless the Attorney General authorizes the dissemination for national defenseo r foreign policy reasons. The Ervin bill flatly bars computerization of intelligence records. An Ervin aide admits that provision will be a "red flag" to police, who rely on intelligence files, but he explains, "We think the issue should be debated."

The Ervin bill has a provision for sealing old criminal records like that of the Justice Department bill, but the senator's measure would also allow states to purge such records completely.

Both bills prohibit the press, as a noncriminal-justice agency, from access to comp-u terized files. The department's bill makes clear that reporters shall have access to police blotters, which list name,a ge, sex, address and charges. Ervin's bill would deny the press that accses.

Both department and Ervin staffers say the press issue creates difficult problems because of the public need to prevent police-state tactics and dragnet arrests. But neither bill would allow general press access to any but current police arrest records. The department bill would allow it if it is specifically authorized by state statute, but the Ervin bill would permit state-approved press access only to conviction records. Under the department bill but not under Ervin's measure, the press could gain access through court order.

The Justice measure provides a fine up to $10,000 and imprisonment up to a year for improper dissemination of criminal history information. Ervin's bill has sanctions of up to a $5,000 fine and five years in prison.

The senator's bill also includes a provision that if a police department wants computer information but does not have a specific name, it must go to court for an "access warrant" that would allow it to seek information based on a suspect's physical description or his background. Such warrants are required for criminal wiretaps. The Justice bill has no such requirement.

Justice officials and Ervin and Hruska say legislation to regulate crime data banks is necessary because technology allows increasingly greater dissemination of criminal information, much of which now finds its way into employment, credit and insurance checking systems.