



Susanna McBee

Crime Records and Privacy

The Federal Bureau of Investigation fears that if Congress passes certain measures to restrict the use of criminal information, law enforcement itself will suffer.

The question is how much, and, surprisingly, the FBI's own figures indicate that the problem may not be great as the bureau thinks.

Its main concern—shared by many police officials across the country—centers on a proposed requirement both in a Justice Department bill and one introduced by Sen. Sam J. Ervin Jr. (D-N.C.) that would seal criminal history files kept by state and local police and the FBI after certain periods of time.

In felony cases, they would be closed seven years after the convict is released from prison, parole or probation. In misdemeanor cases, files would be sealed five years after release from custody. After sealing, they could not be disseminated within or among police departments or between a department and the FBI. But if an ex-convict is rearrested before the five- or seven-year deadline, his file would remain open. Sealed files could be reopened upon subsequent arrest if a court or the Attorney General orders such an action.

The problem with sealing, as FBI Director Clarence M. Kelley testified the other day, is that some criminals have illicit careers that go beyond five or seven years and if their files are put beyond the reach of law officers, police will be hamstrung in investigating certain cases.

To understand what is at stake, one must know a little about criminal record keeping. All police departments keep arrest records, or "rap sheets," and most of them are still in "manual systems"—that is, those consisting of typed cards and sheets of paper kept in files. But many departments are now putting their crime information into computers and exchanging that information with the FBI's National Crime Information Center (NCIC) here.

NCIC has more than 4.8 million records, most of them dealing with stolen property—cars, securities, guns. A small but rapidly growing segment consists of 450,000 computerized criminal history files.

It is the computer that has literally frightened the Justice Department and Congress into considering ways to halt big-brotherly misuse of the data.

"In the past a criminal justice agency's capacity to collect, store, and disseminate data was limited," Attorney General William B. Saxbe told a House Judiciary subcommittee last

The writer is on the national staff of The Washington Post.

week. "The very inefficiency of these systems was one of the chief protections of individual privacy."

Now, however, NCIC's records are available within minutes to more than 6000 police agencies. Within a few years its information can be made available to more than 46,000 police, court, and corrections agencies. In five years, NCIC records will number 10.1 million and in 10 years, 21.7 million. In five years NCIC computers will hold 3 million criminal histories, and in 10 years the number will swell to 8 million.

Efficiency being the name of the computer game, the potential for misuse is awesome. Even now, with most systems still in the manual dark ages, credit bureaus and employment agencies have in many instances easily gained access to crime records. Compounding the problem is the fact that arrest records are often disseminated without final dispositions of the cases. Thus, an arrest can be held against an individual who was found innocent.

"Careers have been ruined, marriages have been wrecked, and reputations built up over a lifetime have been destroyed by the misuse or abuse of data technology in both public and private hands," President Nixon has said.

FBI Director Kelley does not deny the problem. Nor does he deny that most ex-convicts who are going to commit more crime do so within five or seven years, meaning that their arrest records would not be sealed from police.

But Kelley does seem to minimize the figures. He told the House subcommittee last week:

"While studies indicate that the majority of criminal recidivism occurs within a time frame short of the time periods enumerated in some of the bills, all criminal recidivism does not. If only 10 murderers or kidnapers repeated their crime outside the statutory time frame, is not this enough to warrant criminal justice agencies access to offender records which may provide leads in subsequent murder or kidnapping investigations?" [emphases added].

It is a good question, for it points to the balance that Congress is being asked to strike in considering the crime data legislation. What is the greater danger to society—the possibility that people's lives can be ruined by misuse of criminal information or the possibility that police will not

be able to catch certain criminals because clues from old records are unavailable?

No one knows the number of ruined lives or uncaught criminals related to crime data, but a number of studies have been made of recidivism.

One study by sociologist Daniel Glaser indicates that 90 per cent of felons who will return to prison for other felonious offenses do so in three years. Another cited by sociologist Gene Kassebaum shows 75 per cent return in three years.

Colin H. Frank, assistant administrator of mental health services at the U.S. Bureau of Prisons, found, when reviewing recidivism analyses for his dissertation, that 85 per cent of ex-convicts are rearrested within two years.

Another Bureau of Prisons official summarizes the literature this way: "Of those who are going to fail, who can't make it on the outside, at least 95 per cent are caught within seven years."

One of the longest and most frequently cited studies is the FBI's 1969 report on 18,567 offenders who had been released in 1963. It shows that by the end of six years, 65 per cent had been rearrested. A breakdown of the figures also shows that more than half—52.6 per cent—were rearrested within three years and that 60.9 per cent had been rearrested within five years. Afterward, the rate of rearrests tapered off significantly. Between the end of the fifth and end of the sixth year, the percentage of rearrests went from 63.3 to 65.1—an addition of 1.8 per cent.

In other words, records on the overwhelming majority of offenders likely to be charged with other crimes will not be sealed.

But how many felons might stay "clean"—or at least unapprehended—for seven years and then strike again? Assuming a leveling off of the rearrest rate at 1.8 per cent and a continuation of the present practice of releasing 90,000 state and federal prisoners a year, the number of potentially dangerous criminals whose past arrest records would be sealed comes to 1,620.

That does not mean police are helpless in the face of 1,620 ex-cons running loose in the country. Most arrests are made, after all, on the basis of current evidence and current allegations by victims and witnesses.

In the case of murders and kidnappings, the numbers committed are incredibly small. Fewer than 9 out of every 100,000 persons were murdered in 1972, and police made arrests in 82 per cent of the cases. Kidnapings occur with such relative infrequency that the FBI does not include them in its annual Uniform Crime Reports.

So, as George E. Hall, head of the National Criminal Information and Statistics Service, puts it, "The danger to society is pretty small."

Yet it does exist. One Justice Department official, referring to the unsolved Washington area deaths of at least six girls in 1971 and 1972, says, "If we have another series of phantom freeway murders, I want to know the name of every man who has messed around with little girls over the last 30 years."

Then why seal records at all? Why not, as FBI Director Kelley suggests, keep them open and take steps to see that they are not misused?

Rep. Don Edwards (D-Calif.), who has also introduced a bill on the subject, favors sealing but says perhaps the period for keeping records open should be extended. And Attorney General Saxbe, noting that most crime careers last seven years or less and that most crime is committed by people aged 18 to 24, suggests that no record should be sealed on anyone under 30.

Edwards believes sealing would encourage ex-convicts to go straight and seek responsible jobs. "It would give them a chance at a clean slate," he says.

Douglass Lea, who heads the American Civil Liberties Union's project on individual privacy, says sealing is the only sure way to prevent misuse of old records.

"There has to be some point at which you set people free and let them start anew. That's why people came to this country in the first place. It's what the American dream is all about."