

**FBI Criminal
History Records
What Every Legal Aid Lawyer
Needs to Know**

About this Webinar

- For attorneys helping clients with FBI background checks, and advocates who need to understand FBI record systems
 - Overview of the criminal history information that appears in an FBI background check, including an overview of how the FBI obtains, retains, and accesses criminal history information
 - Expunging and sealing in FBI records
 - How your clients can view their own FBI records
 - How your clients can fix errors on their FBI records
 - How employers or licensing agencies get access to FBI records
- Handouts, links, PowerPoint and recording available
- Questions

What is an FBI Criminal Record?

- Criminal history record information compiled and distributed by the FBI
 - Not a “federal” or “national” private background check
- FBI Records for employment or licensing purposes require fingerprints



- The FBI's Next Generation Identification (NGI) System records are fingerprint based.
- The Interstate Identification Index (III) functions as part of the NGI System.
- The III provides for the decentralized interstate exchange of criminal history record information by using pointers established by the submission of arrest fingerprints.



- All criminal history records are submitted voluntarily to the NGI System.
- Searches are conducted in accordance with an appropriate legal authority.
- The NGI System and III rely on purpose codes based on the legal authority.



- During a criminal encounter, there can be different processes:
 - Individual receives a citation and does not report to court (generally no fingerprints are taken) or
 - Individual receives a citation, reports to court, and fingerprints are taken if convicted or
 - Individual is arrested with fingerprints taken and may or may not be referred for adjudication to the court.



- If an individual is fingerprinted during an arrest, the fingerprints are submitted to the appropriate State Identification Bureau for processing. If the fingerprints match to an existing record in the state repository, the arrest information will be added to the individual's record in the state repository. If the fingerprints do not match, a record may be created in the state repository.



- If a new record was created in the state repository for the individual, the state will create a State Identification Number (SID).
- If there is an existing record with a corresponding SID, the arrest event is added.
- Non-National Fingerprint File (NFF) states may electronically submit the arrest information, with the SID, to the NGI System.



- For NFF states, the arrest information is sent to the NGI System only if no prior record with a SID exists.
- If a record with a SID already exists in the NGI System, NFF states will only submit additional biographical information (names, dates of birth, social security numbers, etc.).
- All information submitted to the NGI System will be added to the individual's record, if the state indicates that the record should be retained.



- For a fingerprint based civil check of the NGI System, a response is built by adding federal arrests housed in the NGI System and querying state repositories based on the pointers (SIDs) set at the record level.
- State responses are appended to the NGI System response. States are only queried for purposes to which they are authorized to respond.



- If a state cannot respond to a query, the NGI System will respond on behalf of the state by including any criminal events from that state stored in the NGI System.
- All noncriminal justice checks of the NGI System must be supported by a positive fingerprint identification.



- It is important to note the FBI does not modify or re-format the information provided from the state repositories.
- The compiled response can contain information in different formats based on how each state's response is formatted.



- Non-serious offenses or non-criterion offenses are not stored in the NGI System.
- Contributors may seal an entire record or individual arrest events.
- The contributor provides the FBI with a list of purpose codes for which sealed record information can and cannot be disseminated.



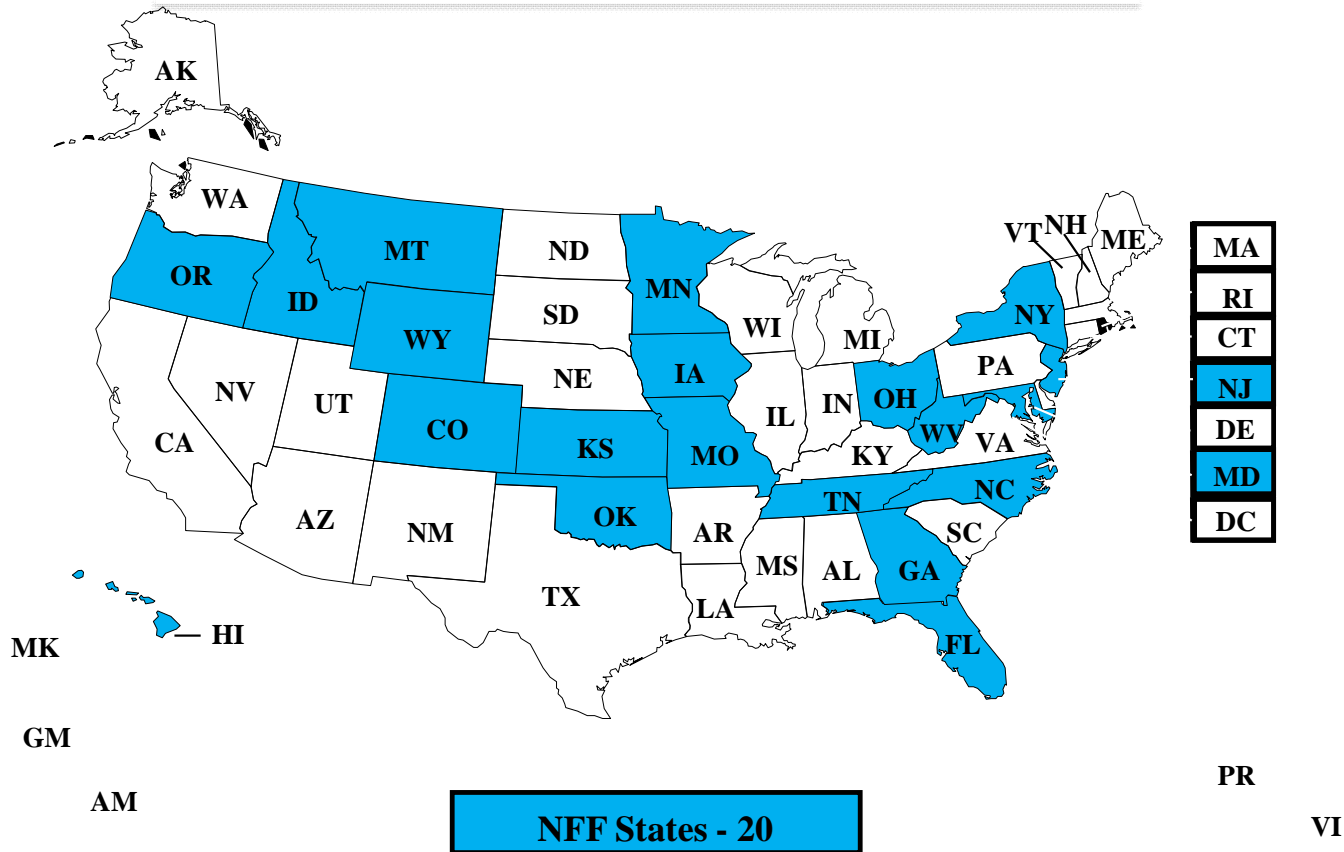
- An expungement is a deletion.
- The record will no longer exist in the NGI System after an expungement.
- If an individual becomes aware that a record has been expunged from a state record but not the NGI System, the individual can challenge the record.



- The FBI cannot seal or expunge a record without a request from the State Identification Bureau or authorized contributor.
- This is important as it ensures the records within both the state repository and the NGI System are in sync.



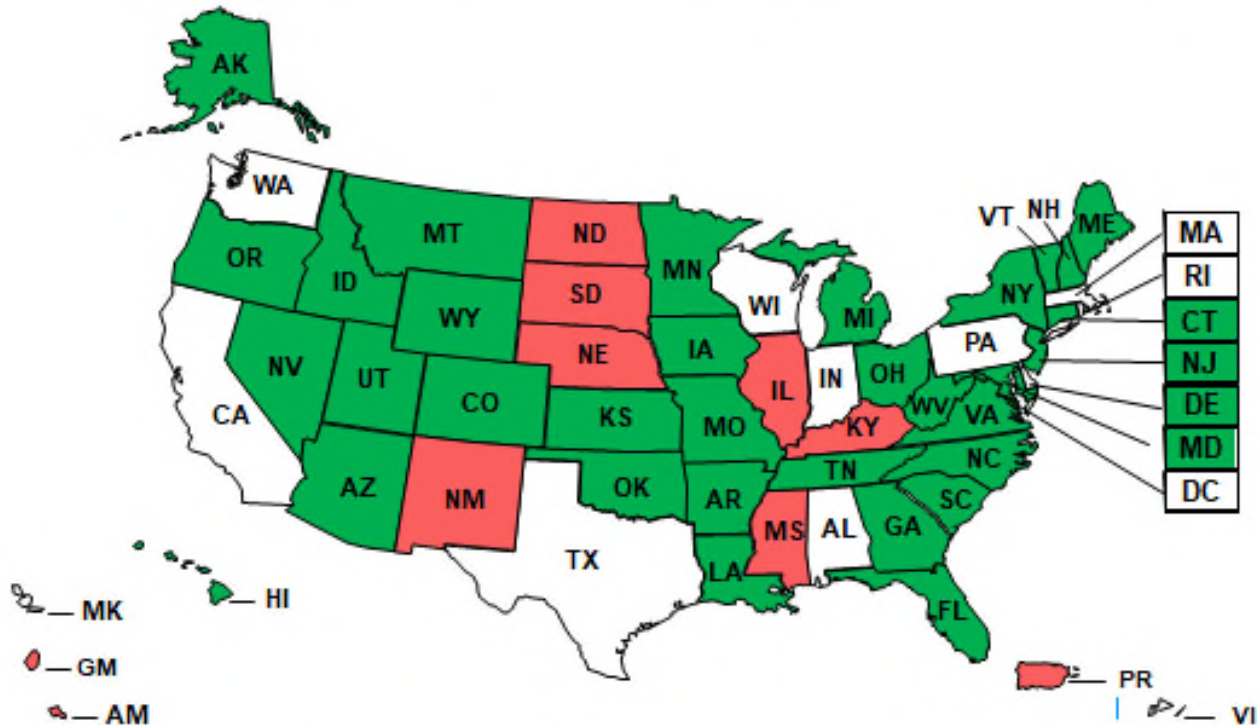
National Fingerprint File (NFF)





Compact States and Territories

As of November 2019



Compact States (34)	Ratified Compact awaiting effective date (0)	MOU Signatory States (10)
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The National Crime Prevention and Privacy Compact Act (Compact) Council

- 15 members appointed by the U.S. Attorney General
- Representatives from Compact states as well as federal and state criminal justice and noncriminal justice agencies
- The Council will exist as long as the Compact remains in effect
- Not to conflict with the FBI's administration of the III for criminal justice purposes



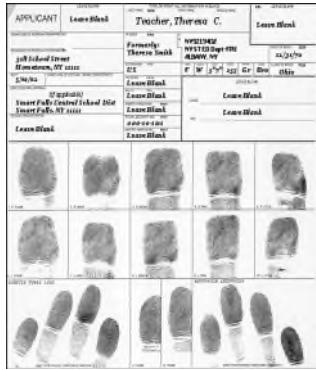
State Support of Purpose Codes

Purpose Code	Description
D	Domestic Violence/Stalking
I	Noncriminal Justice (employment or licensing)
J	Criminal Justice employment
S	National Security
X	Background Checks in Exigent Circumstances

STATE	PURPOSE CODE(S) STATE DOES NOT SUPPORT
Alabama	X
California	D, I, J, S, X
Illinois	D, I, X
Massachusetts	I, X
Mississippi	X
Nebraska	I, X
North Dakota	I, X
Pennsylvania	I, X
Texas	I
Washington	I



Impact of Supporting Purpose Codes



Query submitted
and matches to a
NGI System record



Federal arrests
added to the
disseminable
response

Query each state
repository for any
arrests with a SID in
the NGI System,
then add to response

State outreach is
triggered **ONLY** if
the state supports
the purpose code

If a state does not support
a purpose code, then the
NGI System will add state
arrests listed with the SID
which were stored in the
NGI System.



Title 28 CFR § 20.3 Definition

Dispositions shall include, but shall not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.



Breakdown in the Process

The breakdown in the process can occur at any step.

No or poor quality prints



Disposition not forwarded



No or poor quality prints



Probation or parole not forwarded



Restoration of Rights information not forwarded



State bureau may or may not have any of the above





Electronic Departmental Order (eDO)

- Internal application and outward facing website <https://www.edo.cjis.gov>.
- Currently utilized for four FBI Services
- Improves customer experience and reduces resources required by the FBI





- US DOJ Order 556-73 provides individuals the opportunity to request a copy of their FBI identification record upon a written request, proof of identity, and payment of an \$18 fee. Fees are waived for indigent individuals.
- In February 2018, the eDO system was implemented. Until the implementation of the eDO, this had been a manual process since Director Hoover approved the process.





- The FBI has entered in a pilot agreement with the U.S. Postal Service (USPS). The USPS collect live scan fingerprints to support the DO requests.
- All DO requests submitted via the USPS are processed in a “lights out” environment.
- 80 locations currently with additional locations to come!





- When an individual challenges their criminal history record or firearm-related denial, the FBI coordinates with state bureaus, federal agencies, courts, local law enforcement, and other entities in an attempt to verify or correct challenged information on behalf of the individual.

**There is no charge
to an individual to
challenge a
record.**



Request Type	Current Response Time
USPS	4 minutes
Electronic DO Requests	< 24 hours
Paper Based DO Requests	5 days
Challenges of Criminal History	58 days



FBI-Approved Channeler

- A private business that has contracted with the FBI to submit a request on behalf of an individual.
- Receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI for a national Identity History Summary check, and receive the electronic summary check result for dissemination to the individual.



FBI-Approved Channeler

- An individual requesting an Identity History Summary or proof that a summary does not exist through FBI-approved channelers should contact the channeler directly for complete information and instructions.

<https://www.fbi.gov/services/cjis/identity-history-summary-checks/list-of-fbi-approved-channelers-for-departmental-order-submissions>



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Criminal Justice Information Services Division
Biometric Services Section

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Access to FBI Records under Federal and State Law



Who has access to FBI Records?

- FBI records are not publicly available
- Most employers do not have access to FBI records
- Access must be authorized through federal and/or state statute
- A person always has access to his/her own FBI record



FBI Records Are Not Public Records

- Under the Privacy Act, criminal record information is not a public record, and is excepted from Freedom of Information Act (FOIA) requirements.
 - 5 U.S.C.A. § 552(b)(7): “[Requirement to make records available] does not apply to matters that are ... records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of personal privacy”
- *DOJ v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) interprets this language to create a categorical bar per.
 - “Accordingly, we hold as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no ‘official information’ about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is ‘unwarranted.’”



Public Law 92-544 (1972)

- Pub. L. 92-544, 86 Stat. 115 (1972) allocates funds relating to FBI records and allows FBI records to be exchanged ONLY to:
 - Federally chartered and insured banks
 - **State and local government officials for purposes of employment or licensing if authorized by State statute and approved by the Attorney General**
- Exchange of records is “subject to cancellation if dissemination is made outside of the receiving departments or related agencies”
- State laws are usually authorized under Pub. L. 92-544. There are other federal statutes that also authorize the exchange of FBI records.



28 C.F.R. § 20.33 Dissemination of criminal history record information.

- FBI records may be made available:
 - For criminal justice purposes under (1), (4), (5), (6) and (7)
 - To federal agencies pursuant to federal statute or executive order under (2)
 - “(3) For use in connection with **licensing or employment, pursuant to Public Law 92–544, 86 Stat. 1115, or other federal legislation**, and for other uses for which dissemination is authorized by federal law. Refer to § 50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph”
- Includes the same warning that exchange of information “is subject to cancellation” if shared with others, and requires that records “shall be used only for the purpose requested”



28 C.F.R. § 50.12 Exchange of FBI identification records.

FBI can exchange records with:

1. “officials of federally chartered or insured banking institutions”
2. “if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Public Law 92–544, 86 Stat. 1115”
3. “certain segments of the securities industry, with registered futures associations, and with nuclear power plants”
4. “in other instances as authorized by federal law”



28 C.F.R. § 50.12, continued

- “Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.
- Officials ... must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI.
- The officials ... shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record...
- Officials ... should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so.”



Other Federal Laws

Common Jobs

- FDIC-insured Banks
- HAZMAT-endorsed commercial drivers license
- Aviation Industry, including airport workers with access to secure areas
- Seaports, if access to secure areas
- People working with children, older adults or people with disabilities, if there is a state law or regulation
- Employees providing “direct patient care,” if requested by the State
- Private security officers, unless there is a state law covering these employees

• Other Jobs

- Horse/Dog Racing
- Commodity Futures Trading Industry
- Nuclear Power Plants
- Securities Industry
- Flight School Training
- Various federal government positions
- Indian child care, housing and gaming
- Federal agencies and facilities contracted by federal agencies to provide child care
- Private companies transporting state or local violent prisoners
- People who handle biological agents or toxins



State Laws

- Pub. L. 92-544, 86 Stat. 115 requires a state statute authorizing FBI records that is approved by the AG
- Many such authorization statutes exist
 - Per the 2006 Attorney General report, there were approximately 1,200 state statutes approved by the Attorney General under Pub. L. 92-544
- Look for laws that mention fingerprinting
 - “The U.S. Department of Justice has advised that the state statute establishing guidelines for a category of employment or the issuance of a license **must, in itself, require fingerprinting and authorize the governmental licensing or employing agency to exchange fingerprint data directly with the FBI.**”



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