

A Digital Clean Slate: Public Records in the Private Sector

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Final Project Report
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Abstract

The East Bay Community Law Center (EBCLC) works to place people with criminal records into work situations by helping them through the process of getting prior convictions dismissed. When potentially derogatory information is dismissed from a person's record in the court system, the dismissal is not always registered immediately with various Corporate Data Brokers (CDBs) who provide background checks to employers. This means that errors can appear in background checks and jeopardize chances at employment. In this paper, we present the results of a pilot study that looks at the flow of information from public court records to CDBs and then to employers and job applicants. Of particular interest is how and when errors may be introduced into these records and how processes and systems can be improved to avoid or minimize such errors. We review the current regulatory framework governing CDBs, the relationships of the stakeholders, the processes and systems in place to manage and exchange this data in the courts in Alameda County and in the private sector. In terms of the courts, we focus on Alameda county; on the data broker side, we focus primarily on ChoicePoint, one of the largest players in the field. We also discuss developments in court information systems that are currently underway in California. Hopefully this study will lead to analyses and recommendations that can be revisited in future studies and applied in a broader scope.

0 Introduction

When public records were kept in paper archives, scattered across numerous agency offices in thousands of localities across the country, the privacy of these records would have seemed to be a minute concern. In order to find information about a person's criminal record, for example, someone would need to visit courthouses in all the municipalities and counties in which the person had lived (at least), and first they would have needed to figure out where the person had lived. Things have changed, and in ways that are not as obvious as they might appear at first glance. Of course, technology has made information pervasive and often easily accessed on the Web. But certain kinds of data, about a person's arrest or conviction records, are still not widely accessible to anyone with idle curiosity and a browser. With the exception of a few regions of the country, these records are often only available to those members of the general public who are willing to go to the county courthouse and dig through paper files.

The important change is not in government information practices, which, while they sometimes lag in technology adoption, have become stricter and more accountable in the past few decades, but in the private sector. Corporate data brokers (CDBs), such as ChoicePoint, collect information on individuals from all over the country, amassing huge amounts of personal information that they sell to government agencies, insurers and private sector employers, among others. These services are immensely valuable—ChoicePoint is being acquired by Reed

Elsevier for 4.1 billion dollars¹—and the data can determine whether a person gets a job, a professional license or insurance, so errors have serious consequences. Yet few people are aware of the existence of CDBs until something goes wrong. Furthermore, there is no comprehensive federal legislation governing how these companies collect and use information, and what legislation exists leaves the a heavy burden on subjects of background checks to ensure the accuracy of data being maintained in public records.

In this paper, we discuss the findings of a pilot study that looks at how CDBs operate and interact with the court system in Alameda County, California. Of particular interest is the treatment of convictions that have received remedies under California law. There are a variety of remedies that range from sealing and eventually destroying records of conviction or arrest to simply adding a notation indicating the defendant has fulfilled all the requirements of their sentence and not gotten into any more trouble. In the first two sections, we will look at legislation governing CDBs on the national and state level, as well as remedies available in California and then take a closer look at the service relationships between the major stakeholders in the background check process.

The next three sections describe the major findings of our fieldwork. We interviewed stakeholders in the Alameda County Superior Court, in particular Criminal Division Clerks and the Director of Research and Planning; the manager of ChoicePoint's National Criminal File background check product; an independent court researcher who does on-the-ground background check

¹ <http://www.reed-elsevier.com/index.cfm?articleid=2200>

research in Alameda courts for CDBs;² and legal staff from a clinic in Alameda County that aids clients in petitioning for remedies. These interviews were instrumental in providing us with a detailed picture of how information about convictions moves through the courts, to CDBs, then on to employers and job applicants, including the systems and documents involved and where and how along the way errors can be introduced, discovered and corrected.

In the final third of this paper, we analyze our findings (Section 6) and we look at the future of court information systems in California (Section 7). Section 7 incorporates findings from another interview with the product manager for the California Case Management System, a system being developed by the California Administrative Office of the Courts that will replace all of California's court information systems. Finally, we suggest several directions for further research that will greatly enrich the findings of this study. Indeed, we hope this study serves as the basis for research on a far broader level, as public records information becomes increasingly digitized and the issues surrounding its use more abstruse.

1.0 Existing Information Legislation

In the following section, we look at legislation regarding privacy and handling of information in government agencies. These laws are the most broadly applicable when it comes to the type of information covered and their possible uses, and thus they offer a framework for thinking about this type of

² Throughout, we will use the term "researcher" or "court researcher" to refer to people conducting searches for CDB background checks.

legislation. We also look at one industry-specific law in California: the Investigative Consumer Reporting Agencies Act, which applies explicitly to the practices of CDBs.

1.1 Federal

1.1.1 The Privacy Act

In the 1970s, following a report by the Department of Health, Education and Welfare that articulated a set of “Fair Information Practices,” the federal government and many of the states began to enact privacy laws governing the collection, maintenance and use of personal information. The United States Congress passed the Privacy Act in 1974, and many states followed suit with similar laws. The act required that an agency of the federal government must only collect personal information for a specific, legitimate government function; it must allow access and correction mechanisms for data subjects; and it must limit collection to that information that is necessary for fulfilling that specific function.³

The Act applies to information originating with the government and used by government contractors, but does not apply to Corporate Data Brokers (CDBs) that gather the information independently.⁴ This has left the door open for CDBs to gather information from public records and sell comprehensive records on individuals to other companies and even, ironically, to the government.

³ Hoofnagle, Chris Jay. *Big Brother's Little Helpers: How ChoicePoint and Other Commercial Data Brokers Collect and Package Your Data for Law Enforcement*. North Carolina Journal of International Law and Commercial Regulation Inc. Summer 2004.

⁴ Hoofnagle, pc, 2007

1.1.2 Fair Credit Reporting Act

The Fair Credit Reporting Act (FCRA) governs how data used in consumer credit reports is collected, maintained and distributed⁵, and it sets forth rules specifying under what circumstances credit reports may be obtained. The FCRA definition of a credit report is built around how it is used, but some sections apply to both traditional credit-reporting agencies that report primarily financial information, as well as CDBs.

ChoicePoint advertises some of their database products, including their National Criminal File, as "FCRA-Compliant." This is in line with section 1681k of the FCRA, which sets out specific requirements for reporting credit information derived from public records for "employment purposes." One option for companies like ChoicePoint, when they furnish such a report, is to inform the consumer "of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported." Alternatively, they may "maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date." The Act identifies arrests and convictions as such adverse data. Although the FCRA places this responsibility on the CDB to ensure accuracy, the ultimate burden lies with the subject of the background check to ensure that the court or courts where they have records have maintained accurate, timely data.

⁵ Hoofnagle, 2004

1.2 California

1.2.1 Information Practices Act

The state of California has a more restrictive set of laws governing information privacy, including legislation that applies specifically to investigative consumer reporting agencies, which we refer to as CDBs. Besides acknowledging a right to personal privacy explicitly in the state constitution, California passed the Information Practices Act in 1977, drawing on the same principles as the federal government did in constructing the Privacy Act, but expanding them as well. In addition to the requirements of the national Privacy Act, the California law requires agencies to keep a record of the source of information about an individual and, upon transferring any information to another agency, “to correct, update, withhold or delete any portion of a record that it knows or has reason to believe is inaccurate or untimely.” This constitutes an automatic check on accuracy every time a record is requested.

1.2.2 Investigative Consumer Reporting Agencies Act

The Investigative Consumer Reporting Agencies Act (ICRAA) of California governs how companies, particularly those we are referring to as CDBs, collect, maintain and sell information about consumers to employers, insurers, licensing agencies and others. The law defines what parties may request information, under what circumstances and what types of information they may request. Requestors must certify to the consumer reporting agency that they are using the information for a particular, legally sanctioned purpose. It gives consumers the

right to view their files and dispute information contained therein. The ICRAA outlines a detailed procedure for disputing information in the reporting agencies' file, and requires the agency to investigate on behalf of the consumer and make corrections or, if they cannot confirm the accuracy or correct of the information, delete it.

The ICRAA also sets out very specific guidelines for dealing with public records and especially adverse information, such as convictions, arrests and tax liens, that is obtained from public records. All information that originates in public records must be accompanied by the source and date of the information. When such information is provided in a report, there are regulations requiring that the information must have been verified within thirty days before issuing the report. Additionally, reports must not contain "...Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years."⁶

1.2.3 Remedies

There are a variety of remedies available to people who have been convicted of a crime. As a general rule, these remedies apply to individuals who have been convicted of crimes that are fairly minor and usually do not involve prison time. These are not hardened criminals; they are people who have committed offenses born of mental illness, drug abuse, poverty and homelessness. In order to qualify, they have turned their lives around and

⁶ CA Civil Code 1786.18(a) (7)

worked to prove to the community and the courts that they are ready to be productive members of society.

Our research has focused largely on the dismissal process as governed by §1203.4 and §1203.4a of the California Penal Code.⁷ These sections allow a petitioner to have a misdemeanor dismissed. A §1203.4 dismissal does not remove the conviction from the person's criminal history, but it does amend the record to include the notation "Conviction set aside and dismissed per §1203.4 PC." §1203.4 requires petitioners to fulfill all conditions of their probation or to have fulfilled all conditions of their sentence and not currently be serving a sentence, on probation for or charged with any other offense.

Certain felonies can be sentenced as either a misdemeanor or a felony. In these cases California Penal Code §17b allows for a felony to be reduced to a misdemeanor, and will show up in both state and county rap sheets. §17b felony reductions will count as a misdemeanor for all purposes save for a few exceptions; mostly notably it will still count as a felony strike under California's "Three Strikes" law and may still be considered a felony with regard to getting a license under some state regulated professions.

California Penal Code §851.90 will seal a record and will remove the record entirely from county rap sheets, but will still appear as "Sealed" on state rap sheets. A person can petition for a §851.90 sealing if they have been diverted pursuant to a drug diversion program by a superior court and, having completed the drug diversion program the presiding judge may also seal the

⁷ §1203.4 applies to persons who were found or plead guilty and were granted probation. §1203.4a provides the exact same remedies as §1203.4 but grants those remedies for persons who were found or plead guilty and not granted probation.

conviction records as well as dismissing the conviction. The record of the arrest and conviction for this offense will still be reported by the state Department of Justice and must also be disclosed by any person seeking employment as a peace officer.

§851.8 can seal arrests that did not lead to convictions. This will remove the arrest from the record of both state and county rap sheets. In order to qualify for this remedy a person must have been arrested and not charged; that is to say if the law enforcement agency with jurisdiction over the offense finds that the person arrested was, in fact, innocent then the copies of the original arrest can be sealed for three years and after which the records can be destroyed.

2.0 Stakeholders: Relationships & Quality

The landscape of stakeholders and services that coalesce to produce CDB background checks is incredibly complex. We will focus on what we see as the four primary stakeholders in the process of criminal records background checks, alluded to in the introduction: CDBs; criminal justice system agencies, especially courts; job and professional license applicants; and employers and licensing agencies. Each of these stakeholders has unique concerns regarding the accuracy and timeliness of criminal records and their relationship to the other stakeholders. They are also likely to hold different measures of data quality.

2.1 Corporate Data Brokers

CDBs must consider the concerns of both employers and job applicants, the two stakeholders they may provide direct services to. However, influence of

the two parties is not equal: CDBs target employers as the customers for their background check products, and employers choose to engage in a customer-service provider relationship with the CDB. They pay for a service and consequently help determine its value. The value of that service is greater when they receive information that leads them to hire employees who will not increase their liability as a company and who appear to be trustworthy based on the alignment of their application with the background check.

The best way for the CDB to deliver this value to the employer is to make every effort to ensure the accuracy of their records with respect to convictions. This is not an easy task, considering that CDBs use individual court researchers to collect data from public records all over the country, from agencies with different information systems and different data standards and procedures for accessing those records and from states with different penal codes. CDBs must try to make sense of this data and connect the right facts with the right individuals. The complexity of the process is not seen and may not be realized by customers who simply receive a report that connects facts and incidents to a name. This part of the service is crucial, but it occurs on the “back stage,” that is, it is not exposed to the customer. The “front stage”—the part of the service that is visible to the customer, is a completed background report.^{8 9}

⁸ Teboul, J. *Services is Front-Stage*. Palgrave Macmillan, 2006

⁹ Glushko, Robert J. & Lindsay Tabas. *Bridging the “Front Stage” and “Back Stage” in Service System Design*. ISchool Report 2007-013. 2007
<http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1013&context=ischool>

2.2 Employers: Avoiding Liability

More and more employers have begun performing background checks; in fact, an Institute of Management and Administration survey found that 85.9% of employers ran checks on new applicants in 2007.¹⁰ Background checks offer employers a presumably objective and accurate means of confirming the honesty of an applicant's answers to questions in the application and interview.

Furthermore, employers may be held liable if they hire an employee whose criminal background poses a risk to their business (say, a drug offender trying to work as a hospital orderly with access to prescription medication), especially if negative information may have been exposed through a background check.¹¹

While employers doubtless wish to have the most accurate information possible when making hiring decisions, this concern may be biased. Specifically, employers may be inclined to prefer inaccurate negative information over falsely positive information, since overall this will decrease the employer's liability for inappropriate hiring decisions. This preference is almost certainly counteracted by the employer's desire not to pass up qualified applicants due to inaccurate reports on convictions, but accuracy may not be the primary concern here.

2.3 Job Applicants: No-Win Front-stage Service

For job applicants, the quality of the service provided by the CDB is highest when the CDB is a completely invisible "backstage" player. The applicant may know that a background check is being performed, and knows that this

¹⁰ *Background Checks Are On the Rise*. HR Focus. Institute of Management and Administration. 2007

¹¹ *Ibid*, *Pointers on More Complete Background Checks*. P. S2

check will be a factor in the decision to hire them. But, unless negative information turns up they may never know which company provided it and they almost certainly would not see a reason to contact that CDB. The interaction the job applicant has with the CDB will, at best, allow him to learn the source of the adverse information on the background check and perhaps see a copy of the check. A CDB cannot change erroneous information regarding criminal convictions or remedies unless these changes are derived from the public record. The service they provide to applicants is limited and will not fulfill the job applicant's ultimate goal of removing or changing the conviction data that appears on their background check. If the CDB re-investigates and confirms their original finding, they cannot change the public record, nor will they act as an advocate on behalf of the subject. The subject must go through the court system to dispute the record at its source. Thus, the service encounter between the job applicant and the CDB is inherently negative.

Furthermore, there is ambiguity surrounding the applicant's responsibility to report convictions that have been dismissed pursuant to §1203.4 or §1203.4a. Because such convictions still appear in the public record with a code indicating the dismissal, CDBs are under no obligation to remove such convictions from background checks, but some do. So, the applicant with a §1203.4 or §1203.4a dismissal is faced with one of two unattractive options. First, they can check the box acknowledging a conviction, and risk being immediately having a strike against them. Second, they can leave the conviction checkbox blank and risk the dismissed conviction showing up on a background check, which will give the

appearance of dishonesty with respect to their past, especially if an employer does not understand what a §1203.4 dismissal means.¹²

2.4 Courts: Everything to Everyone

The courts, where criminal conviction records originate, have what is probably the most ambiguous and complex role of any stakeholder. The courts face a multitude of demands from different parties that they are ill-equipped to handle in a timely, accurate manner and that bring up serious policy questions. Their “customer” is only nebulously defined,¹³ and includes segments of the public whose goals are, at best, diverse and whose interests are often directly opposed to one another.

Petitioners, for example, often approach the court without much knowledge of how the process works or what remedy they should seek. This can put court clerks in the awkward position of advising petitioners of which remedies to seek, which can result in remedies being granted that the petitioner does not qualify for.¹⁴ It is unclear what the consequences of such mistakes would be if they make it all the way to a background check, but it certainly lowers the quality of the data and thus the quality of the service provided to CDBs and, indirectly, to employers.

¹² Eliza Hersh, Interview. 2/5/2008. There is a movement in the clean-slate legal community to “Ban the Box”—that is, mandate the removal of boxes that ask about convictions from job applications in order to avoid this kind of confusion. Convictions would, of course, still show up on background checks.

¹³ Fountain, 2001

¹⁴ One such instance appears on a RAP sheet we encountered. It shows that one conviction was dismissed under California Penal Code 1203.4, and also that the person served time in state prison for the same conviction, whereas one of the requirements for this type of dismissal is that the person not have spent time in prison for the conviction.

The CDB, in turn, has service needs that many courts may not be able to meet due to lack of resources. For many areas of the country, the only way to get court records is to go to the courthouse, look up a case docket number then find the associated paper documents in an archive. Other courts¹⁵ provide electronic versions of conviction records in bulk to the public. While this is a potential source of revenue for the court and can provide CDBs with a valuable service, there is concern in the legal community over the policy regarding the use of such records. Currently, Ohio is considering a rule change¹⁶ to allow such sales of records, but legal aid organizations are concerned that the rule does not have stringent enough requirements to ensure that customers buy records frequently and thus stay up-to-date.

Finally, while part of the difficulty lies in the policy surrounding access to public records discussed in Section 3, the role of the courts as service providers, and indeed the question of whether they ought even to prioritize customer service, is fraught.¹⁷ Courts, unlike private companies and like other public sector agencies, cannot target those segments of the market that are easiest or most profitable to serve nor can they deny service based on dissatisfaction with the behavior of a particular customer or group.¹⁸ In the interest of equality, courts must respond to every petition for dismissal as well as requests for public records

¹⁵ Denton County, TX: <http://justice.dentoncounty.com/records.htm>; Charlotte County FL: http://www.co.charlotte.fl.us/OLD_WEB_PAGES/public/OR_access_levels.htm;

¹⁶ PC, Jeff Selbin 12/18/2007 Email “[Fwd: Ohio rule change re: selling criminal record/court data]”

¹⁷ See Fountain, Jane, *Paradoxes of Public Sector Customer Service* for an extensive discussion of the potential difficulties encountered in trying to align public sector agencies with private sector customer service practices.

¹⁸ Fountain, 2001

from members of the public, which may include CDB researchers. The court system must provide all these services to the public, but since the demand is high and resources often low, the quality of the service is likely to vary greatly depending on how much each court considers the service to be a core part of its mission.

3.0 California and Alameda County Court Systems

3.1 Organization of the Courts

In June 1998 the California passed the Senate Constitutional Amendment 4 (SEA4) which revised the judiciary in California and flattened the court system into a single level. Whereas there used to be municipal and superior courts, after Senate Amendment 4 was approved by voters, all courts in California became superior courts.

Once county courts were allowed to merge their municipal and superior courts into one branch, all 58 county courts in California have done so. Currently the superior courts have jurisdiction over all trial cases, including criminal felonies and misdemeanors, as well as over all civil cases.

3.2 Relationship of the Courts to the State DOJ

The states 58 superior courts each report their cases and files up to the state department of justice. In addition to the courts, however, many other agencies, such as police stations and the DMV, report information up to the DOJ where it is then aggregated.

In general, the public does not have access to the DOJ information; it cannot be queried directly from any public terminals or requested directly from clerks. There are some employers, however, who can access this information. Application and vetting of these employers itself involves a thorough background check and is confined to employers participating in specific industries; specifically county and city police departments hiring peace officers and employers whose employees work with vulnerable individuals, such as children or the elderly.

3.3 East Bay Community Law Center

The East Bay Community Law Center (EBCLC) is a community law organization which, among other things, works with low-income individuals seeking to clean up their criminal records. They are well known throughout the Alameda county courthouses through their work on their client's behalves to determine what remedies they are eligible for and to assist in preparing and filing the necessary paperwork at the appropriate courthouses.

As background checks become more important to employers in making hiring decisions it is, consequently, becoming important for prospective employees to make sure that that they are aware of what is on their criminal record and to make every attempt possible to try and clean it up. As mentioned earlier in section 1.2.3, a number of remedies are available in the state of California to reduce or dismiss certain types of convictions if certain conditions are met.

The process for obtaining a §1203.4 or §1203.4a dismissal is pretty straightforward. If a person is eligible for such a remedy they must petition the

court, which requires filling out a petition¹⁹ and filing it with the clerk. A hearing will be scheduled whereupon the judge, the petitioner (and their counsel) and the district attorney will meet to judge the merits of the dismissal.²⁰

But while the process is straightforward, in practice, it can be considerably more difficult. Often, petitioners are not aware of how many convictions they have or exactly which counties they took place in. They may not be sure whether, for example, if they successfully completed a drug diversion program, it still counts as a conviction, or in which of two neighboring counties they were pulled over for a DUI. A petitioner will need to determine these things and whether or not they are eligible for any remedies, which often requires them to obtain a copy of their state RAP sheet from the California DOJ. Only after that has been accomplished can a petition be made for remedies²¹. For individuals of limited means and not versed in the law the EBCLC can be an invaluable resource.

4.0 Alameda County Court Processes and Systems

4.1 CORPUS

Alameda County uses an electronic file record service known as CORPUS²² which was originally developed and implemented in the 1970's and has had periodic maintenance and development since.²³ CORPUS, as a system,

¹⁹ To ease the burden on the clerks they sometimes ask that an order for dismissal also be filled out and filed with the petition. This does not seem to be a requirement, however, because if a dismissal is granted and an order has not been previously filled out the clerk will fill one out at the time the dismissal is granted.

²⁰ Not all Judges require the petitioner to be present for all types of remedies, but some do. This is solely at the discretion of the presiding judge.

²¹ Interview with Eliza Hersch, 2/26/2008

²² Criminal Oriented Records Production Unified System

²³ Technology Overview Current Case Management Systems (Jim Brighton, 1/2005)

encompasses records from the time of arrest through adjudication. Because of this, information included in CORPUS must be made available to multiple agencies and participants. The information contained within CORPUS, however, can be very sensitive and includes rap sheets, court calendars, jail transportation lists, case and docket numbers and a number of reports which are intended for specific agencies.²⁴

4.2 CORPUS System Architecture & Relationships

CORPUS was developed and implemented in the 1970's and its system architecture reflects the technology of the day, though a variety of efforts are currently afoot to modernize the system.²⁵ CORPUS was written in COBOL and currently runs on an IBM Mainframe computer system and is connected to a DB2 Data Warehouse running on top of an IBM VSAM file system.²⁶

CORPUS is tasked with solving two competing problems: the requirement to keep sensitive information and share it between agencies and the requirement to prevent access to those who are not authorized to view certain information or who would find the information irrelevant. And the list of agencies connected to CORPUS is quite large and includes the California DOJ, Social Services, Alameda County Police Departments, Defendants, District Attorney, Public Defender, and the Alameda Superior Courts, to name but a few.²⁷ Even with this cursory list it becomes quite apparent that the needs of the agencies interacting with CORPUS are varied and, at times, contradictory.

²⁴ CORPUS Overview (Jim Brighton, 11/16/1999)

²⁵ Most notably the statewide CCMS initiative.

²⁶ Technology Overview Current Case Management Systems (Jim Brighton, 1/2005)

²⁷ CORPUS Participants (Jim Brighton)

In order to accommodate these needs CORPUS was designed with a segmented architecture. Information is entered into the CORPUS system by various agencies and can then be accessed by all agencies.²⁸ CORPUS was designed to facilitate the sharing of information between agencies, but the segments separating those agencies are meant to be independent in order to prevent any single party or agency from gaining access to all the information stored within CORPUS.²⁹

In addition to these various actors performing real-time interactions within the CORPUS system there are also a series of automated interfaces which transmit new and updated information to various agencies.³⁰

4.3.1 Public Access to CORPUS

The general public also has access to the CORPUS system through the use of a computer terminal located in the court clerk's rooms at the Rene C. Davidson and Wiley Manual Courthouses,³¹ though the information presented to the public is limited. CORPUS identifies people through the combination of whole or partial First and Last name, Date of Birth and Gender. For each individual person individual cases will be identified by unique Docket numbers of specific cases. In order to find out the particulars of a specific case a researcher

²⁸ Ibid.

²⁹ Interview with Jim Brighton, 3/5/2008

³⁰ These include the State of California DOJ, the Automated Warrant System, Public Defender, etc. For our discussion the updates to the CA DOJ, which occur monthly, are of most immediate interest.

³¹ Rene C. Davidson and Wiley W. Manuel Courthouses in Oakland both have terminals set up for the public to use. The courthouses in Fremont and Pleasanton, however, did not seem to have any public access. The Hayward court was not examined. Other counties, such as Santa Clara do not allow any public access to their computer records systems, and instead provide microfiche indices for the public.

must request files specifically from the court clerks and look through the cases individually. A mock-up of the search form is shown below:

LAST NAME:	(LAST NAME REQUIRED)	PARTIAL?	N (Y OR N)
FIRST NAME:		PARTIAL?	N (Y OR N)
MIDDLE NAME:	(OPTIONAL)	PARTIAL?	N (Y OR N)
SEX:	(REQUIRED, MUST BE M OR F)		
DOB:	(OPTIONAL, MMDDCCYY FORMAT)		
SOUNDALIKES:	(ENTER Y TO VIEW ALL LAST NAME SOUNDALIKES)		

Table 1

Upon hitting [Enter], the results for the user's search are shown directly below the original form, with instructions on how to use the function keys. The data included in the results are matching last, first and middle name, date of birth, docket number, court and file dates for all records matching the search criteria.

LAST, FIRST MIDDLE	BIRTH	DOCKET	COURT	FILEDATE
Tam, River	09/23/76	449272	WWM	08/02/03
Tam, Simon	08/13/65	555389	RCD	11/23/99

F3=EXIT F12=CLEAR DISPLAYING PAGE 001 OF 003

Table 2

After using the computer terminal to search through CORPUS and obtain both the individual's identifying information as well as the docket number of the case the next step for a researcher is to request the actual court files from the

clerks. In all cases that we examined³² this process did not vary significantly. A researcher will wait to speak to a clerk and then request a file be pulled and provide at least the docket number and frequently the name on the file. The only significant variation of this process that we experienced was at the Rene C. Davidson courthouse where requests for a file required filling out a paper sleeve with the requestor's name and address and the docket number for the file to be retrieved.

Once the file has been pulled³³ a patron is presented with the entire history of the case. This includes all courtroom testimony, any petitions that had been filed, any orders, granted or otherwise, as well as any supporting documents.³⁴ The file is organized chronologically, with the most recent documents being on top and descending down through the pile to the oldest.

4.3.2 Inactive Criminal Index

At Rene C. Davidson Courthouse, paper indices of cases are also available to look up cases. These contain more information than the CORPUS terminal, including additional justice system personal identifiers, charges, dispositions and disposition dates. This index is arranged alphabetically by last name, and each new case has its own entry, meaning an individual person with several cases will have several case entries, and each case may involve several charges under different sections of the penal code.

³² Rene C. Davidsion and Wiley W. Manuel in Oakland, as well as the Fremont and Pleasanton courts.

³³ The process may take a few days if the file had already been moved out of the courthouse and into the records storage area.

³⁴ e.g. – letters of reference, personal statements, evidence of employment, etc.

4.4 Clerk Processes

The court clerks are instrumental in recording the proceedings of the cases brought before the court. Our research focused primarily with the process that occurred from the moment of adjudication; that is, when a person is found guilty or not guilty, as well as what happens once a §1203.4/1203.4a dismissal is granted.

At the moment a verdict is reached in a trial the jury foreman signs the verdict form and hands it to the Marshal of the court. The judge reads the verdict, and the clerk then file-stamps the verdict form and records the verdict or plea in the court minutes. The clerk's minutes are used as the basis for entering data into the CORPUS system.

Each day the clerk will review the minutes from that day's court calendar and add information from the minutes into CORPUS. Data entry is manual and CORPUS has few internal checks to verify that the information being entered is correct or consistent with information entered previously for the case.³⁵ At the end of each day a daily audit report is generated showing all input activity for CORPUS for the day at that court. This report is then reviewed by the Clerk Supervisor who checks for discrepancies or incorrect codes.³⁶

Error checking, however, appears to be a largely manual process and the burden falls on the defendant to ensure that the court records are correct.^{37 38}

³⁵ CORPUS will return an error if an invalid code was entered, but it does not check to see if a valid code was entered against a case that should not have a specific code entered against it; that is to say, there is no consistency checking.

³⁶ Interview with Bernadette Silva, Division Chief, Rene C. Davidson Courthouse, 4/21/2008

³⁷ Ibid.

³⁸ Interview with Lance Dorman, Independent Record Researcher, 4/8/2008

Typically a person will come into the court clerk's office complaining of incorrect information being reported by the court. Often these are transcription/data entry errors that found their way into CORPUS and corrections can be performed by a clerk.³⁹

An overview of the entire process, from the time the defendant submits a petition through when they are informed of whether it was granted, is shown in the figure below. Figures 2-4 in the following sections elaborate on specific parts of this process.

³⁹ Interview with Bernadette Silva, Division Chief, Rene C. Davidson Courthouse, 4/21/2008

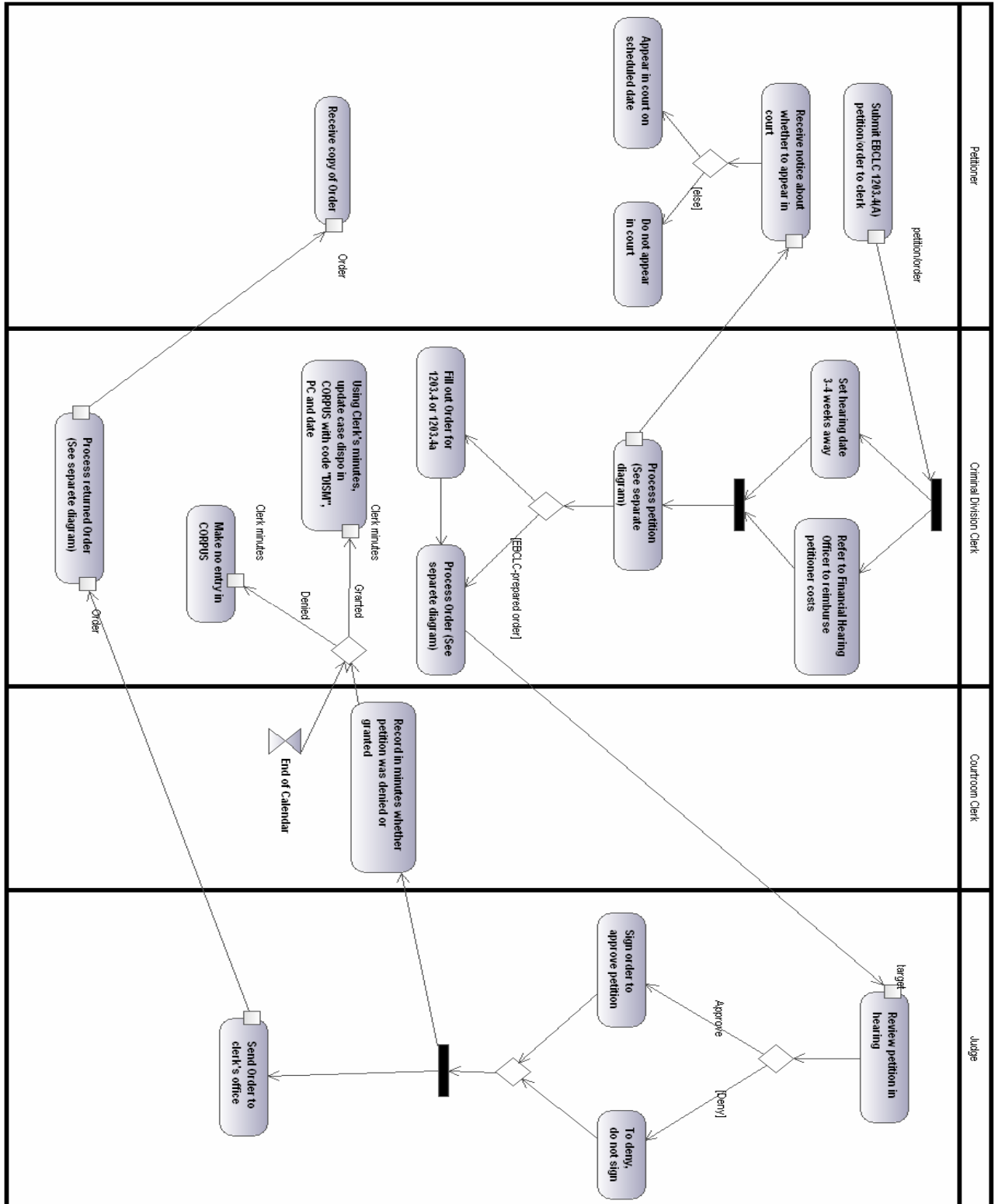


Figure 1: 1203.4/1203.4A Petition-Order Process Overview

4.5 Petition Process

For §1203.4/4a petitions the process is somewhat less formal. In brief, the petitioner⁴⁰ will file a petition and sometimes an order for dismissal under PC §1203.4 or §1203.4a. Depending on the type of conviction being dismissed the judge may or may not have discretion as to whether or not to grant the dismissal. If the dismissal is granted, the judge will sign the prepared order. Granted §1203.4/4a dismissals are also entered into CORPUS by the clerks. If the dismissal is not granted then the prepared order will remain unsigned.

Upon request to seek a dismissal under §1203.4/4a the clerk must first determine which type of dismissal the petitioner is eligible to seek based on probation status. If the petitioner is eligible then the petitioner must fill out the petition. The clerk prepares an order for the judge to grant or deny if the petitioner does not bring one prepared by EBCLC or some other counsel. The clerk will then pull the original file or, if that original has been destroyed, regenerate the file from CORPUS. The petition is then file-stamped and an endorsed copy given to the petitioner, the District Attorney, and the Probation Office. CORPUS is updated with the date, time and department as well as the code “PTDISM”, to show that a petition for dismissal has been started. A model of how the petition is processed is found below.

⁴⁰ Or their counsel, such as the EBCLC.

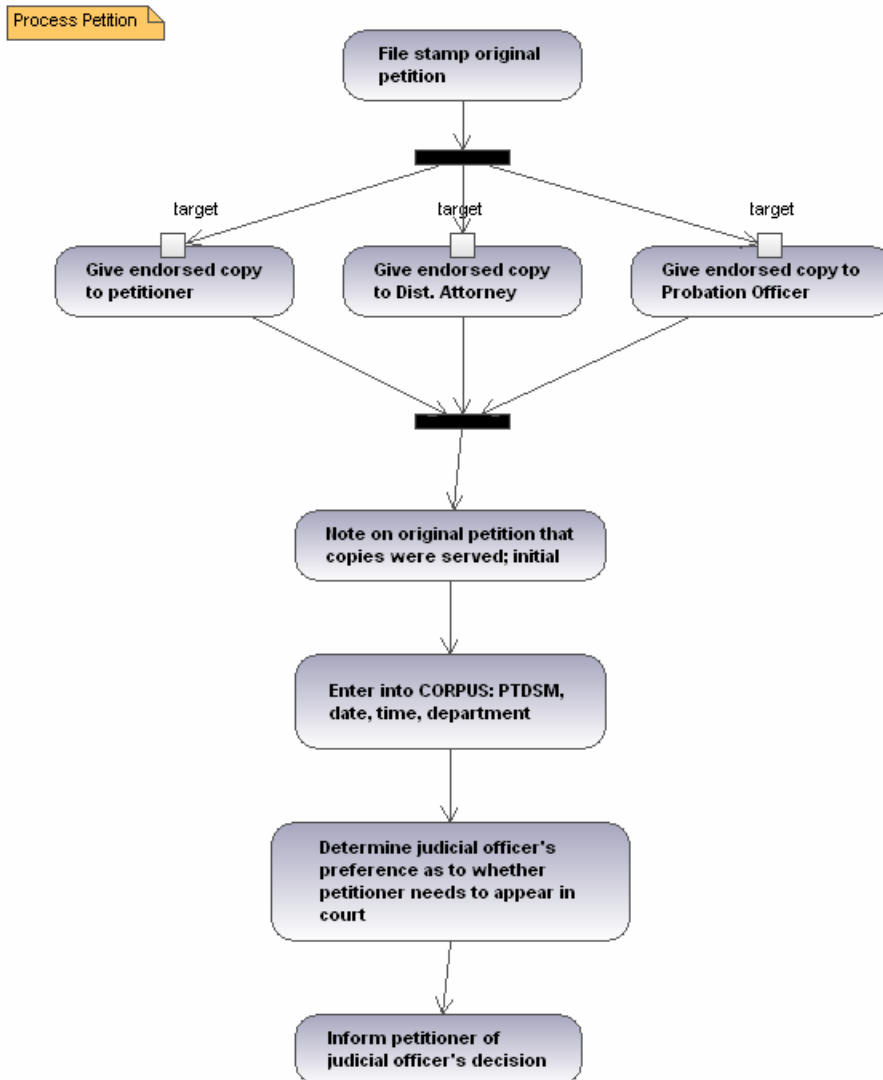


Figure 2: Clerk petition processing

4.6 Order Process

When the hearing is completed the petition for dismissal will either have been granted or denied. If the dismissal has been granted then a certified copy of the order must be made and sent to the petitioner. Otherwise, if it is denied, the copy will still be sent to the defendant but it will not be certified. The diagram

below shows the actions triggered by the return of the physical order from the court; the updates to CORPUS are shown above in Figure 1.

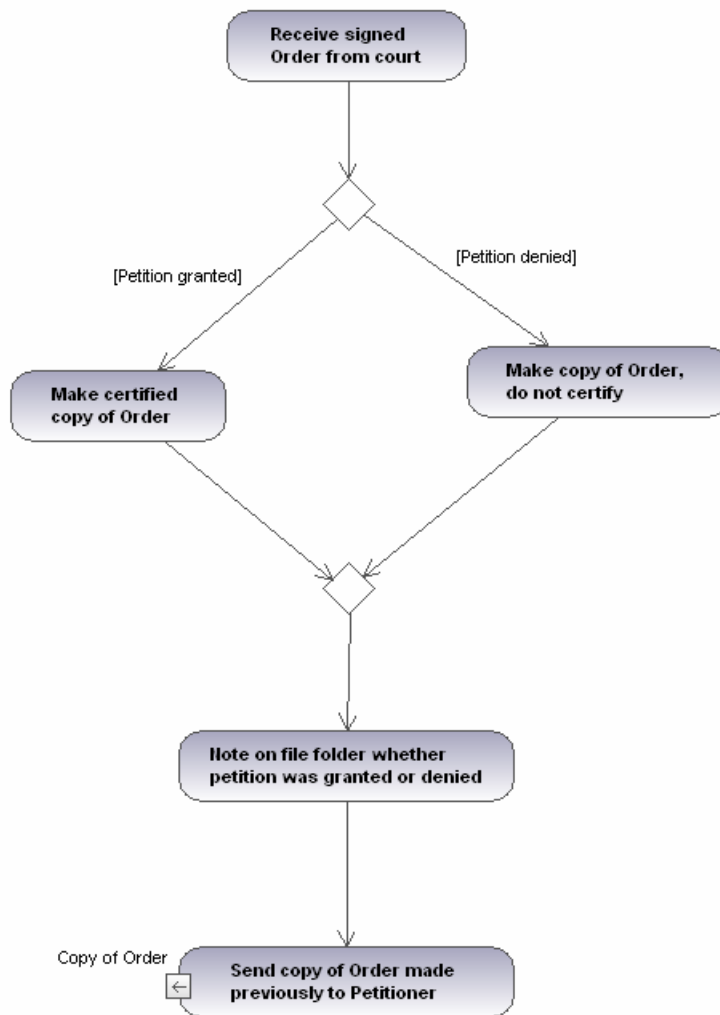


Figure 3: Process returned Order⁴¹

CORPUS is not updated to reflect that a petition for dismissal was denied, nor is this information shown on the public CORPUS terminal. In order for a researcher to determine if a dismissal has been denied, or even that a petition was made, a researcher must retrieve the file and look through it. The original order, whether

⁴¹ See Appendix for example of front of file folder.

granted or denied, is placed in the paper case file. A model of this process can be found in.

When a petition is granted, CORPUS is updated to reflect the new disposition. Clerks update CORPUS at the end of each calendar, that is, after the daily slate of hearings is over and clerk's minutes are returned from the courts. The clerks in the criminal division use these minutes to enter updates, not the signed order for dismissal itself. If the order for §1203.4 dismissal was granted, the clerk enters data in two different CORPUS fields. First, they update the disposition of the case to DISM 1203.4 PC or DISM 1203.4A PC, depending on which section of the penal code the petition was granted under. Second, they enter the date on which the petition was granted.

5.0 ChoicePoint Processes

5.1 Record Retrieval

ChoicePoint offers employers two options for criminal background checks: county-specific court checks and searches in their National Criminal File database. In the county-specific checks, information is usually retrieved from the subject's previous counties of employment and residence, as reported to the employer by the applicant. Records are retrieved on an individual basis, using identifying information provided by the employer, by permission from the job applicant. The employer may also specify that ChoicePoint look for specific types of information.

This type of check means sending someone to the courthouse, looking for court records online or submitting an information request, depending on local

court policy; ChoicePoint keeps a database containing information on access procedures for every court in the country. In addition to following these procedures in a local Superior court, ChoicePoint employees may need to visit other courts – municipal courts or courts handling different types of cases – if records indicate that more information may be found there. If the same job applicant has multiple employers requesting background checks, each requires a separate trip to the courthouses involved. Courthouse checks normally take 72 hours to complete, but could take four to five days, depending on the access procedures in the localities checked. Written requests submitted to the court for response take longer.⁴² An overview of this process is shown below in Figure 4.

⁴² Interview, Theresa Preg, 3/18/2008

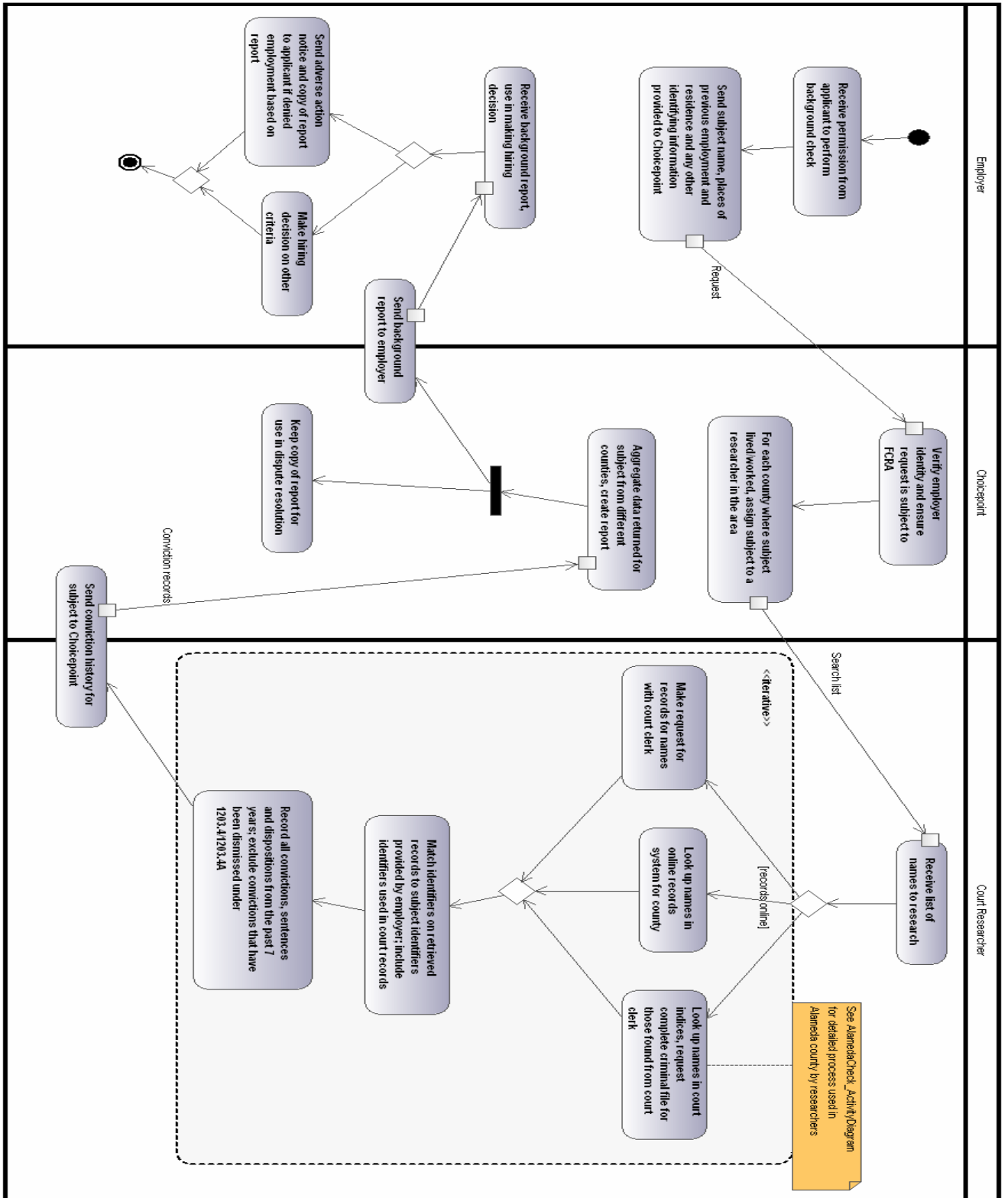


Figure 4: Overview of individual background check

Employers may also request that ChoicePoint check its National Criminal File. This is a separate database consisting of electronic records purchased in bulk from jurisdictions where such records are available. Thus, it does not cover the whole country. For example, Alameda does not sell criminal records in bulk, so a search in the NCF would not recover records of convictions in Alameda County. The purpose of searching the National Criminal File in addition to looking at records in the job applicant's counties of residence and employment is to capture convictions in other counties that may not otherwise be revealed.⁴³ Once again though, it is important to keep in mind that different areas have different policy with respect to whether and how often bulk records must be purchased for use in background checks.⁴⁴

5.2 Information Reported

Broadly speaking, ChoicePoint reports everything its researchers find in the public record, but they claim not to report dismissed convictions, even when they still appear in the record. To comply with California law, they do not report any information over seven years old, but ChoicePoint claims to observe this guideline in every part of the country.⁴⁵ CDB court researchers at the local courthouses copy down all the information they can find on a person, and trained processors edit the retrieved data to comply with legal standards and policies.

Information in public records may vary in different courts. Some pieces of information are standard though. These include name, arrest date and sentence.

⁴³ Interview, Theresa Preg, 4/17/2008

⁴⁴ As of 5/4/2008, ChoicePoint has not responded to an inquiry as to how often they purchase data in localities where bulk records are available.

⁴⁵ Interview, Theresa Preg, 3/18/2008

In some localities, information about the status of a sentence-- for example, whether it was completed successfully-- does not trickle down from the corrections department, in which case, ChoicePoint may attempt to retrieve records from corrections.⁴⁶

5.3 Identifiers

Lack of standard identifiers (SSN, DOB, etc) on records in some areas makes positive identification of subjects difficult. Our contact at ChoicePoint emphasized that subjects of background checks have given permission for ChoicePoint to retrieve information about them, and provided such identifiers for the purpose. ChoicePoint lobbies for maintaining these identifiers in public records, but in some areas⁴⁷ identifiers other than name have been removed due to concerns about identity theft.⁴⁸

5.4 Report Maintenance

ChoicePoint maintains a copy of each background check in their records in case of disputes. The data from the county-specific searches is not stored for any other future use. This measure is part of ChoicePoint's effort to remain FCRA compliant. In the event that an employer takes some negative action against a background check subject, they must provide the subject with an "adverse action" notice to the subject, which includes a copy of the background check and information about how to dispute information therein with ChoicePoint.

⁴⁶ Ibid

⁴⁷ Notably Oklahoma

⁴⁸ Ibid

When information is disputed, ChoicePoint re-investigates the incident, checking the original source again, and issues a corrected report if a change is found.⁴⁹

5.5.1 Court Researchers

The researchers that ChoicePoint sends to local courthouses are both non-exempt employees and contractors. According to our contact at ChoicePoint, about 62% of searches are conducted by regular employees, and contractors are used primarily in areas with a low request volume. ChoicePoint has training programs for researchers and conducts regular audits of their work. Audits involve pulling reports filed by researchers and re-investigating them, tracking how many of a given researcher's reports generate complaints of inaccuracy, etc.

Researchers return information to ChoicePoint in a variety of ways. Regular employees usually use ChoicePoint's own proprietary online interfaces to enter data and transmit it to ChoicePoint's processors. Contractors may transmit data via fax, secure email, overnight mail or verbally over the phone.⁵⁰

5.5.2 Alameda County Court Research

In Alameda County, research for a background check typically starts at Rene C. Davidson Courthouse.⁵¹ A CDB court researcher starts with a list of names and other identifying information, possibly hundreds of names per day. They start at one of the public CORPUS terminals, search for each name and

⁴⁹ Ibid

⁵⁰ Interview, Theresa Preg, 4/17/2008

⁵¹ All information in this section is based on an interview with Lance Dorman, Independent Record Researcher, 4/8/2008. Mr. Dorman works for three different client companies and we were fortunate enough to meet him while conducting our own research at RCD courthouse. He did not reveal the names of his clients.

record docket number, date of birth and courthouse when records are returned. Our contact entered only the first few letters of each name to catch possible alternate spellings and used a partial match search. The researcher compares whatever identifiers were provided for the subject with the identifiers available in CORPUS: first and last name and birth date. If the identifiers all match or are very close (for example, the same name with a slightly different birthday), the researcher will record the docket number and courthouse for the case in order to request the paper file. If the case is at a courthouse he does not cover, the researcher sends the name and docket number to a researcher covering that courthouse. The court researcher we spoke to worked at only three Alameda courthouses, and passed on any names with records at other courthouses to researchers covering records at those courthouses.

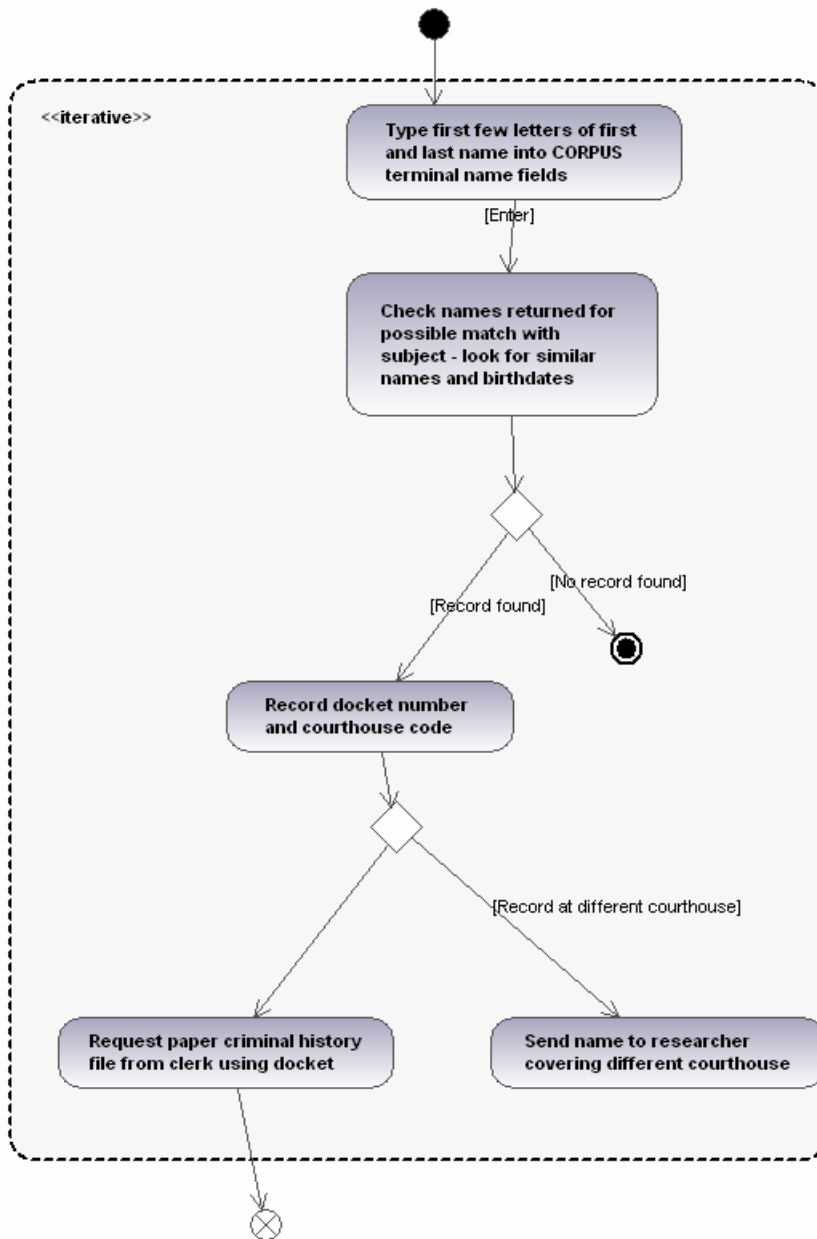


Figure 5: Alameda County Researcher Process

Our researcher reported that he pulls files for roughly 17-20% of the names he searched. The data he records for each case depends on the client's needs: some clients ask him to report §1203.4 dismissals and others do not, which re-affirms the inconsistencies observed in the legal community about whether it is appropriate to report these convictions. He is asked to re-investigate

background checks roughly four times per year due to alleged inaccuracies in the final report. This may indicate that inaccuracies are rare. However, it may also mean that job applicants are not well-versed in how to pursue re-investigations through CDBs, or worse, that they do not receive the FCRA-mandated copies of their background checks from employers when they choose not to hire them based on negative information therein, and thus are not aware of the real problem.

6.0 Analysis

6.1 Error Introduction

While conducting our research and interviews it quickly became clear how many errors were introduced into the system. The types of errors varied, as did their impact on the individual, but in all cases the errors appeared to be of two types: either information was not recorded, or information was recorded, but it was incorrect. We should also note that errors could be introduced either at the court level where the official records are stored or at the data broker level, as the data brokers gather information from the courts and incorporate it into their own systems, or both.

The official court paper records appear to be the most reliable, though our ability to check for errors is limited due to the inherent complexity with court cases. In order to be certain there were no errors we would most appropriately need to consult the counsels for each case to review the paperwork. That said, it appears that with the number of individuals involved in a court case and the filing of paperwork that the official paper record gets vetted for accuracy many times

over. The paper documents are also where many pieces of information originate: dispositions are recorded in clerk minutes in the court room, Orders are signed by judges granting dismissals and later certified by clerks.

Entering information into CORPUS, however, is another matter entirely. CORPUS suffers from limited input validation which can lead to transcription errors being entered into the system. These can take the form of letter transpositions and misspellings (simple typos) or possibly even incorrect codes being applied to a person's electronic file. CORPUS will raise an error if an invalid code⁵² is entered into a field, but it does not check whether or not a valid code entered into the system actually can be appropriately applied to the case at hand.⁵³

Similar errors can occur during the transfer process from the court records to the data brokers. When a background check is performed it generally falls under the guidelines of the FCRA which requires that any records be examined to ensure that the most up-to-date information is reported. In Alameda County this is accomplished by sending a researcher to the various courthouses in the county to check for records.

Researchers working for, or on behalf of, CDBs typically manually transcribe information from the county CORPUS system and pulled court files manually into their own systems. This, too, is a process that has the potential for errors; the court records could be correct and the process of moving the pertinent

⁵² Interview with Bernadette Silva, Division Chief, Rene C. Davidson Courthouse, 4/21/2008

⁵³ Such as whether or not a §1203.4 dismissal is applied versus a §1203.4a dismissal, or whether a 1203.4 dismissal was incorrectly granted to someone who had served time in state prison on the same offense.

information within those records to the CDB's records may introduce further inaccuracies. One researcher we spoke with suggested that nearly all the errors he had encountered while doing his job were caused by human error, in form or another, by someone along the chain of information entry and retrieval.⁵⁴

Human error during the entry and retrieval stages seems the most likely cause of errors being propagated all the way into a final background check report, though it was suggested, anecdotally, that other errors may occur.

An example of these other type of errors was relayed to us by a private researcher working on behalf of various CDBs. He was performing a re-investigation on a subject who had complained about inaccurate information being reported by the CDB. To do so he went back to the courthouse and had the case file pulled so he could double-check the information he had initially gathered. When he did so he realized that the clerk had given him a different file from the one he had examined when he performed the check initially, but with the same case identifiers. He asked the clerk to check for another file on the case and the clerk found the file he had looked at originally. With both files in hand, he realized that they contained different documents from the same case. The second file contained further documentation showing that the conviction had been dismissed pursuant to §1203.4.⁵⁵ For whatever reason, it appears that in this case a second file had been generated and never incorporated back into the original file.

⁵⁴ Interview with Lance Dorman, Independent Record Researcher, 4/8/2008

⁵⁵ Ibid.

6.2 Error Detection and Auditing

The types of errors mentioned above are certainly not unique. Any complex system, especially one that requires the transcription of information from one document or interface to another by a person is very likely to have errors sneak in. This led us to become interested in how errors were detected in the first place.

CORPUS has limited reporting and auditing mechanisms in place to check for data accuracy. At the end of each day a report is generated for all data entered into CORPUS on that day, which is then checked by the clerk supervisor for errors.⁵⁶ The report is not a detailed account of the data that was entered into CORPUS on that day, but rather presents a summary of the changes.⁵⁷ The clerk supervisor is tasked with reviewing this report and making note of any entries that look erroneous. Since the clerk supervisor is well versed in court procedure and clerk's duties it seems reasonable that he or she could spot entries that look amiss in some way.

There are two problems with this approach. The first is that human review of entries is still fallible. From a procedural standpoint it definitely makes sense to have a human review of the entries and, while not perfect, it provides a level of supervision over otherwise automated systems. What may be a more significant problem with this process is that the daily CORPUS reports are summaries rather than detailed accounting of all the data being entered. The clerk supervisor would have no way of knowing if any fields not included on the summary

⁵⁶ Interview with Bernadette Silva, Division Chief, Rene C. Davidson Courthouse, 4/21/2008

⁵⁷ Ibid.

contained erroneous information, nor do they check entries against paper records as a matter of course. Unfortunately, it also seems like such a detailed accounting would prove to be cumbersome, inefficient and expensive.

On the data broker side a similar problem exists. The researchers that the CDBs send out to check for records copy the information into their own system, and what this system is varies: from ChoicePoint's own automated interfaces to email or, conceivably, pen and paper then dictation over the phone. Because CDB researchers are transcribing information directly from the court records they have no way of verifying, after the fact, if their transcriptions were correct, short of going back to the courthouse. Data brokers do take the extra step of recording when complaints come in from subjects of background check and they also periodically audit their researchers' work; but, ultimately, the onus of identifying and correcting errors still lies with the subject.

So how are errors detected? In each of the cases we encountered; at the courthouses, with researchers working for the CDBs and with the CDBs themselves, errors are discovered almost entirely by the people about whom the background checks are being performed. Put another way, it is the responsibility of the subject of the background check to ensure that the information being reported is correct, otherwise the courts, researchers and the data brokers all assume accuracy until otherwise notified.

6.3 Error Correction

Once an error has been discovered there seems to be no formal process for fixing it, at least at the court level.⁵⁸ Generally an individual who discovered an error on their background check will need to check their records at the courthouse where the conviction was recorded.⁵⁹ If the error was a court record error then a court clerk can help correct it, either by amending the file or by changing the record in CORPUS, depending on where the error occurred.

From what we could observe and infer from the clerk's process regarding error corrections, the paper file is treated as the authoritative version of the file. Of equal weight are the certified copies that are sent to the defendants whenever a court decision is made, such as a conviction or a dismissal. It is unclear what the procedure is if the physical file had been destroyed and the defendant no longer had the certified copy showing the dismissal had been granted. CORPUS would be the only record of the file remaining and there would be no way to dispute it. It is then conceivable that, lacking any other authoritative documentation, the process for seeking a dismissal would need to be begun again.

If the court records all appear to be accurate, then it falls to the job applicant to contact the CDB with a dispute. The CDB will then send another researcher out to verify the court record and update their records with the correct information. ChoicePoint, for example, has a defined process for handling

⁵⁸ Ibid.

⁵⁹ It could be argued that this places an undue burden on the individual because it will require time, energy, and potentially travel to correct their record.

complaints about their background checks and for correcting any information when it is brought to their attention.⁶⁰

It should be noted, however, that a common problem encountered with background checks involves the monthly updates CORPUS sends to the California DOJ. Some employers can query the DOJ or DMV for information directly. This means that a record could be updated in Alameda County but not updated at the state level until CORPUS updates the DOJ information. This is not technically an error, but has been a source of frustration for a number of people.⁶¹

6.4 Error Reporting

One of the most frustrating things we encountered was that there is currently no mechanism, at least at the court level, to get an estimate of the incidence of errors being discovered by individuals. Due to the informal process for correcting errors there is no record of corrections. CORPUS, itself, does not appear to maintain an audit trail, or if it does, such a mechanism was not disclosed to us during our interviews; which implies that if that mechanism exists it is not frequently used or well known.

The Alameda County courthouses also don't have a process for generating any statistical reports for the data we were interested in. In our discussions with the EBCLC staff it was suggested that they conduct their own study and pull records from a sampling of their clients and compare that with

⁶⁰ Interview with Theresa Preg, 3/18/2008

⁶¹ Interview with Bernadette Silva, Division Chief, Rene C. Davidson Courthouse, 4/21/2008

background check reports to check for errors.⁶² Unfortunately, short of such an undertaking, it does not seem feasible to query court records against any arbitrary set of criteria. CORPUS was just never created to perform such a task.

7.0 The Future of Court Information Systems

7.1 Data Privacy

The past forty years have seen information technology develop enormously, leading some to fear we are becoming a “Dossier society,”⁶³ in which the government, or, perhaps more relevant to the current discussion, some shadowy corporation, will gather comprehensive records for every citizen. Some scholars have suggested a need to reconceptualize privacy in light of the pervasiveness of information technology and connectivity. Daniel Solove⁶⁴ has argued that simply because certain information is not secret does not mean it cannot be considered private. Instead, he sees privacy as embodying limits on the accessibility of information. The Supreme Court has also acknowledged a privacy interest when it comes to public records. This privacy is protected by the “practical obscurity” of such records—that is, in the world of paper files, it takes some considerable effort to find comprehensive records on an individual.⁶⁵ New developments in court information systems that make public records more accessible force us to look at the issue of how to protect this obscurity.

⁶² Which would be a process fraught with its own difficulties since it is assuming that the EBCLC clients are representative of the whole, which may or may not be the case. Still, it may be an avenue worth pursuing in order to obtain the type of useful statistical information regarding §1203.4/4a dismissal reporting errors that the EBCLC is interested in.

⁶³ Laudon, 1986

⁶⁴ Solove, Daniel J. Access and Aggregation: Public Records, Privacy and the Constitution.

Minnesota Law Review 86, 2001-2002

⁶⁵ U.S. Dept. Of Justice V. Reporters Committee, 489 U.S. 749 (1989)

Fortunately, all the stakeholders we spoke to, in both the public and private sectors, recognized the need to balance individual privacy with the need for safety and disclosure.

7.2 Trends in Access

In the past decade, many jurisdictions have begun efforts to modernize and integrate their justice system technology infrastructure. Especially following September 11th, there was a surge of interest in modernizing criminal justice information systems, making it easier for law enforcement agencies to share data quickly during investigations.⁶⁶ A few states, such as Kansas and Colorado,^{67 68} have already made vast improvements to technological infrastructure in their agencies dealing with courts, law enforcement and corrections. These efforts are important not only on the law enforcement and investigation side, but for millions of other people, more accurate and consistent data in the criminal justice system will mean that voting rights will be restored sooner and old convictions will not haunt them decades after they've reformed. Beyond imposing regulations on CDBs, it is incumbent on government to ensure that public records are accurate and timely at all levels, and that access to data is securely and appropriately partitioned.

⁶⁶ Chen et al, 2003; Morton, 2004; Zhao et al, 2006

⁶⁷ Morton, 2004

⁶⁸ The Colorado state government site for CICJIS <http://www.state.co.us/cicjis/> offers an excellent overview of the system, including detailed information about the architecture, standards, legacy systems and success measures.

7.3 California Case Management System

7.3.1 Scope

The California Case Management System is a case management system being developed by the California Administrative Office of the Courts, and it will constitute drastic changes in the way public records are created, managed and accessed. The system will be designed to manage all court data for the state of California, in all case categories. In addition to storing key pieces of data that allow users to identify a case, as in CORPUS, CCMS will store digitally imaged documents and electronically submitted forms (including petitions for remedies)—documents that are currently stored in paper files in Alameda County. Court data for the entire state will be hosted at the California Court Technology Center, in a data warehouse that will enable extensive and complex reporting.

All California courts will be required to adopt CCMS, but the time frame and process for adoption will vary county to county. This is due to the wide variation that exists in court systems currently: some courts still store all their data in paper files, and others have complex computer systems with varying degrees of sophistication. The target date for the completion of the system is May, 2010, with two more years projected for all courts to finish adopting. This will entail training 22,000 justice system users⁶⁹ in 58 counties in the California court system.

⁶⁹ This figure refers to justice system employees- primarily in the courts- and does not include users in the public such as CDB court researchers or defendants.

CCMS is based on three major and interconnected design principles: public access, venue transparency and standardization. Standardization of data, documents and processes across the state will enable the public to access court data and services from anywhere in the state, regardless of where a particular case was initiated or adjudicated. We will look at these design principles in turn over the next three subsections. Finally, in the last subsection, we will look at how CCMS will address the issues of data quality and accuracy that we encountered in CORPUS.

7.3.2 Public Access

Public access to both court records and services will increase dramatically. Any individual with an internet connection will be able to search a master name index, view other identifiers⁷⁰ and case numbers using a web portal. Search results would likely be grouped by county, and the user would be allowed to drill down through cases in specific courts as well. Court services will also be available online, from filing petitions to paying traffic fines. All courthouses will have kiosks at which these services will be accessible, as well as their being available anywhere on the web. This portal would be accessible to members of the general public, including researchers for Corporate Data Brokers and employers.

This type of access brings up some of the privacy issues discussed previously. CORPUS, for example, is partitioned in order to ensure that no one

⁷⁰ It was unclear in our initial conversation precisely what other identifiers would be available. We were assured that Social Security Numbers would not be available to the general public, but that Driver's License numbers and addresses may be searchable.

user has access to all types of data in the system. Likewise, Ms. Borjon-Miller assured us that many processes and data would only be accessible to justice system users. Furthermore, advanced reporting features, for example, a query to return all cases with a §1203.4 dismissal granted in Alameda County, will not be available directly to the general public. Instead, researchers would be able to request such specific information from database administrators at the AOC, who will have access to report-building tools.

7.3.3 Venue Transparency

Venue transparency is one of the major design principles being used in the development of CCMS. For the purposes of CCMS, this is defined as:

“...the ability to electronically create, view, update or exchange trial court case information and associated documentation **across** local court jurisdictional boundaries within legal and security limits, while providing for exchange of information at the public-to-court, court-to-court, court-to-county, court-to-state, state-to-state and state-to-federal levels.”⁷¹

The system will allow users to file forms, pay fees and fines and view records from anywhere, rather than having to visit the courthouse in a specific jurisdiction where a specific case originated. It will also allow for more sharing between courts and other justice system agencies.

7.3.4 New Standards

CCMS will also incorporate new document and business process standards. The system will attempt to strike a balance between state-wide

⁷¹ Borjon-Miller, Margie. 2008 “Introduction to CCMS.” Slideshow Presentation.

standardization and local variation. For example, there will be standard forms online, but local jurisdictions will still be permitted to use their own non-standard paper forms if they choose, as is already the case with petitions for remedies in Alameda county. Furthermore, process standardization will not extend to how judges run their courtrooms—for example, whether or not they require defendants to appear in person for a §1203.4 petition hearing. Most of the standards to be implemented are being developed from the ground up.

The major areas for standardization include data elements, codes, Judicial Council forms, data exchanges and statewide reporting. Smart forms will be implemented to validate data entered by users and push different data in real time to the proper agencies, courts and other parties upon submission. There will be no scheduled data dumps to the state Department of Justice as there are with CORPUS; all data will be pushed to the agency in real time, eliminating the lag between dismissals being granted and their appearance on state RAP sheets. The goal is, again, increased sharing between courts and agencies. The business processes associated with these documents will also be standardized.

7.3.5 Auditing & Error Correction

Many of the deficiencies we identified in the CORPUS system will be corrected in CCMS. CCMS will record every change made to the data it stores—nothing will be deleted after a case has been adjudicated. Coupled with this audit trail will be extensive triggering mechanisms, more required fields and validation to ensure that the data entered into the system is accurate, timely and shared with the appropriate agencies and people.

8.0 Areas for Further Study

8.1 Alameda County IT

Our research focused primarily on the processes that the court clerks and CDBs use to gather and report information. It became clear early on, however, that a detailed investigation into how all of the electronic systems were connected and operated would be both invaluable and far too expansive a topic. We would suggest further study in this area in order to get a sense of how all the machinery is set up and configured.

Of particular interest would be an investigation into how the automated processes function. CORPUS, for example, has a number of automated interfaces that work to move data between organizations.⁷² We think it would be invaluable to have a greater understanding of how these interfaces operate.

8.2 CCMS

There are three areas of CCMS we believe demand greater external study. The first is the issue of security and partitioning. We recommend further study into the authentication processes being developed, especially whether there will two-step authentication for sensitive data and processes; whether biometric identifiers will be used; how user information will be maintained. In terms of data exchange, we also recommend further inquiry as to whether strong transport-layer encryption will be used; and what kind of guards the public interface will have against client scripting and SQL injections.

⁷² CORPUS Overview (Jim Brighton, 11/16/1999)

Second, we believe there is a need to look more deeply at the document and process standards being developed. This effort should be aimed at ensuring any new standards address the need for more accurate information that is shared with all and only the appropriate parties in a timely manner.

Once CCMS is up and running, it will also be important to audit its performance on data quality metrics. One diagnostic will be to ensure that data fields match between agencies receiving data via CCMS. Disposition data, for example, is used by several justice system agencies, including courts, where it originates, corrections and law enforcement. Once CCMS is up and running, statistics should be gathered as to the rate at which dispositions at various agencies match for the same case. There is, furthermore, a benchmark on disposition matching in the form of analogous data from the Colorado Integrated Criminal Justice Information System. The Colorado ICJIS led to vast improvements on this measure.⁷³

Finally, there is a pressing need to examine the policy implications of CCMS as the project progresses. While CCMS is an exciting step towards greater efficiency and accuracy in the court system, it is vital that we study and debate how CCMS will protect or compromise information privacy, and what policy should apply to it.

⁷³ *Colorado Integrated Criminal Justice Information System: Performance Audit*. Report of the Colorado State Auditor. July 2003.
[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/B9524355EC1566F687256E16005B1288/\\$FILE/1515%20CJIS%20Perf%20FY%2004.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/B9524355EC1566F687256E16005B1288/$FILE/1515%20CJIS%20Perf%20FY%2004.pdf)

8.3 Statistics

Reliable statistics would be invaluable in order to gain a better understanding of the trends with regard to background checks as well as the errors reported. The EBCLC is greatly interested in the number of §1203.4/4a dismissals and thus we suggest a sample audit of EBCLC dismissal cases be performed. Admittedly, this survey would have limited utility outside the EBCLC client population, but it would be a useful first step. We suggest crafting a study where a partial audit of representative EBCLC cases is performed. This would involve retrieving the background checks from one or more CDBs for these individuals and comparing the results with the dispositions from the pulled case files from the courthouses. We think this would give a reliable estimate of the frequency of errors being reported at the courthouse and CDB levels.

It would also be beneficial to try and determine the number of §1203.4 and §1203.4a petitions were made on a year over year basis. If possible, it would also be useful to know the proportion of petitions that were granted. We have anecdotal evidence that there has been a marked rise in dismissal petitions over the past few years⁷⁴ but we have not unearthed any concrete evidence of that, nor do we have anything but anecdotal explanations for the cause.⁷⁵

⁷⁴ Interview with Head Clerk at Pleasanton Courthouse

⁷⁵ It was suggested that more people are pursuing dismissals due to the greater number of background checks being performed as a condition of employment. The background checks, it was suggested, are a response to greater security obligations caused by legislation, litigation and security concerns.

9.0 Conclusion

Our research sought to shed some light on the practices that Corporate Data Brokers use to acquire and report information to employers when those employers request a background check on a potential or existing employee. Accuracy in the reporting of this information is of paramount concern for potential employees as the use of background checks by employers to stave off liability has steadily increased year after year.

We discussed the various remedies that are available to individuals in California and outlined the process by which these remedies can be petitioned for. We also described the processes involved with data collection, storage and retrieval by the various actors in this system— how and where conviction and dismissal information is stored by the courts, how these records are accessed by court personnel and the general public, and how data brokers and their researchers retrieve this information and transfer it into their own systems—and outlined the various ways errors and inaccuracies can be introduced into this system and how they may be corrected.

Finally, our research spawned a series of further questions that we hope will be answered through further research. As the statewide Current Case Management System (CCMS) finished development and begins being rolled out across the state, the fundamental system architecture of recording, storing, transferring, and accessing court case information in California will undergo a massive change.

Because this rollout is scheduled for 2010 we believe the intervening years between now and then would provide an excellent research opportunity to not only document and address how the system works, but also study how such a monumental change to court records and court process can change the policy and practices of individuals, employers, and corporate data brokers within the state.

For individuals with a criminal history getting a job can be a difficult endeavor. After their sentence has been served they often find they need to be able to demonstrate to potential employers that they have paid their debt and are ready to move forward with their lives. Ensuring that our court information systems and the public accessing those systems have accurate, timely data is one way to help them move on. The remedies offered to offenders in California and other states demonstrate that our justice system has a stake in reform, not just punishment. Accurate data, small but vastly consequential pieces of the puzzle, can go a long way towards ensuring that those who have done the difficult, often painful work to reform themselves are no longer being punished.

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