Uniform Criminal Justice Data and Identification Standards Subcommittee: White Paper **DRAFT**

10/9/2020

# The problem

A group of government representatives from areas within the criminal justice system has been studying two identification challenges in the criminal justice system:

* The person who commits an offense provides another individual’s identifying information (Name and DOB) to avoid the consequences of their actions.
* The criminal justice system does not always have the correct legal name and date of birth for a person as they move through the process.

With all the modern technologies available, it may seem impossible to Minnesota residents that they could be associated with someone else’s crime. It also may seem unlikely that someone could leave prison without the police, court, or prison ever knowing their legal name. However, these situations do happen with an unknown frequency.

Some other countries, like Pakistan, have national registries with their residents’ fingerprints on file. That fingerprint is tied to the person’s legal name, birthdate, their parents’ names, and other identifying information. When Pakistani law enforcement arrests someone, they can take a fingerprint of a Pakistani resident and know exactly who the suspect is. That person cannot lie about who they are.

This is not the case in the United States. While this appropriately reflects the cultural beliefs on personal privacy in this country, it does leave gaps in the criminal justice system that offenders can exploit to negatively affect residents. It means offenders can lie and give someone else’s name instead of their own, leaving someone else to bear the consequences. It also means that offenders can experience problems reentering society after incarceration because their criminal history is not tied to their legal name. These challenges contribute to community mistrust in the criminal justice system.

These are complex problems. There are not easy solutions to them, and no individual solution is going to eliminate them. That said, there are ways that the legislature and criminal justice partners can improve the situation.

This white paper will describe the different issues related to identification standards in the Minnesota criminal justice system. It also presents some ways government can help.

This document includes periodic definitions of key terms. There is also a full glossary at the end of this document.

Key terms:

* Legal name: The name on someone’s birth certificate or a name that has been established through a legal process (marriage certificate, divorce decree, name change findings and order, immigration documentation).
* Biometric: “The measurement and analysis of unique physical or behavioral characteristics (such as fingerprint or voice patterns) especially as a means of verifying personal identity.”[[1]](#footnote-1) In Minnesota, the criminal justice system only uses fingerprints as a biometric.[[2]](#footnote-2)

## The person who commits an offense does not always receive the consequences of their actions, and instead someone else might

### An example

Jim Smith has a clean criminal history when he’s pulled over for speeding. Law enforcement queries his name and date of birth and finds a record indicating that he is wanted on a felony warrant. What would have been a speeding ticket now becomes a felony stop, and Jim is handcuffed and placed in the back of a squad. But the warrant doesn’t belong to Jim. It belongs to a criminal who provided Jim’s name and date of birth during a past criminal justice encounter. Jim may even be taken to jail while he tries to prove he didn’t commit the original crime. If he’s booked on a Friday, he may have to stay in jail over the weekend until he can see a judge on Monday. He may lose his job if he misses scheduled shifts while he is incarcerated, or suffer many other consequences because he is unexpectedly in jail.

Jim is fortunate. Because the original crime was a felony, the police took the offender’s fingerprints. Jim can prove with his fingerprints that he is not the original offender. If the original offender’s prints were not taken, as they aren’t for many crimes below the gross misdemeanor level, it would be much harder for Jim to prove he didn’t commit the crime. There may be recorded details about the offender’s tattoos or distinguishing marks, and maybe there are enough that law enforcement can compare them to Jim’s face and see that isn’t him. But not all cases can be resolved through either of these methods.

Jim finds someone to come pick him up from jail and take him to the Bureau of Criminal Apprehension (BCA). Their staff verify that the original record is not his and give him a letter that he can provide to law enforcement, potential landlords, and employers as needed to prove his innocence. The BCA then adds information to the actual offender’s criminal history indicating that it contains a questioned identity.

While in the future Jim can always prove his innocence with the letter, he may still experience future questions when employers, landlords, or law enforcement check his criminal background by name and date of birth. He will have to prove again and again that he is innocent. He lost time and potentially money by being jailed, and may have to spend more time and money trying to get the case expunged from his record. He is also likely very upset and frustrated about the situation that can keep affecting him for the rest of his life.

If Jim is a person of color, being mistakenly arrested could be a particularly traumatizing experience, as happened in a recent, publicized incident. In July 2020, law enforcement detained a Black Minnesotan in Bloomington for a warrant that did not apply to him.[[3]](#footnote-3) The officers determined on the scene that he was not the offender, but not until after they had handcuffed the man and put him into a police vehicle. After the man was released, he shared a video of himself in his car. He said he was “shaking” and described how terrified he had been during the incident, particularly so soon after the death of George Floyd.

There are currently almost 5,000 people in Minnesota whose name and date of birth are associated with another person’s criminal history. The BCA reported that 21 people received Questioned Identity status in August 2020, and that staff have approved roughly 20 per month for the previous year. That adds up to about 250 people per year who have been able to prove they have suffered from mistaken identity with law enforcement. This does not include individuals who did not have enough evidence to support their claim, or who have yet to realize their identity has been tied to a crime they didn’t commit. These hundreds of Minnesotans must spend hours of their time and money on travel to prove their innocence and possibly have the charges expunged.

Key terms:

* Questioned Identity: A situation in which a person’s name has been given by another to law enforcement during a booking or citation; the uninvolved person has discovered that their name is contained in a criminal history record that does not belong to them.
* Questioned Identity Letter: A letter from the BCA that states that a criminal history record exists, but as determined through a fingerprint comparison, the person who was issued the letter is not the subject of the record containing their name and date of birth. It helps the person prove they are not the subject of a criminal history record, such as during background checks for employment or housing.

### Why does this happen and who does it affect

This problem happens because:

* Offenders lie or are inconsistent when providing their information to law enforcement.
* This country does not retain biometrics on every individual, and law enforcement does not catalog every offender’s biometric (e.g., does not record fingerprints for most misdemeanors). See the section “Identity across criminal justice system platforms” for more detail.

This affects:

* Victims: Being associated with someone else’s record can make it difficult for the innocent person to get a job, rent an apartment, etc. The victim must go through a process to prove they are a different person and continually prove over time that they are a different person than the offender. In some cases, the charge may remain listed on their criminal history as dismissed.
* Criminal justice system: When innocent people suffer, the system is not achieving its goal of serving justice. Law enforcement may not be able to find and charge the true offender if the offender’s fingerprints were not taken at the time of the citation, as is the case with most misdemeanors. Affected individuals might sue law enforcement for being mistakenly arrested, which could result in financial costs for the department.
* Offenders: DOC staff hear from partners working with incarcerated individuals that that population has an elevated risk of someone using their identity while they are incarcerated. For someone who is incarcerated for a longer period of time, the fact that someone used their identity might not come to light for years after the crime has been committed. The offender may be released to fines or fees if someone else has provided their information when booked by law enforcement while the offender was in prison.

## **The criminal justice system does not always have the correct legal name and date of birth for a person as they move through the process**

### An example

The first time Jennifer Johnson receives a criminal citation, she tells law enforcement that her name is Jenny Johnson. She does not have a form of identification on her, so law enforcement books her in the system as Jenny Johnson. They take her fingerprints and create a criminal record for her name, date of birth, and biometric. Jenny Johnson is listed as the first reported name in the record for this set of fingerprints in the BCA’s criminal history system.

At her second citation, Jennifer identifies herself as Jen Johnson. Law enforcement enters this name into her criminal record as an alias. Neither of the names tied to her fingerprint are her legal name.

After her second citation, Jennifer legally changes her name to Rebecca Jones. The next time she is cited, law enforcement runs her fingerprints to find her criminal record. Although Rebecca explains that she changed her name, the officer believes that the first name in her criminal history is the most accurate one, even though it’s just the first name on record. After all, the system calls the first name the master name, so the officer believes it must be the most accurate one. He believes she is lying about her name change, so he books her as Jenny Johnson for this crime.

The prosecutor files charges against Jenny Johnson because that is the name given by law enforcement. The courts use that name, too, and then eventually so does the Department of Corrections (DOC). When Rebecca is released from her prison term, the probation system also uses the name Jenny. Rebecca has to suffer through responding to something besides her actual name for months.

While helping Rebecca prepare for reentry to the community, the DOC tries to help her get a driver’s license and an apartment. This turns out to be very challenging because her legal name does not match her DOC identification or criminal record. These problems are not her fault, and should not have occurred because she tried to provide her legal name to law enforcement.

The DOC does not have estimates on how many offenders have this problem. However, staff report that this continues to be a problem that they and their partners experience when working with incarcerated individuals.

Key terms:

* Criminal History System (CHS): Minnesota’s central repository for data on persons who have been fingerprinted for felony, gross misdemeanor, and some misdemeanor offenses. It is used by the criminal justice community for decisions regarding investigations, arrests, bail/bond, criminal charges, plea bargains, convictions, probation, and placement in correctional facilities. It is also used during mandated background checks on individuals seeking employment or licensing for various positions.
* First reported name: The name in the criminal history system that was used at the time the record was established in a criminal justice database; it may or may not be the person’s legal name. It may also be referred to as the “Master Name.”
* Alias:Someone’s current or former legal name, or another name an individual is known by or provides during the criminal justice process or encounter. For example, they may provide their mother’s maiden name, a nickname, or a name that is not close to theirs at all, such as the name of an acquaintance. In some criminal justice databases, someone’s legal name could be listed as an alias; some of the systems list all reported names as aliases.

### Why does this happen and who does it affect

This problem happens because:

* Offenders lie or are inconsistent when providing their information to law enforcement.
* Offenders can legally change their name.
	+ Law enforcement may not see or believe that the person has legally changed their name, and may book them under an old, inaccurate name.
	+ The law requires a criminal history check form for name change applicants, but it is up to the local authority to decide whether to run the person’s fingerprints to look for a related criminal history. If they do not run fingerprints, they are relying on the person’s word about their criminal history, and that they have not been booked under a different name.
* Law enforcement may not book the person under their legal name and true date of birth. Prosecutors and courts often rely on whatever name law enforcement booked them under; DOC relies on whatever name the court order has. See the section “Identity across criminal justice system platforms” for more detail.
* Law enforcement does not always note in the record if they have verified a name and date of birth on a photo ID.
* The different data systems do not indicate which set of information is most accurate.
	+ Law enforcement and prosecutors sometimes assume the first name in the BCA database is the most accurate name, when it is in fact only the first name ever recorded for that fingerprint.
* The different data systems do not share all the information they have with each other.
* The different data systems are not set up for the name structures of other cultures, or for the transgender population.

This affects:

* Offenders: They may be booked, charged, and go to prison under a name that is not their legal name. One of the ways DOC supports individuals reentering the community is by securing the right documentation for them, including IDs, paperwork, and other things that can prepare them to be productive members in society. When a person has incorrect information on their record, they are not able to secure the right identification documents upon release. This in turn creates additional barriers to their ability to secure housing, employment, and more.
* Criminal justice system:
	+ Has multiple identities for one person, which can create confusion and problems.
	+ The DOC expends resources correcting name issues for incarcerated individuals.

## Identity across criminal justice system platforms

A concept like “identity” may seem straightforward, but criminal justice partners do not all rely on the same ways to identify someone. As an example, to prosecutors, someone’s name and date of birth are their identity. To the BCA, though, someone’s identity is an ID number and their fingerprints.

* Identity: Who a person is. Some items that contribute to an identity are the name, date of birth, and biometrics associated with an individual. Different criminal justice partners use different identity markers as the center of a person’s record in their systems:
	+ Law enforcement: Name and date of birth, local ID.
	+ Courts: Name and date of birth, Person ID
	+ Bureau of Criminal Apprehension (BCA): Criminal history state identification number supported by fingerprints
	+ Prosecutors: Name and date of birth
	+ Corrections: Offender identification number confirmed by fingerprints

While some criminal justice systems organize around a person’s biometrics, which are truly unique to an individual, others organize around a person’s name and date of birth. This is necessary because law enforcement doesn’t record fingerprints for all criminal citations; they don’t take the fingerprints for most speeding drivers, for example. This means law enforcement has to find other ways to try to uniquely identify people. However, because not every criminal citation has fingerprints attached, the two identity challenges discussed above persist.

### The issues with using name and DOB as key identity factors

Name and date of birth are things people can easily share with others, lie about, or vary in their answers from encounter to encounter. Names change over time as people get married, get divorced, transition to other genders, or simply develop other naming preferences. For example, some people have two or more last names for a variety of reasons. An offender may give all of them at one booking, but only one at another. This is not an attempt to mislead police about an identity, but just a matter of how people choose to identify themselves on any given day.

As another example, identifying by name and date of birth can be a challenge in the Somali population. Many people from Somalia give their birthdate as January 1 of their birth year. The criminal history system probably has multiple people with variations on a common name, such as Mohammed Ahmed, with a birthday of January 1 of a given year. Using only name and date of birth, it is very difficult for law enforcement to know whether the person in custody is one of the previous Mohammeds cited. Some of the citations under the same name and date of birth may have fingerprints attached, but if they don’t, law enforcement can’t know whether the Mohammed Ahmed they’re booking now is really the same as a previous one.

### How someone’s identity flows through the criminal justice system

Although other criminal justice system databases may center around fingerprints, law enforcement’s determination of someone’s name and date of birth affect all later systems in the process. Figure 1 shows how someone’s identity starts with law enforcement and then flows throughout the criminal justice system.

When citing someone, law enforcement asks for someone’s name and date of birth. They try to verify what someone says their name and date of birth is, but this is not always possible. Not all residents have documents proving their name and date of birth. If they do, the documents may accurately reflect their information, or they may not have them on hand at the time of citation to provide to law enforcement. If the person does not have a criminal history, law enforcement creates a record for them with the information they have been told, and possibly been able to verify.

* Verification of identity: The process of determining one’s identity through the review of documents (e.g., driver’s license, passport), databases (DVS records), or performing a fingerprint comparison (manual or through Rapid ID).
* Rapid ID: A process using a portable device that can be used to capture two fingerprints from someone. The system searches Minnesota and FBI databases to look for a record associated with those prints. The scanned fingerprints are not stored. The system cannot verify the identity of someone who has no recorded prints in those databases.

Even if the person has a criminal history tied to their fingerprints, that is no guarantee that law enforcement will cite them for new crimes under their current legal name. They may book them under the first name on record, book them under a new nickname, or reenter the same name as a previous alias but with an accidental typo, creating a new alias.

The figure shows that most other criminal justice partners mostly rely on whatever information law enforcement provided as someone’s name and date of birth, regardless of whether it’s someone’s legal name. Prosecutors, courts, DOC, and probation systems all use the name and date of birth provided by law enforcement.

Some partners within the criminal justice system might try to fix someone’s name if they learn the one on record is not the person’s legal name. A defense attorney can request a change on the name on the complaint, for example, and DOC does have a process to help correct some names on record. In general, though, the criminal justice system relies heavily on what law enforcement says someone’s name and date of birth is.

The structure of these systems and current law contribute to the two identity challenges described earlier. The system doesn’t always know someone’s legal name and date of birth, and as a result offenders and innocent people can suffer. Correctly identifying someone at the beginning of the criminal justice process would solve many current issues.

Figure : A person's "identity" throughout the Minnesota criminal justice system



# Who has been studying this problem

The Uniform Criminal Justice Data and Identification Standards Subcommittee is a subgroup of the Criminal and Juvenile Justice Information Advisory Group. The Subcommittee has been meeting for several years to understand these issues and make recommendations on how to create accurate identification standards in the criminal justice system.

The Subcommittee currently has representatives from law enforcement, the BCA, courts, prosecutors, DOC, and probation. They compiled the information in this white paper and are exploring ways to address the problem. This section outlines the Subcommittee’s next steps, and the history of their work to date.

## Actions to address the problem

* DOC is planning to change their policy on allowing offenders to change their names on file to their legal names. This will help address the problems incarcerated individuals can have in reentering the community.
* The BCA is developing a marker for the criminal history database to indicate the most recently-known legal name with specific parameters. This will hopefully help law enforcement and criminal justice partners better identify someone’s legal name, ensuring that the person goes through the system with the name that will cause them the least problems later on.
* The Minnesota County Attorneys Association is pushing legislation to ensure more automatic expungement of records when charges are dismissed. The language reviewed by the Subcommittee would help some mistaken identity cases, but not all. If legislators consider the Association’s effort, criminal justice partners could push to add more language that applies in the cases described in this paper. This would provide some relief to individuals whose names are used by another when being charged with a crime.
* There could be more state guidance or statutory changes that encourage/require criminal justice partners to use an offender’s legal name if it’s known. This would prevent problems for the offender.
* State entities or relevant associations could provide training to criminal justice partner employees to show the value of ensuring someone’s legal name is used once someone is in the system.

### Fingerprinting

Many of these next steps will help offenders be recognized by their legal name as they move through the process. However, stopping victims from suffering the consequences for others’ crimes is more challenging. This is because there is no way to uniformly identify people at an encounter with law enforcement besides taking a biometric.

The Subcommittee has discussed this possible change: all law enforcement partners could begin taking fingerprints for low-level offenses in a database separate from the criminal history system. (It would not be searchable, but rather serve as an identity verification tool.) However, this would require changes to statute, a large investment in equipment, and the development of data storage and practices standards. Unless the legislature changes statute to allow law enforcement to capture biometrics in low-level offenses, it is difficult to address the problem of innocent people being tied to other people’s crimes. Because this change would be significant, and would likely require more community involvement, the Subcommittee is not planning to explore this option in detail in the short-term.

## Subcommittee history

The Subcommittee began meeting in 2018. They then held two meetings with stakeholder organizations and advocacy groups to discuss two ways of improving identification standards: law enforcement taking photos of offenders for low-level offenses where they currently don’t book someone, and extending the use of two-finger fingerprinting (called Rapid ID) to all offenses. The Subcommittee made the following observations based on the stakeholder meetings:

* A lack of trust for law enforcement-led initiatives would hinder any effort to reduce misidentification.
* Stakeholders have differing views about which method (photos or Rapid ID) would be perceived as most invasive.
* Stakeholders view public engagement as the most viable method for vetting identification standards.
* There is conflicting and sometimes inaccurate information about how law enforcement collects and uses data.

The BCA also reached out to other states to learn more about how they address the need to positively identify those accused of low-level offenses. In total, eight states responded. Of those, half have implemented or are considering implementing fingerprint identification, whenever possible. The other half have not yet arrived at a solution.

In 2019 the Subcommittee continued to meet to understand the root causes of these issues and to discuss solutions. They mapped out different processes and learned from partners across the criminal justice system. The group did not meet for most of 2020 because of the pandemic, but began work again in the fall.

# Conclusion

The fact that criminals use others’ identity information, along with current criminal justice system practices doesn’t always ensure that the right person is held accountable, or that someone’s legal name is on record. This causes problems for victims and offenders.

There are many broader questions in this area that the subgroup can’t address alone. Among other things, what should be the standard to identify a person? Who establishes that standard? No individual criminal justice partner can determine these things.

The Subcommittee has learned that correctly identifying someone at the beginning of the criminal justice process would solve many current issues. However, the group needs help from the Legislature and the public to understand how to best make that happen while balancing justice and privacy.

# Glossary of terms

* Legal name: The name on someone’s birth certificate or a name that has been established through a legal process (marriage certificate, divorce decree, name change findings and order, immigration documentation).
* Alias:Current or former legal name, or other name an individual is known by or provides during the criminal justice process or encounter. For example, they may provide their mother’s maiden name, nickname, or a name that is not close to theirs at all, such as the name of an acquaintance. In some criminal justice databases, someone’s legal name could be listed as an alias; some of the systems list all reported names as aliases.
* First reported name: The name used at the time the record was established in a criminal justice database; it may or may not be the person’s legal name. May also be referred to as the “Master Name.”
* Biometric: “The measurement and analysis of unique physical or behavioral characteristics (such as fingerprint or voice patterns) especially as a means of verifying personal identity.”**[[4]](#footnote-4)** In Minnesota, the criminal justice system only uses fingerprints as a biometric. A photo of someone is not a biometric.[[5]](#footnote-5)
* Identity: Who a person is. Some items that contribute to an identity are the name, date of birth, and biometrics associated with an individual. Different criminal justice partners use different identity markers as the center of a person’s record in their systems:
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* Questioned Identity: A situation in which a person’s name has been given by another to law enforcement during a booking or citation; the uninvolved person has discovered that their name is contained in a criminal history record that does not belong to them.
* Questioned Identity Letter: A letter from the BCA that states that a record exists, but as determined through a fingerprint comparison, the person who was issued the letter is not the subject of the criminal history record containing their name and date of birth. It helps the person prove they are not the subject of a criminal history record, such as during background checks for employment or housing.
* Verification of identity: The process of determining one’s identity through the review of documents (e.g., driver’s license, passport), databases (DVS records), or performing a fingerprint comparison (manual or through Rapid ID).
* Citation: An interaction with law enforcement that results in a ticket. Most citations do not result in a booking.
* Arrest: When someone is held in law enforcement custody. In most Minnesota counties, the person is taken to an adult detention center and law enforcement completes a booking.
* Booking: When law enforcement captures fingerprints, a photograph, and personal information about a person. Theyalso document the nature of the alleged crime.
* Criminal complaint: A document filed in court by the government charging an individual with a crime. This typically includes the name and date of birth of the defendant, as well as details about the charges.
* Rapid ID: A process using a portable device that can be used to capture two fingerprints from someone. The system searches Minnesota and FBI databases to look for a record associated with those prints. The scanned fingerprints are not stored. The system cannot verify the identity of someone who has no recorded prints in those databases.
1. <https://www.merriam-webster.com/dictionary/biometrics> [↑](#footnote-ref-1)
2. Photos and facial recognition are not biometric tools. They are tools in investigating identities, not confirming someone’s identity. Photos are not a confirmation of identity because people’s faces change over time from aging, injury, and other physical factors. They also photograph differently in different situations. [↑](#footnote-ref-2)
3. Walsh, Paul. “’I’m shaking’: Black driver in Bloomington pulled over by police, who apologize after mistake.” Star Tribune, July 14, 2020. [↑](#footnote-ref-3)
4. <https://www.merriam-webster.com/dictionary/biometrics> [↑](#footnote-ref-4)
5. Photos and facial recognition are not biometric tools. They are tools in investigating identities, not confirming someone’s identity. Photos are not a confirmation of identity because people’s faces change over time from aging, injury, and other physical factors. They also photograph differently in different situations. [↑](#footnote-ref-5)