



March 6, 2007

To the Honorable Senator Florence Shapiro  
Chair- Senate Education Committee

Re: Senate Bill 9

Madam Chair and Honorable Members of the Committee:

My name is Mark Myers and I am Chief Operating Officer of Safe Advantage Services, a business unit of First Advantage Corporation, one of the largest pre-employment screening services company in the U.S. My purpose here is to testify on Senate Bill 9 as an expert witness regarding public school background checks.

Safe Advantage Services currently serves approximately 275 school districts in 9 states and our background check program currently covers approximately 43% of the public school employees in the state of Texas. Our program has been available to school districts in Texas since 1998 and we have performed literally hundreds of thousands of background checks on behalf of Texas schools.

Our program was designed to help fill the gaps and reduce the exposure facing school districts which, at best, were only performing Texas DPS checks in 1998. This meant that any convicted sex offender or criminal whose record was outside of Texas could simply move to Texas and apply to work or volunteer at a Texas school district with little or no fear that their out-of-state records would be detected.

My written testimony which is available to members of the Committee provides a brief overview of various criminal background check processes available including specific important information regarding the Texas DPS and FBI fingerprint checks.

My oral comment will summarize the key points of my written testimony. I have been instructed by my company to make myself available to any member of the Committee or staff as a resource and will be happy to answer questions today or subsequent to this hearing.

Thank you for the opportunity to provide relevant information to the Committee.

Sincerely,

Mark C. Myers  
COO & General Manager



**MARK C. MYERS**  
Chief Operating Officer  
General Manager  
Safe Advantage Services  
Employer Services

10501 North Central Expressway • Suite 309  
Dallas, TX 75231  
T: 214.360.9122  
F: 214.217.4068  
mmyers@FADV.com  
www.FADV.com

## **Senate Bill 9: Criminal Background Check Overview**

**1. Fundamental Tenet of Criminal Background Checks:** County courthouses are the fundamental repository of criminal records information in the United States.

- 1) Arrests occur at the county level;
- 2) Indictments occur at the county level;
- 3) Prosecutions occur at the county level; and
- 4) Convictions occur and are recorded at the county level.

**2. Limitations of State Agencies.** State agencies such as the Texas Department of Public Safety ("DPS") rely on counties to report their arrest and conviction information to the state agency. Since this reporting frequently does not occur or is delinquent, most state agencies in the U.S., including DPS, have major holes and gaps in their "statewide" databases. In this regard, the Dallas Morning News reported in an article dated October, 2, 2004,

**"According to a report issued in July by the Texas Department of Public Safety, the state has only 69 percent of the complete criminal histories records for 2002. In 2001, the state had only 60 percent. Hundreds of thousands of records are missing."**

**3. Federal Agency ("FBI") Records.** There are no federal regulations or laws requiring state agencies to report to the FBI the criminal conviction records that have received from counties by the state agencies.

*The reporting of criminal convictions to the FBI from state agencies is purely voluntary and as a result, there is a further decline in the percentage of county criminal records and convictions which ultimately are reported to the FBI.*

By its own admission, with regard to the portion of fingerprints taken at the time of arrest which actually are forwarded to the FBI, the FBI estimates that they have no disposition information on 50% of the fingerprints they have on file (i.e., whether the arrestee was convicted or not and if convicted, for what crime the conviction was entered and what the sentence was). Obviously, the FBI doesn't receive any of the county records which fail to make it to the state agencies.

**4. The FBI Fingerprint Check.** Although the FBI fingerprint check is currently used by the TEA in Texas as the background check tool in the certification process for certified employees, an understanding of what is checked and what is missed with an FBI fingerprint check is extremely important. A copy of fingerprints taken at the time of arrest by local law enforcement are supposed to be forwarded to state agencies. Ideally, the state agencies would send a copy of all fingerprints they receive to the FBI but this doesn't happen and the FBI only end up with a portion of fingerprints taken at the time of arrest.

The FBI fingerprint check simply compares the fingerprint taken to the FBI's fingerprint database to see if a matching print is found. If a match is

found, the FBI simply reports back whatever records it has associated with the fingerprints on file in the FBI database. In 50% of cases where the FBI does have a matching print in their database, all the FBI has is an arrest record with no disposition information. ***The only sure way to find the disposition is to perform a county criminal record check in the county where the arrest occurred.***

With the FBI fingerprint check used in Texas in the teacher certification process since October of 2003, no action is taken or effort made to determine and conduct a criminal record check in places where a person has lived. In addition, the results of the FBI fingerprint check do not distinguish between felonies, misdemeanors and lesser categories of offenses like "offenses". Rather the FBI rap sheet simply indicates offenses in the particular state's penal code such as "criminal mischief" without providing whether the offense was a felony or misdemeanor.

**5. "Tools" to Identify What Counties to Search.** If an applicant has a criminal record which will probably disqualify them from an employment opportunity, it is unlikely that the applicant will identify the county where the conviction occurred on the employment application. Without knowing where a person has lived, a school district is "in the dark" in terms of knowing in which counties a criminal record check should be conducted.

**A Social Security Number Trace** is a tool that can be used to uncover past address locations. A Social Security Number Trace is a search of credit bureau "header files" containing the names, addresses and dates on which credit checks have been run on the Social Security Number in question. Prior addresses typically going back an average of 7 to 15 years are identified by the Social Security Number Trace thereby creating a "roadmap" of counties in the U.S. where a criminal record check of available county criminal records can be performed. In most U.S. counties, this requires a person going to the county courthouse in order to perform the record check. In the background check industry, these searches are referred to as "real county criminal record checks." Real county criminal record checks will find the dispositions in the 50% of the cases where the FBI fingerprint records only have arrest information without any disposition information.

**Criminal record databases and sex offender databases** can also be valuable tools in uncovering criminal and sex offender records. Although databases may have gaps and may not contain the most recent convictions at any point in time, they can be a valuable tool in terms of searching millions of records from across the U.S. in a very quick and cost-effective manner. The greater number of databases searched, the more difficult it becomes to conceal in-state or out-of-state criminal records. Databases may also find conviction records in places where the person has committed a crime in a location that might not be revealed by a Social Security Trace (such as a crime committed in a city other than where the person's residence was located).

An optimal background search would be designed to identify and search locations where an applicant has lived. It would likely include Social Security Number Traces, real county criminal record checks, and criminal record and sex offender database searches.

This could be supplemented by an FBI fingerprint search which might identify additional arrest records where no conviction has yet occurred. Obviously, the costs involved in performing any package of background check services would need to be analyzed in arriving at the "optimal" solution.

### **What is the Safe Schools Project?**

The Safe Schools Project is located in Dallas, Texas and operates as a business unit of First Advantage Corporation. The Safe Schools Project was developed in 1998 and specifically designed to meet the needs of Texas school districts, virtually all of which, at best, were running a Texas Department of Public Safety database search.

***This meant that any convicted criminal or sex offender whose conviction occurred outside of Texas could simply move to Texas and apply to work or volunteer at a Texas public school without any real risk of being discovered.***

Many Texas superintendents and HR directors were consulted and a consensus was reached that school districts needed a program where:

- 1) all current employees and volunteers are run through a broad Criminal Record and Sex Offender Data Center (now containing nearly 190 criminal record and sex offender databases from across the U.S. which are updated on a monthly basis and
- 2) new hires would be through an even more comprehensive "national" background check including running a Social Security Number Trace to identify prior address locations followed by county criminal record checks in every county, nationwide, identified by the Social Security Number Trace. This search fills in the gaps in the FBI fingerprint check which does not involve any attempt to determine and check for records in locations where a person has lived and which has no disposition information with regard to 50% of the fingerprints it has on file\*. In addition, this type of Safe Schools background check searches all available county criminal conviction records unlike the FBI fingerprint check which only has records which have been voluntarily forwarded to the FBI from state agencies.

\*verifiable through direct contact with FBI Criminal Background Liaison, Steve Fisher (304) 625-5820

**It is precisely because of the significant gaps in the FBI Fingerprint Check that Safe Schools Project clients run the comprehensive check described in 2) above on new certified employees who have just gone through the FBI fingerprint check.**

The Safe Schools Project has "a la carte" and annual flat fee options which allow the school districts to run an unlimited number of background checks through the Data Center. In this way, school districts can run employees and volunteers through the



Criminal Record and Sex Offender Data Center multiple times each year to take advantage of the monthly updated records being received and new databases that become available for the first time.

The Safe Schools Project currently provides background check services for approximately 275 educational clients located in the states of Texas, Oklahoma, Nebraska, New Mexico, Georgia, North Carolina, Indiana North Dakota and Wisconsin. In Texas, approximately 43% of the public school district employees in the state of Texas are checked through the Safe Schools Project's services.

### **Endorsements of the Safe Schools Project Services**

The services provided by the Safe Schools Project have been specifically evaluated and endorsed by the following Educational organizations:

Regional Education Service Center 1, Texas  
Regional Education Service Center 4, Texas  
Regional Education Service Center 8, Texas  
Regional Education Service Center 12, Texas  
Regional Education Service Center 14, Texas  
Regional Education Service Center 16, Texas  
Regional Education Service Center 18, Texas  
Regional Education Service Center 19, Texas  
Oklahoma State School Boards Association  
Nebraska Association of Schools Boards  
Educational Service Unit #3 Nebraska  
Educational Service Unit #9 Nebraska  
North Carolina Association of School Administrators  
All Education Service Centers in Indiana  
Cooperative Education Service Agency No. 6, Wisconsin

### **Costs**

Although the costs of an FBI fingerprint vary somewhat from state to state, \$49 per check is a good estimate for Texas. **Additional costs would be required to:**

- 1) Identify and searching records in places of current and prior residence (something which is not done with the FBI fingerprint check) and
- 2) Check the county records in the 50% of cases where the FBI has no disposition information related to the arrest records they have received.

The cost of the "national" criminal background check done by the Safe Schools Project as described above (which actually identifies places of current and prior residence and searches the available county criminal records in each of these locations nationwide) averages less than half of the above cost for the FBI fingerprint check).

The "national" criminal record check provided by the Safe Schools Project also includes criminal record interpretation and dispute resolution services which are not provided with the FBI fingerprint check. The Safe Schools Project provides for unlimited checking of current employees, substitutes, part-time employees and volunteers through the Criminal Record and Sex Offender Data Center which is provided on a separate flat annual fee basis.

### Conclusion

Requiring that Texas schools check personnel for criminal records both inside and outside the state of Texas will help better protect our children and institutions from persons with disqualifying criminal records.

However, the program used to perform these record checks should be closely examined to ensure the best and most cost-effective methodology is utilized. It would not make good sense to mandate a methodology which would result in missing a significant percentage of relevant criminal records.

# Schools/Mentoring Clients



ABILENE ISD  
ACADEMY OF ACCELERATED LEARNING, INC  
ACCELERATED INTERMEDIATE ACADEMY  
ALDINE ISD  
ALEDO ISD  
ALIEF ISD  
ALIEF MONTESSORI COMMUNITY SCHOOL  
ALLEN ISD  
ALLISON ISD  
ALVIN COMMUNITY COLLEGE  
ALVIN ISD  
ANAHUAC ISD  
ANGLETON ISD  
ANTHONY ISD  
APPLIED INFORMATION MGMT. INSTITUTE  
ARGYLE ISD  
ARLINGTON ISD  
ATLANTA ISD  
AUBREY ISD  
AVERY ISD  
BARBERS HILL ISD  
BAY AREA CHARTER SCHOOL  
BELL SCHOOLS  
BETHANY PUBLIC SCHOOLS  
BIRDVILLE ISD  
BLAIR COMMUNITY SCHOOLS  
BLOOMINGTON ISD  
BLUE LAKE ACADEMY  
BOLES ISD  
BONHAM ISD  
BOOKER ISD

BORGER ISD  
BOVINA ISD  
BOYD ISD  
BOYS RANCH ISD  
BRAZOSPORT COLLEGE  
BRAZOSPORT COLLEGE STUDENT SERVICES  
BREMEN PUBLIC SCHOOLS  
BROWNSVILLE ISD  
BUCKHOLTS ISD  
BURLESON ISD  
CANUTILLO ISD  
CARRIZO SPRINGS ISD  
CARROLLTON CITY SCHOOLS  
CARROLLTON FARMERS BRANCH ISD – AUXILIARY  
CENTRAL INDIANA EDUCATIONAL SERVICE CENTER  
CHANNELVIEW ISD  
CHILDRESS ISD  
CHINA SPRING ISD  
CISCO JR COLLEGE  
CLAUDE ISD  
CLEBURNE ISD  
CLEVELAND ISD  
CLINT ISD  
COLLEGE OF THE MAINLAND  
COM HUMAN RESOURCES  
COMMUNITIES IN SCHOOLS – HOUSTON  
CONESTOGA PUBLIC SCHOOLS  
COOPERATIVE EDUCATIONAL SERVICE AGENCY #6, WI  
COPPELL ISD  
COSMOS FOUNDATION  
COWAN COMMUNITY SCHOOLS

COVINGTON ISD  
COZAD CITY SCHOOLS  
CULVER COMMUNITY SCHOOLS  
CUMBY ISD  
CYPRESS-FAIRBANKS ISD  
DALHART ISD  
DALLAS COUNTY COMMUNITY COLLEGE  
DALLAS COUNTY SCHOOLS  
DALLAS ISD  
DAMON ISD  
DARROUZETT ISD  
DAVENPORT PUBLIC SCHOOLS  
DEER PARK ISD  
DEKALB COUNTY EASTERN C.S.D.  
DELAWARE COMMUNITY SCHOOL CORP.  
DENTON ISD  
DESOTO ISD  
DICKINSON ISD  
DODD CITY ISD  
DONIPHAN-TRUMBULL PUBLIC SCHOOL  
DONNA ISD  
DUBLIN PUBLIC SCHOOLS  
DUMAS ISD  
DURHAM PUBLIC SCHOOLS  
EAGLE CHARTER SCHOOLS – LEWISVILLE  
EAST CENTRAL EDUCATION SERVICE CENTER, INDIANA  
EASY LOBBY SCHOOLS  
E-CHALK, INC.  
ECTOR COUNTY ISD  
EDCOUCH-ELSON ISD  
EDGEWOOD ISD

# Schools/Mentoring Clients



EDUCATIONAL SERVICE UNIT #3  
EDUCATIONAL SERVICE UNIT #9  
EDUCATIONAL SERVICE UNIT #12  
ELKHORN PUBLIC SCHOOLS  
ELMWOOD-MURDOCK ESU #3  
EL PASO ISD  
EULA ISD  
EVADALE ISD  
FARWELL ISD  
FERRIS ISD  
FORT BEND ISD  
FORT WORTH ISD  
FRENSHIP ISD  
FRIENDSWOOD ISD  
FRISCO ISD  
GAGE ISD  
GALENA PARK ISD  
GIRLS & BOYS PREP ACADEMY  
GOOSE CREEK ISD  
GRAND PRAIRIE ISD  
GRANDVIEW-HOPKINS ISD  
GRAPEVINE-COLLEYVILLE ISD  
GREENFIELD-CENTRAL COMMUNITY SCHOOLS  
GRUVER ISD  
HAPPY ISD  
HARMONY SCIENCE ACADEMY  
HARRIS COUNTY DEPT. OF EDUCATION  
HARTLEY ISD  
HASKELL CONSOLIDATED ISD  
HEDLEY ISD

HEMPSTEAD ISD  
HEREFORD ISCO  
HICO ISD  
HIDALGO ISD  
HIGGINS ISD  
HIGHLAND PARK ISD  
HILLSBORO ISD  
HOUSTON ALTERNATIVE PREP CHARTER SCHOOL  
HOUSTON COMMUNITY COLLEGE SYSTEM  
HOUSTON GATEWAY ACADEMY  
HOUSTON HEIGHTS LEARNING ACADEMY  
HOUSTON ISD  
HUDSON ISD  
HUMBLE ISD  
HURST-EULESS-BEDFORD ISD  
IMMANUEL LUTHERAN CHURCH & SCHOOL  
IMPACT CHARTER SCHOOL  
IRVING ISD  
JOAQUIN ISD  
JOHNSTON COUNTY SCHOOLS  
JUAN B GALAVIZ CHARTER  
JUDSON ISD  
JUMPSTART  
JUSTICE PUBLIC SCHOOLS  
KATY ISD  
KAUFMAN ISD  
KELTON ISD  
KENDLETON ISD  
KERMIT ISD  
KETCHUM PUBLIC SCHOOLS

KILLEEN ISD  
KIPP TRUTH ACADEMY  
KLEIN ISD  
KRESS ISD  
KRUM ISD  
LAKE DALLAS ISD  
LAMAR CONSOLIDATED ISD  
LA MARQUE ISD  
LA PORTE ISD  
LASARA ISD  
LAZBUDDIE ISD  
LEFORS ISD  
LEONARD ISD  
LEXINGTON ISD  
LITTLE ELM ISD  
LIVING STONES CHRISTIAN SCHOOL  
LIVINGSTON ISD  
LORENA ISD  
LOUISVILLE ISD  
LUBBOCK ISD  
LUBBOCK-COOPER ISD  
MAINLAND PREP ACADEMY  
MANSFIELD ISD  
MARLIN ISD  
MAUD ISD  
MCKINNEY ISD  
MCLEAN ISD  
MERIDIAN TECHNOLOGY CENTER  
MIAMI ISD  
MIDLAND ISD



# Schools/Mentoring Clients



MID-VALLEY CHRISTIAN  
MIDWAY PUBLIC SCHOOLS  
MILLER GROVE ISD  
MISSION CONSOLIDATED ISD  
MITCHELL PUBLIC SCHOOLS  
MOTIVATING MINDS, LLC  
MUSKOGEE PUBLIC SCHOOLS  
NEBRASKA ASSOC. OF SCHOOL BOARDS  
NOBLESVILLE SCHOOL  
NOLANVILLE ISD  
NORRIS PUBLIC SCHOOLS  
NORTH CAROLINA ASSOC./SCHOOL ADMINISTRATORS  
NORTHERN INDIANA ESC  
NORTHLAND CHRISTIAN SCHOOL  
NORTHSIDE ISD  
NORTHWEST INDIANA ESC  
NORTHWEST ISD  
NORTHWEST PREP ACADEMY  
O'CONNELL CONSOLIDATED HIGH SCHOOL  
ODYSSEY ACADEMY  
OKLAHOMA STATE SCHOOL BOARD ASSOC.  
PAMPA ISD  
PAPILLION LA VITA PUBLIC SCHOOLS  
PEARLAND ISD  
PEGASUS ISD  
PERRYTON ISD  
PIEDMONT SCHOOLS OF OKLAHOMA  
PLATTSMOUTH COMMUNITY SCHOOLS  
PLEMONS-STINNETT-PHILLIPS ISD  
POOLVILLE ISD  
POTTSBORO ISD  
PRIDY ISD  
PRINCETON ISD  
QUINLAN ISD  
RATTAN PUBLIC SCHOOLS  
RAUL YZAGUIRRE SCHOOL FOR SUCCESS

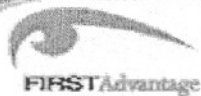
RAYMONDVILLE ISD  
REAGAN PUBLIC SCHOOLS  
RED OAK ISD  
REGION 1 ESC - TEXAS  
REGION 4 ESC - TEXAS  
REGION 6 ESC - TEXAS  
REGION 6 EXTERNAL PROGRAMS  
REGION 8 ESC - TEXAS  
REGION 8 ESC - INDIANA  
REGION 10 - TEXAS  
REGION 12 - TEXAS  
REGION 14 - TEXAS  
REGION 16 ESC - TEXAS  
REGION 18 ESC - TEXAS  
REGION 19 ESC - TEXAS  
RICHARDSON ISD  
RIO BRAZOS EDUCATION COOPERATIVE  
RIO VISTA ISD  
RIVER ROAD ISD  
ROCKWALL ISD  
ROOSEVELT ISD  
ROUND ROCK ISD  
ROYAL ISD  
SALTILLO ISD  
SAMARITAN.COM  
SAMNORWOOD ISD  
S & S CONSOLIDATED ISD  
SAN ANGELO ISD  
SAN ANTONIO ISD  
SAN ELIZARIO ISD  
SEMINOLE ISD

SHELDON ISD  
SHERMAN ISD  
SIERRA BLANCA ISD  
SILVERTON ISD  
SOCORRO ISD  
SOUTHERN INDIANA ESC  
SOUTH SARPY ISD  
SOUTH SIOUX CITY COMMUNITY SCHOOL  
SOUTHWEST HIGH SCHOOL  
SPRING ISD  
ST. MARY'S CHARTER SCHOOL  
ST. JOSEPH'S INDIAN SCHOOL  
STAFFORD ISD  
STAR ISD  
SUNNYVALE ISD  
TARKINGTON ISD  
TEMPLE SHAARAY TEFILA  
TEXARKANA ISD  
TEXAS A & M ACCELERATED ONLINE  
TEXAS CITY ISD  
TEXLINE ISD  
TEXOMA CHRISTIAN SCHOOL  
TOMBALL ISD  
TORNILLO ISD  
TULIA ISD  
TYLER ISD  
VALENTINE CITY SCHOOLS  
VEGA ISD  
VERNON ISD  
VINITA PUBLIC SCHOOLS  
WABASH VALLEY ESC - INDIANA

# Schools/Mentoring Clients



WACO ISD  
WALCOTT ISD  
WALLER ISD  
WASBASH VALLEY ESC  
WEEPING WATER – ESU #3  
WES-DEL COMMUNITY SCHOOL CORP.  
WESLACO ISD  
WESTBURY CHRISTIAN SCHOOL  
WEST CENTRAL ESC – INDIANA  
WESTFIELD WASHINGTON SCHOOLS  
WEST SABINE ISD  
WHARTON COUNTY JUNIOR COLLEGE  
WHITESBORO ISD  
WHITE SETTLEMENT ISD  
WILMER-HUTCHINS ISD  
WILSON CENTER ESC – INDIANA  
WINONA ISD  
WYLIE ISD – REGION 14  
YOUNG LEARNER'S CHARTER  
YSLETA ISD  
ZAPATA ISD



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## Criminal checks deficient

### State's database of convictions is crippled by lack of reporting, putting public safety at risk, law officials say

10:00 PM CDT on Saturday, October 2, 2004

By DIANE JENNINGS and DARLEAN SPANGENBERGER / The Dallas Morning News

More than 3 million times a year, state agencies and individual Texans turn to the state criminal convictions database to buy a little peace of mind by running background checks on prospective licensees, employees, tenants or even significant others.

They're not getting what they pay for.

The state criminal convictions database is so riddled with holes that law enforcement officials say public safety is at risk.

According to a report issued in July by the Texas Department of Public Safety, the state has only 69 percent of the complete criminal histories records for 2002. In 2001, the state had only 60 percent. Hundreds of thousands of records are missing.

"That's just shocking," said Renee Judd, administrator of a Dallas home health agency who uses it to screen employees and assumed it was comprehensive.

Law enforcement officials, who use state data much more frequently than Ms. Judd, have been aware of the problem for years.

"Anyone who depends on the state database for a full and accurate check is foolish," said John Bradley, Williamson County district attorney. Mr. Bradley is currently prosecuting a murder case in which the state information shows no prior convictions for the defendant; he actually received probation twice before on drug charges in two different counties.

The problem is particularly acute in Dallas County, which has one of the worst records of reporting criminal convictions among metropolitan areas. In 2002, less than half the convictions in Dallas County made it into the state database. The year before, it was one out of every five.

In analyzing county and state records, *The Dallas Morning News* found more than 4,000 Dallas county records involving sex offenses, from 1993 to 2003, which did not appear in the state

convictions database last year.

By contrast, Harris County sets the pace for urban counties, reporting 96 percent.

Dallas county officials blame an outdated computer system scheduled for replacement this month. "Our criminal justice computer system is over 30 years old," said Allen Clemson, court administrator. The system has been "modified and Band-Aided for years."

Officials say the new technology should resolve some of the reporting deficiencies going forward. Criminal convictions since 2000 are being restored to the state system manually -- and gradually. There are no plans to restore missing convictions between 1993 and 2000.

Another problem area is with the state sex-offender registry. The online system is plagued by incomplete or inaccurate information, which might give employers and neighbors a false sense of security. In a spot check of 245 sex offenders registered in the city of Dallas, *The News* found more than 40 whose information does not appear in the state registry.

DPS officials are well aware of the reporting problems with criminal convictions and sex offenders. "Our data is only as good as what's reported to us," said Angie Klein, manager of the Criminal Justice Information System.

### RECORDS BY THE NUMBERS

**31 percent:** Offense records missing from the state criminal conviction database as of Dec. 31, 2002

**3,064,855:** Conviction records available to the public

**7,386,577:** Arrests, convictions and other records available to law enforcement and authorized users

**63,830:** Monthly public users of the state conviction database

**191,010:** Authorized users, such as law enforcement and school districts, who seek arrest, conviction and other records each month.

Dismal as Texas' record keeping may seem, it's better than in many states. The FBI estimates that slightly fewer than half of convictions make it into a national database. That's particularly problematic when it comes to gun sales.

Convicted felons may not purchase guns, but if the criminal history is lacking, the sale may proceed after three days. Since the 1998 Brady Bill regulating gun sales, the FBI has ordered more than 21,000 firearms -- including almost 2,500 in Texas -- retrieved from those who should not have been allowed to buy them because of incomplete background information.

Mr. Bradley and other law enforcement officials, as well as many state agencies and certain types of businesses such as day care centers, have access to other information such as arrest records. But without a conviction, the information requires checking at the local level to make sure the charge was not dropped or the defendant acquitted.

And, if the conviction is not processed, some people might be judged wrongly if they were arrested



but later cleared.

Jessica Edwards, an assistant district attorney in Hunt County, said she learned of the problem early in her career. As a West Texas prosecutor, she was startled to find a man she had once prosecuted for murder return to the system with no mention in state records of his prior conviction.

Since the previous murder was local, prosecutors easily found the records. But, if he commits another crime in a different county, "and they run his record ... they won't see that this guy has been up for murder," she said.

"It's part of my job to help protect the community. And I can't do that properly if I don't know how dangerous the person is I'm dealing with."

'Moral responsibility'

Luckily, when the case of James McNatt came to her attention, Ms. Edwards knew how dangerous he could be -- and took the extra step of checking local records.

In 2001, a glassy-eyed, "somewhat confused" Mr. McNatt was found sitting in a car pointed in the wrong direction in Greenville. "I felt a moral responsibility to get James McNatt off the road," Ms. Edwards said.

That's because Ms. Edwards knew Mr. McNatt had a long history of DWI convictions. He also had an involuntary manslaughter conviction in 1983. To prosecute Mr. McNatt as a "habitual" offender -- thus subject to a harsher sentence -- prosecutors needed a more recent conviction. But the state convictions database didn't show any.

So Ms. Edwards and County Attorney Keith Willeford checked Dallas County records, where they verified another DWI in 2000. As a result, they withdrew plea bargain offers of 12 or eight years.

"That's why we took the extra step," Ms. Edwards said.

Mr. McNatt was convicted of DWI as a habitual offender and sentenced to 99 years. His appeal is pending.

He declined to be interviewed, but his attorney, Vincent Perini, expressed surprise that the 2000 Dallas conviction was not in the state records. "I assumed that the DPS had that information," he said. If Hunt County prosecutors had failed to find the case, "that would have made a huge difference" in his client's sentence.

Checking local records worked in Mr. McNatt's case. But in a state as big as Texas, with 254 counties spread across more than 260,000 square miles, local checks are not always possible. Generally, "We don't have the time or the manpower to investigate further," Ms. Edwards said. "Most of the cases, we do solely rely on that [the state database]."

Criminals 'reborn'

In an age when parcels can be tracked across the country, it's difficult to understand why felons can't be tracked across county and state lines. "It's almost like you go from county to county as a criminal [and] you're reborn every time you cross the county line," said Richard Alpert, assistant criminal district attorney in Tarrant County.

Some arrests, for instance, are simply never reported. A 2002 audit conducted by the now-defunct Texas Criminal Justice Policy Council discovered that more than 88,000 arrests and subsequent "dispositions," or outcomes, in 30 counties never reached DPS. Projecting that figure statewide meant an estimated 221,000 criminal dispositions would be missing that year.

Dr. Tony Fabelo, the council's former director, attributed the failure to employee turnover, low staffing levels and computer problems.

Those same issues affect reporting at the court level.

Sixty-two counties, in mostly urban areas, submit information to the state electronically, Ms. Klein said. But the computer systems often are outdated and the information doesn't always reach the state.

That's the problem in Dallas, Ms. Klein said.

In 2001, Dallas County failed to completely report almost 51,000 records; in 2002, the number was 39,000. County officials submitted the information, but Ms. Klein said a "computer glitch" did not tell the system to transmit it to the state.

Before the 2002 report, state officials only ran spot checks on information. "What we get is really good" from Dallas County, Ms. Klein said, so Dallas appeared to be one of the best at reporting information. But they didn't know what they didn't have.

The computer problem was not identified until DPS analyzed all the information for the first time. Before the 2002 DPS report, "there were no controls at the state level to catch this sort of thing," Ms. Klein said.

Since then, DPS has stepped up monitoring by providing detailed monthly performance reports to county officials, including arresting agencies and prosecutors.

Mr. Clemson, the Dallas County court administrator, said the county had no idea the information wasn't getting to Austin because no one complained. Once notified, he said the county responded quickly.

"This is a high priority issue with us," he said. "We have done every single thing the state has asked us to do."

Other county officials acknowledge they face chronic technology problems that the database problems merely highlight.

District Attorney Bill Hill said he was taken aback at the condition of county computing power when he took office in January 1999. "Most of my 200-plus prosecutors did not even have computers," he said. "If we wanted to call a meeting, we had to write a memo and make 300 copies."

The new system should resolve most of the problems, Mr. Clemson said. In the meantime, county officials are committed to filling in the missing records from 2001-03. "When all is said and done, we think it will be in the 70s or 80 [percent] compliance for 2002, and certainly that much or better for 2003, as we continue to work through this mess," Mr. Clemson said.

There are no plans to find records missing from the 1990s or earlier, however.

"It would be extremely difficult," Mr. Clemson said. "It's not a high priority right now."

Ms. Klein of DPS said she hoped Dallas County will retrieve those records. The 1998 conviction of Dallas priest Rudy Kos, for instance, does not appear in the state convictions database.

But County Judge Margaret Keliher said she wasn't sure the benefit of restoring old records would merit the cost of that effort.

The information is still available in the county, she said. "You can come and look it up here."

#### Filling the holes

Reporting criminal history to the state became mandatory in 1993. Any information available before then was sent in voluntarily by county officials. Filling the holes in the database before reporting became mandatory would be a gargantuan task.

Robby Collins learned the hard way about the hit-or-miss basis of criminal convictions from the early 1990s. As a personnel administrator for Dallas Independent School District, there were "lots of instances" where an employee's record came up clean, when they actually had been in trouble before, he said.

In 1997, for instance, after a substitute teacher was charged with sexually assaulting a 14-year-old boy, officials learned he had previously received probation and deferred adjudication for public lewdness and indecent exposure -- information that had not appeared in state records during background checks.

The holes in the system bothered Mr. Collins so much that he started Safe Schools, a company specializing in comprehensive background checks tailored to school districts, when he retired from DISD in 1999. The company and other professional background investigators check individual county records where an applicant has lived and worked. DISD, along with many other districts in North Texas, now subscribe to Safe Schools

"There is no 100 percent accurate check of a criminal record," Mr. Collins said, but "all criminal justice starts at the county level."

The DPS has pushed Texas counties for more accurate reporting for years. Forms have been standardized and trainers dispatched to help county officials.

Most counties want to provide better information, Ms. Klein said, but the Legislature never funded the effort.

State District Judge John Creuzot in Dallas said improved reporting won't be a priority until taxpayers push for it. But that probably won't happen "until they get angry about it," the judge said.

"Which usually is the product of something going terribly wrong."

E-mail [djennings@dallasnews.com](mailto:djennings@dallasnews.com) and [dspangenberger@dallasnews.com](mailto:dspangenberger@dallasnews.com)

#### **FINDING SOMEONE'S CRIMINAL HISTORY**

Individuals interested in checking criminal histories can go to the "online services" link on the Texas

Department of Public Safety Web site:

www.txdps.state.tx.us

The link directs users to both the convictions database and sex offender registration list.

There is no charge to access the sex offender registry. Conviction look-ups, at \$3.15 apiece, require establishing an account by check or credit card. There is an additional nominal transaction fee.

The department also accepts inquiries by mail at \$10 apiece. They should be directed to:

Crime Records Search, Texas Department of Public Safety, P.O. Box 15999, Austin, Texas 78761-5999

### 2002 CRIMINAL REPORTING

A criminal history begins with a report from an arresting agency. Prosecutors and court officials update it. If the information is not completely reported at each stage, the arrest may appear in a database available to law enforcement, but it does not appear in the criminal convictions database available to the general public.

2002 criminal convictions	Number of charges reported initially	Charges reported through prosecution and court outcome
Statewide	658,728	69%
Dallas County	67,771	42%
Collin County	8,259	71%
Denton County	10,564	80%
Tarrant County	53,551	85%
Harris County	76,960	96%

SOURCE: Texas Department of Public Safety



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Sincerely,

Mark C. Myers  
COO & General Manager



MARK C. MYERS  
Chief Operating Officer  
General Manager  
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