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United States General Accounting Office  
Washington, DC 20548

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November 30, 2001

The Honorable Jerrold Nadler  
Ranking Minority Member  
Subcommittee on the Constitution  
Committee on the Judiciary  
House of Representatives

Subject: Limited “Voided Arrest” Data From Federal, State, and Local Agencies

Dear Mr. Nadler:

In a letter dated March 21, 2001, you requested that we investigate and report on the number of “voided arrests” that occur at national and state levels. You expressed interest in “voided arrests” defined as any arrest resulting in the release of the person without the filing of formal charges; dismissal of proceedings against the person arrested; or a determination that the arrest was without probable cause. This definition is the same as that of the term “voidable arrest,” contained in H.R. 1154, a bill you introduced in the House of Representatives on March 21, 2001.<sup>1</sup>

To respond to your request, we contacted various federal, state, and local agencies and collected information to design a methodology for this study. On September 25, 2001, we discussed the preliminary results of our work with your staff, who advised us that you would not be pursuing the passage of H.R. 1154, at least in the foreseeable future, because of the attacks that occurred in the United States on September 11, 2001. Since this study was intended to support H.R. 1154, your staff requested that we close out our work with this letter summarizing the information we collected to date and the difficulties involved in obtaining data on “voided arrests.”

### **Federal Agencies**

- We contacted the Federal Bureau of Investigation (FBI) headquarters and its Criminal Justice Information Services Division (CJIS); Bureau of Justice Statistics (BJS) law enforcement statistics unit and its National Criminal History Improvement Program; U.S. Marshals Service at Los Angeles; and Drug Enforcement Administration (DEA) headquarters.<sup>2</sup>

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<sup>1</sup>In this letter, we use the term “voided arrests” instead of “voidable arrests.” The two terms are synonymous as defined in your March letter to the Comptroller General and your bill, Clear Your Good Name Act, H.R. 1154, 107<sup>th</sup> Cong. (2001).

<sup>2</sup>We selected Department of Justice components responsible for making arrests, maintaining criminal history records, and collecting criminal justice statistics.

- None of the federal agencies we contacted uses the term “voided arrest.” In addition, none of them has complete and readily available nationwide data on the total number of the different types of “voided arrests,” as defined by H.R. 1154, that occurred at either federal or state levels.
- FBI CJIS officials told us they do not have standardized categories for the dispositions of arrests<sup>3</sup> reported by federal and state agencies. The officials said this information is recorded as narrative, making it impossible to conduct an automated search for arrest dispositions in the FBI’s Interstate Identification Index (III).<sup>4</sup> In addition, they said much of the disposition information in III is incomplete or inaccurate.
- Some nationwide data on certain types of federal “voided arrests,” as defined by H.R. 1154, may be available, but the data are limited, according to BJS law enforcement statistics unit officials. The BJS officials said that they have a Federal Justice Statistics Program database that can compare federal arrests booked by the U.S. Marshals Service with data from the Executive Office for U.S. Attorneys and the Administrative Office of the U.S. Courts to identify the arrests that were not prosecuted and determine the percentage that resulted in various dispositions, such as prosecutor declinations and court dismissals. BJS does not routinely conduct such a comparison, but it has the ability to do it upon request.
  - According to BJS’s database, there were 109,857 arrests for federal offenses booked by the Marshals Service; 31,004 declinations to prosecute by U.S. Attorneys; and 8,552 cases dismissed in fiscal year 1999.<sup>5</sup>
  - However, not all arrests by federal agencies are turned over to the Marshals Service and recorded in their database. For example, BJS reported that DEA agents made 37,746 arrests in fiscal year 1999 and there were 11,718 DEA arrests for federal offenses booked by the Marshals Service that same fiscal year. The DEA arrests not booked by the Marshals Service include suspects referred for prosecution in state courts. A BJS official said the FBI also has a significant number of arrests that are not turned over to the Marshals Service.
  - Prosecutor declinations and court dismissals can occur for numerous reasons, including referrals to other authorities for prosecution, pretrial diversion into a program of supervision and services tailored to the offenders’ needs, restitution fully or partially made, and civil or administrative alternatives. In

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<sup>3</sup>Dispositions of arrests include release by a law enforcement agency without charges filed, declination to prosecute, court dismissal, conviction, and acquittal. Arrest dispositions can occur at different stages of the criminal justice process and for a variety of different reasons.

<sup>4</sup>The III is an “index-pointer” system maintained by the FBI for the interstate exchange of criminal history records. The III includes names and personal identification information relating to individuals who have been arrested or indicted for a serious or significant criminal offense anywhere in the United States. Search inquiries are made by criminal justice agencies nationwide, and data are automatically retrieved from each state repository holding records on the individual. As of September 30, 2000, 41 states participated in III.

<sup>5</sup>See BJS’ Compendium of Federal Justice Statistics, 1999 (April 2001, NCJ 186179).

such situations, the arrested persons may not be considered innocent of the crime for which they were arrested. For example, of the 31,004 U.S. Attorney declinations in fiscal year 1999, BJS reported that the basis for declining to prosecute 6,408 suspects was that the matter was referred or handled in other prosecution; pretrial diversion was the basis for not prosecuting 757 suspects; restitution was the basis for not prosecuting 102 suspects; and civil or administrative alternatives was the basis for not prosecuting 665 suspects.

- BJS does not collect state arrest or arrest disposition information, according to BJS officials.
- DEA provided us with data showing there were 39,793 DEA domestic arrests and 4,128 prosecutor declination dispositions in fiscal year 2000 and 23,515 DEA domestic arrests and 2,647 prosecutor declination dispositions from October 2000 through June 2001. DEA also has the ability to compile data on the reasons for declinations (such as insufficient evidence and referred for other prosecution), the number of dismissal dispositions, and the reasons for dismissal dispositions.<sup>6</sup>
- Neither the FBI nor the Marshals Service can compile statistics on the various dispositions of arrests by the two agencies, including prosecutor declinations, dismissals, and the number of arrests made without charges filed. The arrest disposition report used by the two agencies (FBI Form R-84, Final Disposition Report) does not have standard codes or categories for recording the various types of dispositions, according to FBI and Marshals Service officials. Dispositions are recorded on the form in narrative.

### State Agencies

- We contacted eight state agencies (i.e., state criminal history record repositories). We attempted to contact a ninth state repository, but agency officials did not respond to our phone calls and letter.<sup>7</sup>

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<sup>6</sup>DEA's declination statistics, and other arrest disposition data, are derived from Defendant Disposition Reports (Form DEA-210) received in DEA headquarters during the fiscal year indicated, and they are without regard to when the arrest occurred. Consequently, given the time between each arrest and its subsequent disposition, arrests and dispositions for the same time periods do not necessarily refer to the same individuals. Also, DEA's arrest and disposition data are updated as additional information becomes available; the data DEA provided us were as of August 8, 2001.

<sup>7</sup>Using BJS' Survey of State Criminal History Information Systems, 1999 (October 2000, NCJ 184793), we selected some states that required, and some that did not require, notification to their state criminal history record repositories by (1) law enforcement agencies when arrested persons are released without formal charging after fingerprints are submitted and (2) prosecutors when they decline to prosecute. Our selection of states was weighted toward those that provided data on these dispositions to BJS. We contacted officials at the Bureau of Criminal Identification and Information, California Department of Justice; Hawaii Criminal Justice Data Center, Department of Attorney General; Division of Criminal Investigation, Iowa Department of Public Safety; Criminal Records and Identification Division, Missouri State Highway Patrol; Records Division, Nebraska State Patrol; Bureau of Identification, New Jersey State Police; Identification and Criminal History Operations (within the Office of Systems and Operations) and Office of Justice Systems Analysis, New York State Division of Criminal Justice Services; and Crime Information Center, Vermont Department of Public Safety.

- None of the eight state criminal history record repositories we contacted use the term “voided arrest.”
- Six state criminal history record repositories (California, Hawaii, Missouri, Nebraska, New Jersey, and New York) compiled and provided data on the number of arrests in those states resulting in prosecutor declinations and court dismissals. The California and Hawaii repositories also provided data on arrests resulting in release without charges filed. Enclosure I presents data provided by the six state criminal history record repositories.
- Officials at two other state repositories (Iowa and Vermont) said they do not have any data on “voided arrests,” including prosecutor declinations and court dismissals.

### **Local Agencies**

- We contacted seven local law enforcement agencies. We attempted to contact another four local agencies, but they did not respond to our phone calls and letters.<sup>8</sup>
- None of the seven local law enforcement agencies we contacted use the term “voided arrest.”
- The Westchester County Department of Public Safety (New York) provided us with estimates of the number of arrests that resulted in release without referral for prosecution for 1999 and 2000. Of 1,460 total arrests in 1999, there were an estimated 5 arrests that resulted in release without referral for prosecution; of 1,764 total arrests in 2000, there were an estimated 8 arrests that resulted in release without referral for prosecution. According to the official we talked with, actual data on such releases is not readily available.
- Officials at five other local law enforcement agencies said all arrests are referred for prosecution (i.e., no law enforcement releases). These agencies were the Des Moines Police Department (Iowa), Lincoln Police Department (Nebraska), Millburn Township Police Department (New Jersey), Little Falls City Police Department (New York), and Windham County Sheriff’s Office (Vermont).
- The San Francisco Police Department does not have data on arrests resulting in release without referral for prosecution. When this occurs, the police department would notify the state criminal history record repository of the release and would no longer consider this an arrest, according to the official with whom we spoke.

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<sup>8</sup>At our request, officials at seven of the eight state criminal history record repositories we contacted referred us to officials in local law enforcement agencies in their respective states, including some large agencies and some agencies considered to have good criminal history record systems.

## Difficulties in Obtaining “Voided Arrest” Data

Complete data on the number of “voided arrests,” as defined by H.R. 1154, that occur at national and state levels are not available. None of the federal, state, or local agencies we contacted use the term “voided arrest.” They do not have data for the category “voided arrests,” and the data that they have do not include all arrests in those jurisdictions that can be considered “voided arrests” as defined by H.R. 1154.

BJS and the state criminal history record repositories we contacted generally have data for the arrest disposition categories of prosecutor declinations and dismissals, and these dispositions can be considered “voided arrests” as defined by H.R. 1154. However, prosecutor declinations and court dismissals can occur for numerous reasons, including referrals to other authorities for prosecution, diversion into programs involving supervision and services tailored to the offenders’ needs, restitution, and civil or administrative alternatives. In such situations, the arrested persons may not be considered innocent of the crime for which they were arrested. Trying to obtain and analyze data on the reasons for prosecutor declinations and court dismissals would be extremely difficult and time-consuming, if not impossible in many cases. For example, officials at five state criminal history record repositories told us they do not maintain reliable data at this level of detail. In addition, several officials told us that disposition information is often incomplete or inaccurate.

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We are sending copies of this report to the Chairman, Subcommittee on the Constitution, House Committee on the Judiciary; the Attorney General; and other interested parties. This letter will also be available on our home page at <http://www.gao.gov>.

If you have any questions, please call me at (202) 512-8777 or Darryl W. Dutton at (213) 830-1000. Other key contributors to this letter were Ronald G. Viereck, Gretchen E. Bornhop, and Cheryl M. Peterson.

Sincerely yours,



Paul L. Jones  
Director, Justice Issues

Enclosure

**Enclosure I**

**Six States' Arrest Disposition Data  
Fitting H.R. 1154's Definition of "Voided Arrests"**

<b>State</b>	<b>Year</b>	<b>Disposition</b>	<b>Number</b>
California	1999	Law enforcement releases	31,989
		Prosecution rejects/releases	80,010
		Court dismissals	1,490
	2000	Law enforcement releases	28,960
		Prosecution rejects/releases	99,531
		Court dismissals	712
Hawaii	1999	Released, no charge	1,037
		Released, prosecution declined at arrest	263
		Declined to prosecute	365
		Nolle prosequi <sup>a</sup>	6,517
		Dismissed	17,164
	2000	Released, no charge	1,084
		Released, prosecution declined at arrest	368
		Declined to prosecute	363
		Nolle prosequi	7,748
		Dismissed	20,517
		Indictment, no true bill returned <sup>b</sup>	1
Missouri	1999	Charges not filed <sup>c</sup>	36,331
		Dismissed <sup>d</sup>	14,002
	2000	Charges not filed	26,118
		Dismissed	5,995
Nebraska	1999	Prosecution declined, court dismissed	593
	2000	Prosecution declined, court dismissed	611
New Jersey	1999	Full dismissal <sup>e</sup>	19,981
	2000	Full dismissal	18,168
New York <sup>f</sup>	2000	Prosecution declined <sup>g</sup>	18,629
		Dismissed	166,442
		No true bill	1,158

<sup>a</sup>Nolle prosequi is a formal entry on the record of the court indicating the prosecutor declares that he or she will no longer proceed in the action. It is a type of defendant disposition occurring after the filing of a case in court and before judgment.

<sup>b</sup>No true bill is a disposition in which a grand jury fails to return a bill of indictment.

<sup>c</sup>According to the Criminal Records and Identification Division, Missouri State Highway Patrol, the charges not filed category consists primarily of prosecutor declinations.

<sup>d</sup>According to the Criminal Records and Identification Division, Missouri State Highway Patrol, the dismissed category consists primarily of court dismissals.

<sup>e</sup>Full dismissal indicates that all charges in the arrest were dismissed for various reasons, including lack of prosecution, plea bargains, incompetent, and appealed.

<sup>f</sup>Data were not provided for 1999.

<sup>g</sup>The Office of Justice Systems Analysis, New York State Division of Criminal Justice Services, noted concern with the quality of the prosecution declined disposition data because of previously detected inconsistencies in reporting across jurisdictions in the state. The agency discontinued presenting this data in its publications and noted that it is not in a position to know whether the data quality has improved. The agency further noted it is likely that errors in reporting this disposition are accounted for in other "not prosecuted" disposition categories, probably dismissals.