

Issue resolution worksheet

The subcommittee currently is considering *Privacy Policy Guidance for Illinois Integrated Justice Information Systems Volume 1*, the first in a series of documents that will provide justice practitioners and system designers with recommendations on the appropriate collection, use, and dissemination of information throughout the Illinois justice system. At the Privacy Policy Subcommittee’s March 9th meeting, members identified the areas of continuing discussion itemized below.

In addition to reviewing the changes that have already been incorporated into Privacy Policy Guidance, we are asking each member to give some thought about how the subcommittee should go about addressing each of the following concerns. This worksheet is intended to help direct that process by asking whether (A) the concern should be resolved for inclusion in Volume 1; (B) the policy provision should be deleted because it is outside the scope of the recommendations the subcommittee is willing to make or otherwise inappropriate for a document of this nature; or (C) the concern should be resolved at a later date for inclusion in a later volume. Furthermore, beside each concern is space to set a priority for resolution. Finally, underneath each concern is space to provide comments or suggestions on how to go about resolving the issue.

Resolve for Vol. 1	Delete provision	Resolve in later Vol.	Members’ concerns with <i>Privacy Policy Guidance Volume 1</i>		
			Decide whether the policy provisions are mandatory or only recommendations.		
Priority			<ul style="list-style-type: none"> • _____ • _____ • _____ 		
			Determine how much transparency is appropriate in the policy.		
Priority			<ul style="list-style-type: none"> • _____ • _____ • _____ 		
			Several provisions restrict information from being made available to the public. While there are several exceptions, in some instances the provisions do not go far enough.		
Priority			<ul style="list-style-type: none"> • _____ • _____ • _____ 		
			Should the policy provisions include general rules where, in practice, decisions regarding information sharing are on a case-by-case basis?		
Priority			<ul style="list-style-type: none"> • There are several instances where defense counsel access to information is permitted by the trial judge. • _____ • _____ • _____ 		

Resolve for Vol. 1	Delete provision	Resolve in later Vol.
Priority		

Members' concerns with *Privacy Policy Guidance Volume 1*

Revisit information retention periods contained in all sections.

- Members indicated that the provisions as drafted were either impractical, inconsistent with existing practices or failed to meet the investigative needs of the justice system.
- Members identified the following statutes and guidelines that should be reviewed and incorporated into these provisions:
 - State Records Act (5 ILCS 160/4a, /17)
 - Local Records Act (50 ILCS 205/1)
 - Guidelines established by the State Records Commission
 - Guidelines established by the Local Records Commission
 - 725 ILCS 5/116-4(d-10) (passed due to death row innocence issues)
 - Illinois Supreme Court Order on Recordkeeping.
 - _____
 - _____
 - _____
- There were several issues raised by the retention/deletion of the following types of justice information:
 - Suspect information § 201(d)(1)** The destruction of suspect information was a concern to investigators, who may use older information to develop new leads on recent crimes. It was also a concern to prosecutors and defense counsel because retroactive statutes of limitation may be a recurring issue *citing Stogner v. California, 539 US 607 (2003)* (holding in a 5-4 decision that the *ex post facto* clause barred application of a new state laws that permitted resurrection of otherwise time-barred criminal prosecution).
 - Juror information § 216(e)** The destruction of juror profile information may inhibit *Batson* challenges, which are also raised in post-conviction setting where ineffective assistance of counsel issues are implicated. The retention of juror sex, race, and age was also a concern here.
 - Pre-trial services reports § 202(e)(3)** Members wanted to reconcile the statutory expungement of pre-trial services records with the expungement section of the Uniform Conviction Information Act.
 - Victim identity not associated with perpetrator § 207(d)(3)** Members wanted these retention standards revisited. Specifically, investigations of insurance fraud were overlooked in Comment 24 to this section.
 - Child witness testimony § 213(c)(1)** Members indicated that retention of child testimony should be longer than 5 years to accommodate defense and prosecutor need for “false accusation” evidence.
- To the extent that these materials do not address the retention of information, is it our place to make recommendations or should legislative clarification be sought?
 - _____
 - _____
 - _____

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			<p>Clarify that expungement does not extend to police case reports.</p> <ul style="list-style-type: none"> • _____ • _____ • _____
Priority			<p>Add provisions that address the sharing of information with victims and witnesses in order to advance an investigation.</p> <ul style="list-style-type: none"> • The Juvenile Court Act has language at 705 ILCS 405/1-7(D) that might be relevant. • _____ • _____ • _____
Priority			<p>Incorporate the Freedom of Information Act into provisions that grant public access to justice information.</p> <ul style="list-style-type: none"> • _____ • _____ • _____
Priority			<p>Emphasize that this volume only addresses adult information and that juvenile justice information will be addressed in a later volume.</p> <ul style="list-style-type: none"> • _____ • _____ • _____
Priority			<p>Delete the several references to other states' laws throughout the document.</p> <ul style="list-style-type: none"> • References to the laws and policies of other states are included at comment 17 to Section 207; comments 10-13 of Section 212; and comment 5 of Section 213. • _____ • _____ • _____
Priority			<p>Title I: Third Principle "All instances of justice information sharing and data modification will be recorded to ensure accountability for the transactions."</p> <p>Is recording in the Third Principle too limiting? How about providing that "a means be established to identify with whom the info was shared"?</p> <ul style="list-style-type: none"> • _____ • _____ • _____

Resolve for Vol. 1	Delete provision	Resolve in later Vol.
Members' concerns with <i>Privacy Policy Guidance Volume 1</i>		
Priority	<p>Title I: Fifth Principle “Each individual is entitled to know, with limited and narrowly defined exceptions, whether information about him or her has been collected and maintained by the justice system and to review and challenge that information.”</p> <p>This principle may require a limiting timeframe so as to protect ongoing investigations. Determine how broadly the principle should apply (i.e., should it be limited to instances where the individual is mentioned as an offender or suspect versus more incidental references).</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
Priority	<p>Section 201 Cmt. 7 Seek out more recent language defining probable cause as an in-court determination.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
Priority	<p>Section 202 Information Concerning Arrestees Address the court clerk’s role in information sharing in this section.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
Priority	<p>Section 202 Information Concerning Arrestees Better explain the interrelationship between this section and the section dealing with prisoners because arrestees can simultaneously be prisoners.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
Priority	<p>Section 202(e)(4) Secondary dissemination – Agencies and individuals, excluding the news media, receiving personally identifiable arrest information should take care not to further disseminate it so as to not contravene the legislature’s policies of (A) not permitting records of arrests to improperly influence employment decisions; (B) allowing eligible arrestees to seal or expunge their arrest records; and (C) ensuring the timeliness of the information. Is this appropriate as a policy?</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	

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			Priority	<p>Section 202 Comments</p> <p>Should subpoenas be discussed as an information sharing policy?</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
			Priority	<p>Section 202 Comment 1 – policy definition of arrestee</p> <p>Is it confusing to define arrestee as a person not convicted?</p> <p>Can this confusion be fixed?</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
			Priority	<p>Section 202 Comment 13 – other states' treatment of pending arrest information</p> <p>Florida and Colorado may also permit access to pending arrest information.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
			Priority	<p>Section 203(c) – public access to information concerning convicted persons</p> <p>This subsection should address access to conviction information via various offender registries.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
			Priority	<p>Section 203(d) – Retention of offender information</p> <p>Clarify that there is a difference between conviction information collected from court records and conviction information collected under the uniform conviction information act.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 	
			Priority	<p>Section 203 Comment 6 – civil disability statutes</p> <p>Add loss of driving privileges to this comment.</p> <ul style="list-style-type: none"> • _____ • _____ 	

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			Section 203(d)(6) & Section 204(e)(2)	– secondary dissemination of PSIs	
Priority	<p>There may not be any prohibitions on agencies that possess the PSI if, for example, they get a subpoena for this information and a medical/mental health release. Furthermore, how is a request by one party on the list to another party on the list in 5/5-3-4 handled?</p> <ul style="list-style-type: none"> • _____ • _____ 				
			Section 204 Information concerning probationers		
Priority	<p>Consider that communication between defense counsel and probation officers may be beneficial to the probationer and the justice system. Moreover, it may be current practice in some jurisdictions to share information with defense attorneys even though it is not expressly included in the existing statutes.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 				
			Section 204(c) or (d)		
Priority	<p>Clarify what access a victim may have to probation information.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 				
			Section 205(d)(1)	– duty to warn of threats of violence	
Priority	<p>Indicate the authority for imposing a duty to warn upon the department of corrections.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 				
			Section 205 Comment 4	– information collected about prisoners table	
Priority	<p>Line up contents so that all similar items correspond horizontally to aid comparison.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 				
			Section 206 Information concerning individuals on supervised release		
Priority	<p>Address how sex offenders fit into this section.</p> <ul style="list-style-type: none"> • _____ • _____ 				

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			Section 207 Information concerning victims		
Priority			<p>Consider that if victims are to be afforded special treatment, there may be some distinction between victims and those who falsely claim to have been victimized.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 		
			Section 207 Information concerning victims		
Priority			<p>Revisit this section to better address the implications of victim searchability in existing and future information systems.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 		
			Section 207(c) – public access to victim information		
Priority			<p>These provisions may be too broadly drafted; they don't take into consideration that victims of ordinary property crime and corporate victims may not have the same interests to protect as victims of sexual violence.</p> <ul style="list-style-type: none"> • _____ • _____ • _____ 		
			Section 207 Comments 10 & 13 – linking requirement before release of victim identity		
Priority			<p>These provisions seems to be based upon fear that police officials may somehow abuse the sensitive data provided to them by victims at large.</p> <p>Is it necessary to wait until suspicions arise before inquiring into an individual's victimization history or may an individual's victimization history be investigated as a matter of routine practice?</p> <ul style="list-style-type: none"> • _____ • _____ • _____ • _____ 		
			Section 212 Comment 3 – “most states, including Illinois, focus more on compelling witnesses to testify than protecting their identities or other sensitive information”		
Priority			<p>This line may be offensive and some members questioned its accuracy</p> <ul style="list-style-type: none"> • _____ • _____ 		

Resolve for Vol. 1	Delete provision	Resolve in later Vol.
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Members' concerns with *Privacy Policy Guidance Volume 1*

Priority	<p>Section 216 This section limits the sharing of juror information too severely and should be revised considerably.</p> <ul style="list-style-type: none"> • _____ • _____ • _____
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Additional concerns

Priority	<p>Section _____ Concern: _____</p> <p>_____</p> <ul style="list-style-type: none"> • _____ • _____
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Priority	<p>Section _____ Concern: _____</p> <p>_____</p> <ul style="list-style-type: none"> • _____ • _____
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Priority	<p>Section _____ Concern: _____</p> <p>_____</p> <ul style="list-style-type: none"> • _____ • _____
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Priority	<p>Section _____ Concern: _____</p> <p>_____</p> <ul style="list-style-type: none"> • _____ • _____
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