

ACT NOW TO OPPOSE THE FBI'S PROPOSED REGULATION TO REPORT "NON-SERIOUS" OFFENSES ON THE RAP SHEETS ISSUED TO EMPLOYERS AND OCCUPATIONAL LICENSING AGENCIES

1. How has the FBI Proposed Expanding their Rap Sheets?

The FBI has asked for public comments (**due Monday, November 6th**) on a proposed regulation which would, for the first time, authorize the agency to report "non-serious" offenses on the FBI's rap sheets for employment screening purposes. Currently, the FBI can only report serious misdemeanors and felony arrests and convictions. The FBI rap sheets are generated from the fingerprint-based criminal records provided by the states and federal law enforcement.

2. How Broad is the Term "Non-Serious" Offenses?

As defined by the FBI, "non-serious" offenses includes all juvenile arrests and convictions reported by the states to the FBI and any adult arrest or convictions, including anything from vagrancy, to drunkenness, to many traffic violations. The actual offenses reported to the FBI will vary by state, with some reporting all offenses to the FBI where a fingerprint record is created, and others reporting selected offenses. In addition, some states may go back and list all old non-serious offenses, while others will start by reporting new offenses. At least one state (Maryland) has indicated that it will not provide the FBI with their records of non-serious offenses.

3. How are FBI Rap Sheets Used for Employment Purposes?

In 2002, the FBI generated more raps sheets for non-criminal justice purposes than it did to investigate crimes, including over 5 million FBI rap sheets provided to employers and state occupational licensing agencies. While most FBI rap sheets are reported to state and federal agencies, more federal laws now authorize certain employers to access the FBI's rap sheet (including schools, nursing homes and private security officer companies). In addition, the U.S. Attorney General has recommended to Congress that all employers be eventually authorized to access the FBI's criminal records.

4. What's Wrong with the FBI's Proposed Policy

(a) By reporting large numbers of "non-serious" arrests and convictions, the FBI will unfairly deny employment to far more people with criminal records. The FBI's policy could expand the volume of non-serious arrests and convictions reported on an FBI rap sheet by at least 20%, thus also increasing the likelihood that employers and licensing agencies will unfairly deny employment to people with criminal records. In 2004, drunkenness and disorderly conduct alone accounted for almost 10% of all arrests in the United States (or 1.2 million cases). In most cases, this highly prejudicial information bears no serious relationship to a person's employment qualifications.

(b) The FBI's proposal represents a radical departure from state policies protecting the privacy of juvenile records for non-criminal justice purposes and promoting rehabilitation. In

2005, there were more than 1.5 million arrests of people less than 18 years old, often for property crimes. Most studies indicate that only one-third of youthful offenders ever commit a second offense. To keep these sensitive records confidential and promote rehabilitation, almost all states authorize certain juvenile records to be expunged or sealed. However, the records can still be listed in the state record systems and reported to the FBI unless and until the young person successfully petitions the courts to have them removed. As a result, the juvenile records often remain on the FBI rap sheet, either because the court petition was never filed or the FBI record was never properly updated. Most states never seriously contemplated that an individual's minor juvenile offense would now make its way onto the FBI's rap sheets and forever undermine their future employment prospects.

(c) The FBI's policy will seriously undermine the civil rights of people of color, who are more likely to be arrested for non-serious crimes. While African Americans represent about 13% of the U.S. population, they account for about one-third of all those arrested for disorderly conduct, vagrancy and juvenile offenses (which exceeds the rate of Whites by about 15%, depending on the offense). A leading study in Minneapolis also documented that African-Americans are 15 times more likely than Whites to be arrested for low-level offenses, but less than 20% of the African-American arrests resulted in convictions.

(d) The FBI's rap sheets, which are already 50% incomplete, will provide far less reliable information to employers. By adding non-serious offenses, the FBI will further compromise the integrity of the FBI's rap sheets because the non-serious records are inconsistently reported by the states and they are more likely to include inaccurate and incomplete information. According to the United States Attorney General, more than 50% of the FBI criminal records are already incomplete, mostly due to the failure of the states to update their arrest records. It is likely that the percent of incomplete records will increase due to the lesser reliability of non-serious offense records, especially juvenile offenses.

(e) Many more workers will, for the first time, show an FBI rap sheet based solely on a non-serious offense. While current figures are not publicly available, when the FBI implemented its policy excluding non-serious offenses in the 1970s, it resulted in a 33% decrease in the total number of fingerprints cards retained by the FBI. Unless the proportion has changed dramatically since then, a large number of people will for the first time show a criminal record with the FBI if the proposed policy is adopted. Studies show that 40% of employers will not hire an individual with a criminal record, no matter the seriousness of the offense. Thus, many more workers will be wrongly denied employment based solely on a non-serious offense.

5. Act Now to Oppose the FBI's Misguided Policy

The National Employment Law Project (NELP) has drafted a model letter for interested organizations and individuals to urge the FBI to abandon its new proposal. The more letters received by the FBI with your compelling stories, the better the chance that the FBI will think twice before implementing this misguided policy. **But you have to act right away. The FBI's deadline for public comments is Monday, November 6th.** As described in the official Federal Register notice (71 Federal Register 52302, September 5, 2006), public comments may be e-mailed to the FBI at enexreg@leo.gov (be sure to indicate FBI Docket No. 111P in the subject box). For a copy of NELP's model letter, contact Laura Moskowitz (lmoskowitz@nelp.org/510-663-5705) or Maurice Emsellem (emsellem@nelp.org/510-663-5700).