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## State background-check system flawed and unreliable



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By **Randy Ludlow**

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From cops whose safety is at stake to day-care centers trying to avoid hiring ex-felons, Ohio's flawed criminal background-check system doesn't always reveal the truth about people they deal with.

The computerized background-check system operated by the Bureau of Criminal Investigation in the office of Attorney General Mike DeWine has been troubled for years, sometimes indicating that thousands of criminals have clean records.

A review of thousands of pages of records reveal ongoing problems that have led supervisors to label the 15-year-old system — used for more than 1.3 million checks a year — as “cobbled together” and “running on borrowed time.”

Thousands of intertwined criminal-conviction and fingerprint records with processing errors have hung in limbo in a twitchy computer system for months at a time while records of convictions don't arrive promptly — or at all.

Amid an investigation by WBNS-TV (Channel 10) and *The Dispatch*, state officials are cracking down on the system contractor, 3M Cogent, and planning to buy a multi-million-dollar replacement.

Thousands of police officers and employers rely daily on the criminal background-check system that DeWine

describes as “critical for the safety of Ohio families.”

The system is used to vet school teachers, foster parents, medical professionals, police officers, firefighters, day-care and nursing home workers and gun owners seeking concealed-carry permits, among many others.

If the system doesn't work, felons can be hired for jobs they should not have landed, police officers might not know they just stopped a person with a history of violence, and ex-convicts could be OK'd to carry handguns.

And there are times when it hasn't worked. Hundreds of times in the past three years, including 195 in 2014, BCI backtracked to tell employers that they had been incorrectly informed that a would-be, or hired, employee had no criminal record.

Questions about accuracy aren't limited to the computer system. Since 2013, some court clerks, including in Franklin and Hamilton counties, inadvertently did not submit criminal conviction records to BCI for months. And problems remain.

A spot check by WBNS-TV of municipal and county court records in eight counties found 6.6 percent of convictions from recent years — more than 10,000 overall — missing from the state system.

BCI employees acknowledge that the system is unreliable. A supervisor wrote in a December email that system errors “could mean a person who committed a felony offense will not have this on their record.”

“We inherited kind of a Model T (information technology) system,” DeWine said, adding that the system has required constant upgrades. “Going back years and years, nothing had been done, really, to bring it up to date.”

DeWine likens the challenge of fixing the background-check system to changing an engine in an airplane while it is flying. “We're better than we were,” he said.

Asked whether he is confident in the system's reliability, DeWine said today, “We're doing everything we can every day to protect Ohio citizens.

“We're asking this (system) to do a lot more,” he said. “Is it perfect? No, it's not perfect, and until it is perfect and until there is never any delay, I'm not going to be satisfied. That's what I owe the people of the state of Ohio.”

BCI Superintendent Tom Strickrath and Kimberly Murnieks, the attorney general's chief operating officer, acknowledge spotty problems, but defend the overall performance of the background-check system.

“This system is better than it has ever been before,” said Strickrath. “But we've reached the point where were ready to move to a new system.”

Incidents of the background-check system not correctly capturing criminal convictions represent a fraction of the total number of checks, Murnieks said.

Ohio's criminal-history system is tied to fingerprints submitted by police agencies and courts after people are convicted of crimes. Private-sector and government employers also submit fingerprints to learn whether would-be employees have records.

BCI says many problems stem from electronic prints, totaling nearly 278,000 last year, submitted improperly through the so-called “Live Scan” system used by police, courts and employers to send images to the state agency.

According to BCI identification division supervisor emails, the system never has been properly fixed — a proposed \$162,000 upgrade was killed last year — with audits regularly finding criminals who wrongly were flagged as clean.

“We cannot trust that ALL of the transactions accepted at Live Scan are archiving. This has been an ongoing, serious, high-priority problem that I thought everyone was aware of,” a supervisor complained in an email last year.

More than 1,100 times from 2012 to 2014, BCI officials changed criminal histories recorded through flawed fingerprint scans as “no-hit” when, in fact, checks showed the people had “hits” — prior convictions with

fingerprints on file.

State officials continue to work with courts and police agencies to ensure they submit accurately captured fingerprints and records on a timely basis, Stickrath said.

One of the system's most alarming failures came in 2013 when 1,432 criminal convictions did not flow into the Law Enforcement Automated Data System for six months — including three months after the problem was discovered.

Police officers statewide use LEADS to check on the backgrounds of people they stop, question and investigate.

On April 26, 2013, BCI found that some records submitted the prior February and March never reached the BCI-fed LEADS, with tech workers believing they had been deleted due to a lack of computer storage space. Another 1,210 records destined for the fingerprint system also had not been processed.

The problem remained unaddressed until mid-July, when employees were instructed to begin contacting 99 law-enforcement agencies in an attempt to retrieve missing electronic fingerprint and conviction records. Finally, an archive of the records was found and they were placed in the system in early August.

Law enforcement officials said they never were informed that the checks they were running on suspects might have been incomplete or wholly inaccurate.

"It is important that law enforcement personnel have as much information as possible when they have contact with an individual," said Lt. Craig Cvetan, spokesman for the State Highway Patrol.

"LEADS relies on those databases containing accurate and complete information. If the database is not functioning or information is lacking, LEADS will not be able to notify the officer of a prior criminal history, which could ultimately put the officer's safety at risk," Cvetan said.

Attorney general IT employees stumbled onto the missing records and blamed employees of the system contractor, 3M Cogent, for not detecting them. "Cogent used to watch the log files and catch these sorts of problems when they occurred, rather than us happening upon them months later," one supervisor wrote.

Other emails exchanged by BCI officials also regularly report the discovery of hundreds of "lost transactions," deleted entries and months-old records not properly routed into the background-check system.

Officials have complained for years about the performance of 3M Cogent, the \$1-million-a-year contractor based in Pasadena, Calif., that is responsible for operating the system, before the attorney general's office began to demand improvements and better staffing in December.

Citing "disappointment and frustration," officials demanded a \$6.2 million "credit" on April 6 requiring the company to provide three full-time system engineers, upgrade the system and complete its rebuild by June 30.

In a letter to 3M Cogent, the attorney general's office said the company violated its contract, pointing to 10,147 hours that the system cumulatively was unavailable last year to BCI employees — a system that "continues to perform poorly this year, as well."

"Although we respectfully take issue with a number of the assertions made by the attorney general's office, we are very much looking forward to resolving our differences and continuing to provide ... the citizens of Ohio a state-of-the-art biometric identification system," a 3M Cogent spokeswoman said in a statement.

Records and emails also reveal a host of other periodic problems afflicting the background-check system:

-- Some sheriffs complain that they periodically fail to receive background checks within the 45-day legal limit for issuing permits to people seeking to carry concealed handguns.

-- The so-called "Rapback" component of the background-check system sometimes fails to promptly notify public employers, such as school districts, of employees recently convicted of crimes, including bus drivers charged with drunken driving.

-- Criminal convictions and fingerprints are not always promptly transferred to the FBI for its national

database, and checks requested by the FBI sometimes have to be “reset” so they process.

-- Public employers complain that some background checks can take four to six weeks, leaving them and would-be employees — including teachers and nurses — in limbo awaiting their state licenses.

-- Some criminal records given to employers improperly reflected juvenile arrests, and some court-ordered expungements of criminal records were not being recorded.

-- BCI officials discovered last year that some employers were receiving outdated background checks rather than updated reports reflecting first-time or additional convictions.

Senate Criminal Justice Committee Chairman John Eklund, R-Chardon, is confident that issues at both ends of the system — the submission of records and their placement in the BCI database — will be resolved by DeWine.

“If our chief law enforcement officer and his office believe there are some issues that need to be addressed, sure, it should be a concern to every Ohioan. I am sure it is of concern to (DeWine),” Eklund said.

Wendi Turner, executive director of the Ohio Family Care Association, which represents foster and adoptive families, said foster parents must submit their fingerprints for background checks through BCI every two years. “If there are problems, they need to be fixed. Now. You don’t want children placed with a bad person,” she said.

James Wayman, a criminal identification technology expert at San Jose State University in California, said problems with background-check systems are not restricted to Ohio and that even the FBI’s system faces the same challenges.

States are not staying on top of the need to regularly replace outdated systems with the latest technology, he said. “These systems break down quite regularly,” Wayman said.

“These systems ought to be replaced seven to 10 years, but here is the problem. ... The state of Ohio is going to have to get out its checkbook and start writing some checks for these things, and people don’t like to do that.”

The attorney general’s office declined to provide an estimated cost or time frame for replacing the current system with new software and hardware. Stickrath acknowledges it won’t be inexpensive.

*WBNS-TV “10 Investigates” reporter Nathan Baca, researcher Joel Chow and supervisor Jodi Andes contributed to this story.*

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