

**CHRIA**

**CRIMINAL HISTORY RECORD  
INFORMATION ACT**



**2014-2015-2016  
Audit Review**



# REGULATORY COMPLIANCE AND INTELLIGENCE SECTION 2014-2015-2016 CRIMINAL HISTORY RECORD AUDIT REPORT<sup>1</sup>

## I. INTRODUCTION

The 2014-2015-2016 Criminal History Record Review is an official report published by the Office of the Attorney General (OAG) to review compliance with the Criminal History Record Information Act (CHRIA)<sup>2</sup> by the criminal justice agencies within the Commonwealth over the past year.

Federal guidelines applicable to the collection of criminal history records in automated systems, such as the state central repository,<sup>3</sup> require that complete and accurate records be maintained by the official repository. Every Commonwealth criminal justice agency (CJA) is responsible for the timely reporting of accurate criminal history data and pursuing a policy of minimizing errors in the collection and dissemination of criminal history record information (CHRI).<sup>4</sup> This report is a detailed review of the 2014-2015-2016 Criminal History Record Audits program.<sup>5</sup> Part II generally explains CHRIA and legislative authority for the audit. Parts III and IV discuss the selection of samples and implementation of the audit. Finally part V interprets the statistical results derived from the audits.

## II. BACKGROUND

In order to fully understand the audit process and the statistical methodology applied, an understanding of CHRIA<sup>6</sup> is necessary. One of the primary responsibilities of the Regulatory Compliance & Intelligence Section (RCIS) is to ensure systematic statewide compliance with CHRIA. The audit and educational programs provided by this section is intended to facilitate compliance and improve the overall completeness and accuracy of criminal history records available to criminal justice agencies in Pennsylvania.

---

<sup>1</sup> This project was originally (1993) supported by PCCD sub grant #93-DS-15B-4476, awarded by the Commission on Crime and Delinquency (PCCD). The awarded funds originate with the Office of Justice Programs, U.S. Department of Justice. Points of view or opinions contained within this document are those of the author(s) and do not necessarily represent any official position, policy or view of PCCD or the U.S. Department of Justice.

<sup>2</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9101 (West 1983 & Supp. 1995-1996) (effective Jan. 1, 1980), Act of July 16, 1979, Pub. L. 116 No. 47, hereinafter (CHRIA) or (Act).

<sup>3</sup> 42 U.S.C. §3711, *et seq.* as amended, The Omnibus Crime Control and Safe Streets Act of 1968.

<sup>4</sup> 28 C.F.R. Part 20, 20.21(a), (1)(2).

<sup>5</sup> Initially these reports analyzed cases at least two years old in each reporting year, which provided sufficient passage of time to ensure a final disposition in each case. The application of Rule 600 of the Pa. R.C.P. to criminal actions requires that case analysis begin only after two years has elapsed in order to properly reflect the final dispositions in each matter.

<sup>6</sup> *Id.* at note 6.

## A. Criminal History Record Information Act

CHRIA governs CHRI<sup>7</sup> and certain “protected information” maintained by criminal justice agencies<sup>8</sup> - key elements in the Commonwealth’s criminal justice system. Specifically, CHRIA regulates all aspects of CHRI from dissemination,<sup>9</sup> completeness and accuracy,<sup>10</sup> expungements,<sup>11</sup> maintenance of protected information,<sup>12</sup> and security<sup>13</sup> to an individual’s right to access and review.<sup>14</sup> The Act provides civil and administrative sanctions for violations of its provisions.<sup>15</sup>

CHRIA was enacted by the Pennsylvania legislature in response to federal law<sup>16</sup> and regulations.<sup>17</sup> Pursuant to the applicable federal guidelines, CHRIA is intended to facilitate the development of a secure, complete and accurate database of CHRI provided by agencies within the criminal justice system. Each CJA acquires, classifies, maintains and disseminates CHRI according to its specific responsibilities under the Act. CHRIA mandates that state and local agencies report various CHRI within the system so that each agency maintains correct and

---

<sup>7</sup> The Act defines “criminal history record information” as “[i]nformation collected by criminal justice agencies concerning individuals, and arising from the initiation of a criminal proceeding, consisting of identifiable descriptions, dates and notations of arrests, indictments, informations or other formal criminal charges and any dispositions arising here from. The term does not include intelligence information, investigative information or treatment information...” Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9102; see also 28 C.F.R. §20.3(b)(1993); 18 Pa. C.S.A. §9106 sets forth in detail the collection and dissemination guidelines for “protected information” as collected in automated systems.

<sup>8</sup> The Act defines “criminal justice agency” as “[a]ny court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the state or federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized state and municipal police departments, local detention facilities, county regional and state correction facilities, probation agencies, district or prosecuting attorneys, parole boards and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the state and federal constitutions or both.” Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9102.

<sup>9</sup> “Dissemination” is defined as “[t]he oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.” *Id.* The Act has stringent requirements concerning dissemination of “protected information” and general criminal history information to non-criminal justice agencies and even between criminal justice agencies. *See generally id.* §9106, §9121 (Supp. 1995-1996); *see infra* note 13 (defining “protected information”).

<sup>10</sup> *See* Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9111-9114.

<sup>11</sup> “Expunge” is defined as “[t]o remove information so that there is no trace or indication that such information existed...” 18 Pa. C.S.A. §9101; *see also id.* §9122 (regarding expungement requirements.)

<sup>12</sup> “Protected information” is collectively defined as “intelligence, treatment or investigative information.” “Investigative information” is “assembled as a result of the performance of any inquiry...into a criminal incident or an allegation of criminal wrongdoing...” *Id.* §9101. “Treatment information” concerns “medical, psychiatric...or other rehabilitative treatment...for any individual charged with or convicted with a crime.” *Id.* “Intelligence information” includes “habits, practices, characteristics, possessions, associations or financial status of any individual compiled...to investigate...criminal activity.” *Id.* The Act refers to this information as “protected” due to the stringent requirements regarding maintenance and dissemination. *See id.* §9106.

<sup>13</sup> The Act has numerous mandates regarding security. *See id.* 18 Pa. C.S.A. §9131 and §9106(f).

<sup>14</sup> The Act has procedures to allow individuals to review and challenge their criminal history records. *Id.* 18 Pa. C.S.A. §9151-52.

<sup>15</sup> *Id.* 18 Pa. C.S.A. §9181-82, §9106(g) (Supp. 1995-96).

<sup>16</sup> Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3711 (1968)(amended).

<sup>17</sup> 28 C.F.R. §20.21.

complete records relevant to the agency's duties.<sup>18</sup> These reporting requirements provide for the "real time" exchange of data in the criminal justice system which results in the collection of complete and accurate data catalogued by the central repository.<sup>19</sup> Information makes its way from police departments, district attorney's offices, clerks of courts, and other criminal justice agencies as required by CHRIA. The final official repository of this information (criminal history record) (CHR)), is the Pennsylvania State Police (PSP) central repository.

The Pennsylvania legislature gave the OAG supervisory powers over implementation of the Act. The OAG has the authority to establish regulations<sup>20</sup> relevant to CHRIA and to institute civil proceedings for violations – if necessary.<sup>21</sup> The primary method through which the OAG reviews<sup>22</sup> compliance with the provisions of the Act is the annual audit.<sup>23</sup> The Act requires the OAG to audit annually a representative sample of the Commonwealth's repositories<sup>24</sup> containing CHRI.

The OAG's audit of the Commonwealth's criminal history repositories underscores the significance of the legislative mandate to review compliance with the regulations requiring collection of complete and accurate criminal history records. The audit not only inspects the completeness and accuracy of each agency's criminal history records, it also points out individual agency strengths and weaknesses. This required annual audit is the only legislatively mandated check on each agency's reporting responsibilities. At the conclusion of the audit of the individual agencies, an analysis in the form of an audit report provides an overall picture of the completeness and accuracy of the criminal history record system throughout the Commonwealth.

---

<sup>18</sup> See *id.* 18 Pa. C.S.A. §9112(a), (c) (regarding fingerprint cards), §9113 (regarding disposition reporting), §9114 (regarding correction of inaccurate information), §9122(d) (regarding expungements), and §9123(b) (regarding juvenile records).

Pennsylvania is one of the several states to require final disposition reporting by the clerk of courts. Bureau of Justice Statistics, U.S. Department of Justice, Compendium of State Privacy and Security Legislation: 1994 Overview of Criminal History Record Information (1995). Some of the other states include: Alabama, Alaska, Arkansas, District of Columbia, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Oregon, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, Wyoming, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Maine, Michigan, Montana, Ohio, Wisconsin, North Carolina, South Carolina, and New Hampshire. *Id.*

Pennsylvania is one of the several states to require reporting of final dispositions to the central repository by the District Attorney. *Id.* Some of the other states include: Alabama, Alaska, Arkansas, District of Columbia, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Oregon, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia and Wyoming.

<sup>19</sup> The central repository, which is maintained in Harrisburg by the Pennsylvania State Police, is the Commonwealth's primary collection point for criminal history record information and the dominant source for accurate criminal record information for individuals and both civilian and law enforcement agencies throughout the United States. Specifically, it maintains information on individuals arrested and fingerprinted within the Commonwealth, expunges pursuant to court order and disseminates criminal history records.

<sup>20</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9161(1).

<sup>21</sup> *Id.* 18 Pa. C.S.A. §9161(4).

<sup>22</sup> The OAG has the authority to investigate all matter relevant to CHRIA. *Id.* 18 Pa. C.S.A. §9161(3).

<sup>23</sup> *Id.* 18 Pa. C.S.A. §9161(5) and §9141.

<sup>24</sup> "Repository" means "[a]ny location in which criminal history record information is collected, compiled, maintained, and disseminated by a criminal justice agency." *Id.* 18 Pa. C.S.A. §9102.

## **B. History of the Audit Program**

In 1994, the OAG, in conjunction with the Pennsylvania Commission on Crime and Delinquency (PCCD), began an in-depth review of the obligations of the Commonwealth's criminal justice agencies under CHRIA. Funding for the OAG implementation of its CHRIA responsibilities began as part of a PCCD grant<sup>25</sup> which allocated monies reserved by the United States Department of Justice for the development of information systems within the states.

The PCCD grant focused on aspects of the OAG implementation of CHRIA legislation. That grant was the catalyst for statewide improvement of criminal history record reliability. The grant funded the creation of the RCIS. The section's primary responsibility at the time was the completion of the annual audit of the criminal justice agencies in accordance with the provisions of CHRIA. The grant funding enabled the OAG to develop seminars on the requirements of CHRIA to educate CJA personnel as to the various agency responsibilities under CHRIA. The grant also funded the investigation of complaints, alleged violations of the Act, and the production of pamphlets and brochures outlining the pertinent aspects of the CHRIA legislation. Each year OAG personnel provide on-site educational training upon request to agencies requesting assistance in identifying compliance issues regarding their role in providing complete and accurate CHRI to the central repository. While the grant dollars have expired, the OAG continued to perform its audit functions as set forth in CHRIA.<sup>26</sup>

## **C. The Regulatory Compliance & Intelligence Section**

The RCIS conducts its work throughout the Commonwealth and maintains offices in both the Western, Central and Eastern region. Supervision of the section is provided by one Supervisory Agent, and five agents from the investigative staff. The audit functions of the section require that agents serve different and critical functions. The Supervisory Special Agent responds to public inquiries regarding access and review, as well as agency inquiries regarding dissemination and expungements of CHRI. In addition, the OAG has developed a presentation program to educate criminal justice agencies throughout the Commonwealth regarding CHRIA.

The OAG presently hosts on its website the CHRIA Handbook, first published in 1995 in hardcopy form. This book is currently used throughout the Commonwealth as an easy reference to the requirements of law enforcement and other criminal justice agencies to assist in maintaining compliance with the Act.

The audit methodology used in the study is the result of a collaborative effort between the OAG and the PCCD.

The agents in the RCIS are responsible for conducting the audit, investigating alleged violations of the Act, and performing the duties of "intelligence officer" in each of the regional offices of the OAG.

---

<sup>25</sup> See *supra* note 1 (PCCD grant statement).

<sup>26</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9141 Audits.

### III. SELECTION OF AUDIT SAMPLING

The selection process used in drawing the audit sample was the first step undertaken in the analysis of the criminal record-keeping system. The focus of the audit is to gain a complete and accurate understanding of the status of each of the Commonwealth's criminal justice agencies with respect to the reporting of disposition data and overall compliance with the Act. Since 1995, a statistic-based methodology has been employed which was designed to improve the reliability of the data collected and allow the RCIS to draw certain inferences and conclusions with a high degree of scientific reliability.

The shortcoming of studies prior to 1995 was largely a failure to select statistically accurate samples which rendered the information collected and conclusions drawn statistically unreliable. The two most important aspects of the criminal history information – **completeness** and **accuracy** – could not be verified with any degree of scientific predictability.<sup>27</sup>

The present improvement of sampling methods permits one to statistically draw reliable conclusions concerning the overall improvement of the Commonwealth's criminal justice agencies with respect to compliance with CHRIA.

#### A. The Audit

Federal regulations require states to develop complete and accurate CHRI.<sup>28</sup> With an emphasis on the importance of statistical sampling, the RCIS undertook its first comprehensive and reliable audit in 1995. That process continues today with each successive audit. The RCIS relied significantly upon the Bureau of Statistics and Policy Research, PCCD, to assist the OAG in determining the appropriate sample size and the technique to be employed in analyzing the audit data. This comprehensive review of the audit methods available within the law enforcement community permitted proper focus which assisted the audit team in achieving optimum results from the study.<sup>29</sup>

Each audit in the program provided for an on-line audit with the CJA representatives (on-line-audits). The analysis of this information obtained through this procedure provides the foundation for the conclusions found in each report.

CHRIA requires a comprehensive review of the performance of the criminal justice agencies.<sup>30</sup> CHRIA governs individual agency functions, such as, fingerprinting, expungements, dissemination and security,<sup>31</sup> key areas of CJA involvement in the collection and proper maintenance of CHRI. The on-line audits were designed to measure policy compliance among the CJA and to provide a statistically reliable sample from which to determine what percentage of agencies within the Commonwealth were operating in accordance with CHRIA.

---

<sup>27</sup> 28 C.F.R. §20.21.

<sup>28</sup> Id. at note 29.

<sup>29</sup> See ex. Bureau of Justice Statistics, U.S. Department of Justice, *Assessing Completeness and Accuracy of Criminal History Record Systems: Audit Guide* (1992).

<sup>30</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9141 Audits.

<sup>31</sup> See *supra*. Part I.A.

The Act governs that reporting of complete and accurate CHRI from each repository through mandatory agency reporting requirements to the central repository.<sup>32</sup>

### **1. On-Line Audit Process**

The on-line audit included a sampling of all criminal justice agencies in order to determine compliance with the CHRI *procedures* established by the CHRIA. To develop the sample, the first task was to identify the total number of criminal justice agencies. In 2014-2015-2016, there were over 2,000 (Appendix I) criminal justice agencies within the Commonwealth, a number that fluctuates slightly over the years as agencies merge. This list of agencies includes district justices, state, local, transit, airport, housing and university police departments, clerks of court, district attorneys, county detectives, sheriffs, OAG repositories, state and local probation and parole agencies, and state and local correctional facilities.

Because a complete audit of each and every category of CJA (i.e. police departments, sheriffs, clerks of court, etc.) would result in a sample size that would be unmanageable, a sample of all criminal justice agencies, regardless of function, was drawn to provide a level of statistical reliability of 90% so that the true measure of compliance would be within 5% of the sample.<sup>33</sup> These percentages suggested that there was 90% reliability that the true compliance rate was within plus or minus 5% of the rate reported by the sampled agencies.

## **IV. THE PROCESS OF THE AUDIT**

Once the selection of the agencies was completed, the criminal history record audit began. The RCIS developed a specific questionnaire to determine agency compliance with general provisions of the Act. Agents were assigned agencies to send a link for the on-line audit. This section explains the development of the questionnaires and the on-line audit process.

On each on-line audit, the responding agency is instructed to reference a copy of the Criminal History Record Information Handbook (Handbook).<sup>34</sup> The RCIS compiled the original Handbook and its revisions with the intention of creating a better understanding of the Act by CJAs, thereby furthering the development of the foundation for a successful criminal history record program. The Handbook analyzes the Act by providing easy to read explanations as well as examples, definitions and sample documents, which may be modified for use by any CJA. The form documents, adoption of which are a starting point toward full compliance, include dissemination logs and requests, policies and procedures, right of access and review requests, and notices of availability of criminal history information. Many repositories have used the suggested forms because of the savings in manpower and expense in developing their own versions. In addition to sample documents, the Handbook includes explanatory charts. These charts diagram a path for compliance with CHRIA.<sup>35</sup> The flow charts provide a simple guide to

---

<sup>32</sup> *Id.* at note 19.

<sup>33</sup> This section of the report was contributed by the statistical staff of the Pennsylvania State Police.

<sup>34</sup> CHRIA Handbook, (June 2016)

<sup>35</sup> For example, the chart regarding section 9102 gives examples of what falls within the definition of criminal history record information as well as examples of what is not considered criminal history record information and the qualifications of section 9104. Other charts follow the process of collecting and disseminating protected



the complex relationship between sections of the Act and the agencies covered by the Act. Since early 2001, the CHRIA Handbook has been available for online access through the OAG website located at [www.attorneygeneral.gov](http://www.attorneygeneral.gov) (website). The inclusion of the Handbook provides easy access for CJAs, both law enforcement and judicial, to the provisions of the Act and explanations of the specific sections. Forms are available for downloading by the agencies to assist in effecting coordinated compliance throughout the Commonwealth with the provisions of the Act.

#### **A. The On-Line Audit Process**

In order to execute the on-Line audits, RCIS developed questionnaires to determine agency compliance with CHRIA procedures. The Department of Justice Publication Programs<sup>36</sup> was consulted in designing the audit questions. Upon completion of each on-line audit, the responsible agency representative electronically signs the questionnaire.<sup>37</sup>

The on-line questionnaire is used for those agencies involved in the actual investigation and enforcement of the Commonwealth's criminal laws. These respondents included state, municipal, housing, airport, transit and university police departments, correctional facilities and offices, probation and parole agencies, OAG repositories and sheriffs. The questionnaire reproduced in Appendix II consists of questions correlating to pertinent sections of CHRIA.

### **V. THE AUDIT ANALYSIS**

To create a CHRI system that complied with the completeness and accuracy requirements of federal and state law and regulation required a commitment from each CJA and attention to detail. In order to improve the official records in the Commonwealth with respect to completeness and accuracy, it was important to establish acceptable standards for collection, maintenance, and dissemination of CHRI and to create a correction mechanism which would require interagency notification to those that receive inaccurate data. Having 100% compliance in any given category is always the goal.

---

information, the transmittal of fingerprint cards, and expungements. *See* 18 Pa. C.S.A. §9102, §9104, §9106, §9131, §9112 and §9122; *see also*, Criminal History Records Information Handbook, Charts 3-6, 9. *Supra* note 3.

<sup>36</sup> *See* Assessing Completeness and Accuracy of Criminal History Record Systems: Audit Guide, *supra* note 19.

<sup>37</sup> Copies of the original judicial questionnaires are on file with the Regulatory Compliance & Intelligence Section.

## **A. Evaluation of Audit**

### **1. Juvenile Record Maintenance Separate from Adult Records**

While CHRIA does not specifically require the segregation of juvenile records, the agencies follow the requirements of the Juvenile Act, found in Section 6308. *See* Graph 1.

The segregation of juvenile records is consistent with the effort made by law enforcement to separate adult offenders from those classified as juveniles except in those instances where the particular criminal activity may result in the individual being prosecuted as an adult offender.<sup>38</sup>

The compliance percentage within the criminal justice community is regarded as excellent. A consistently higher rate of compliance now appears to be the norm among the criminal justice agencies in the Commonwealth.

### **2. Correction of Inaccurate Information**

The correction of inaccurate records is crucial to the development of complete and accurate criminal records in the central repository.

CHRIA requires the correction of inaccurate data<sup>39</sup> and carries a corresponding obligation to notify those to whom the inaccurate data has been disseminated so that appropriate corrections can be made.

The use of dissemination logs allows for tracking of corrected information. This graph illustrates the importance of that process. The use of this retrieval system permits access to recipients of timely data and allows for the correction of deficiencies that result from inaccurate data dissemination. *See* Graph No. 2.

Overall compliance in this area is of significant importance to the agencies as they work to emphasize complete and accurate records in the central repository. A consistently higher compliance rate suggests the incorporation of electronic records into the criminal justice system has led to improved overall completeness and accuracy of the criminal justice records.

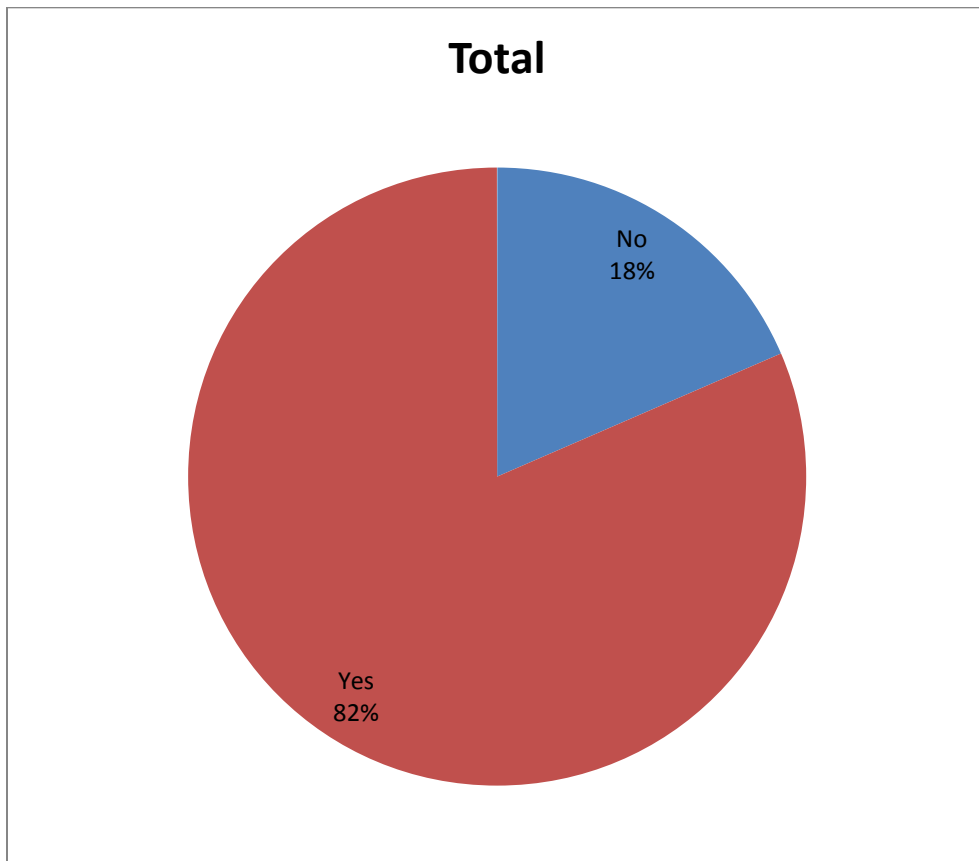
---

<sup>38</sup> *Id.* at note 39. See also, Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9105 and §9123.

<sup>39</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9114. Correction of inaccurate information. Within 15 days of the detection of inaccurate data in a criminal history record, regardless of the manner of discovery, the criminal justice agency which reported the information shall comply with the following procedures to effect correction. (1) Correct its own records. (2) Notify all recipients, including the central repository, of the inaccurate data and the required correction.

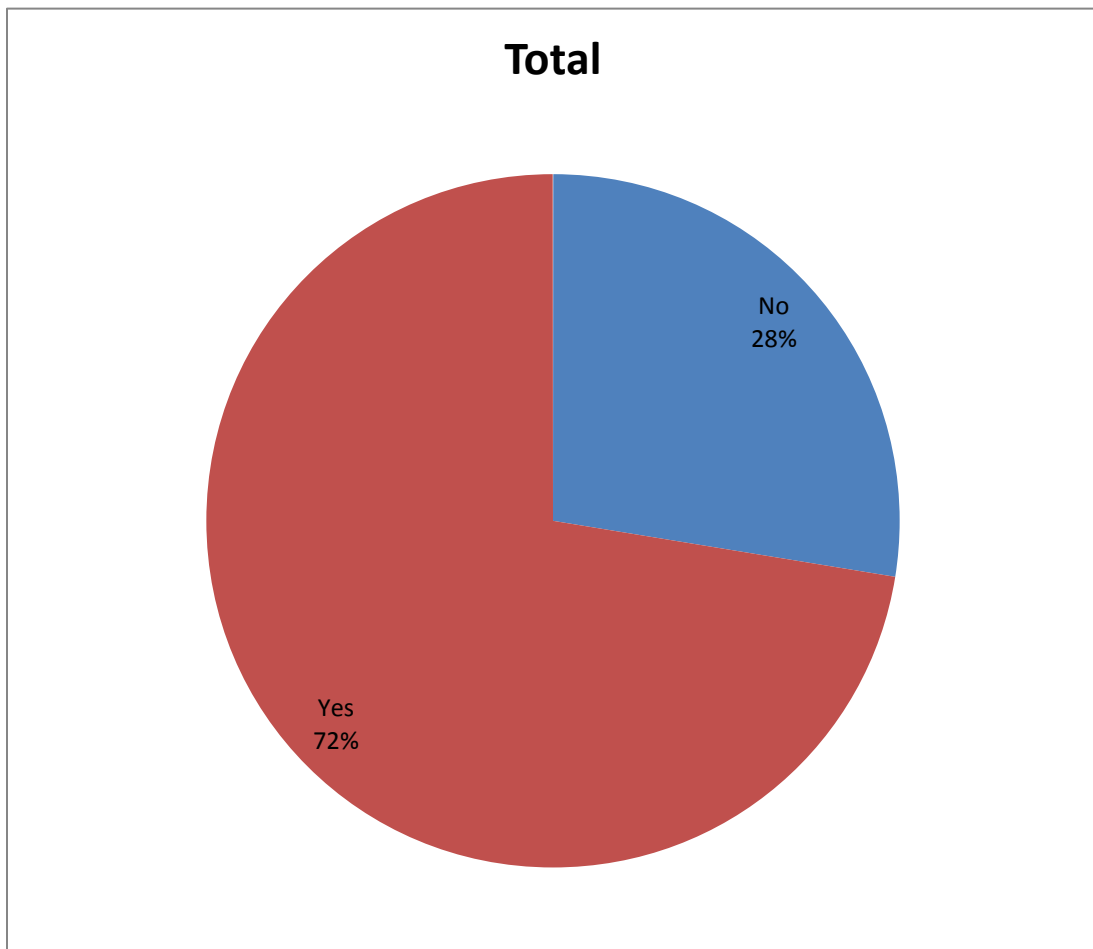
Graph 1

Are Juvenile records maintained separately  
from adult records ?



Graph 2

Does your agency correct its records and notify all Recipients of disseminated Criminal History Information, Including the Central Repository, When inaccurate information is discovered?



## 1. Sanctions

Sanctions against agencies and individuals are set forth within CHRIA. The Act provides for general administrative sanctions and civil remedies which are set forth in Sections 9181<sup>40</sup> and 9183.<sup>41</sup> While instances of sanctions are less prevalent in the less populated counties, several accounts of security breaches have been found to occur in the larger counties resulting in personnel disciplinary action taken by the agency.

For purposes of this audit report, the reports of violations by departments suggest that criminal justice agencies compliance is effectively 100% in this area. During the course of the audits under review, no more than one (3) case has been investigated and resolved through the actions of the Office of Attorney General and indicated compliance by the agency involved.

---

<sup>40</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9181(1)-(3).The Act states:

Any person, including any agency or organization, who violates the provisions of this chapter or any regulations or rules promulgated under it may:

- (1) Be denied access to specified criminal history record information for such period of time, as the Attorney General deems appropriate.
- (2) Be subject to civil penalties or other remedies as provided for in this chapter.
- (3) In the case of an employee of any agency who violates any provision of this chapter, be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

<sup>41</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9183(a) and (b). The Act states:

- (a) Injunctions. The Attorney General or any other individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provision of this chapter.
- (b) (1) Any person aggrieved by a violation of the provisions of this chapter or of the rules and regulations promulgated under this chapter, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.  
(2) a person found by the court to have been aggrieved by a violation of this chapter or the rules or regulations promulgated under this chapter shall be entitled to actual and real damages of not less than \$100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than \$1,000 nor more than \$10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful.

## **2. Right of Access and Review**<sup>42</sup>

Each agency must permit an individual to review his/her CHRI. Although proper identification is required, there is no alternative provision for refusing to permit an individual to review his or her CHRI. The detection of inaccurate data in a record is statutorily required to be corrected. Once it is determined that a change to the record is warranted, a follow-up must be done in order to inform other agencies, including the central repository, that they possess erroneous data<sup>43</sup> and that such data must be replaced with corrected information. The data retrieved from law enforcement agencies is set forth graphically in Graph No. 3.

The presence of notices indicating the right of access and review by criminal justice agencies in possession of criminal justice information has improved the overall compliance. Access to statewide information for individuals is customarily the route taken to determine if an individual has a criminal record in the central repository.

The infrequency of local agencies fielding requests for local criminal history on an individual request explains some of the confusion surrounding the right of access. In the majority of cases where the “right” is something “new” to the agency despite its statutory basis, the knowledge would not result in increased applications for information since only the local data would be recorded. The requestor would be most likely to file a request with the Pennsylvania State Police for a complete record.

## **3. Protected Information, Intelligence, Dissemination and Policies**<sup>44</sup>

Protected information is discussed in Section 9106 of the Act. Intelligence, treatment and investigative information, individually the collection of “protected information.” Intelligence information is also governed by federal statutes.<sup>45</sup> Several states also share restrictions on the collection<sup>46</sup> and dissemination of intelligence information.<sup>47</sup> See Graph 4.

The most recent audit, completed in 2014, was from a collection of agencies within the Commonwealth that had failed to file 9106 procedures with PSP. Future audits will consist

---

<sup>42</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9151 The Act states:

- (a) General rule. Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his criminal history record information.
- (b) Prisoners. Persons incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge and appeal.

<sup>43</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9152 outlines the procedures to follow for requesting, challenging and correcting inaccurate criminal history record information in any agency file. Id. §9152.

<sup>44</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9106.

<sup>45</sup> 28 CFR 23, *et seq.*

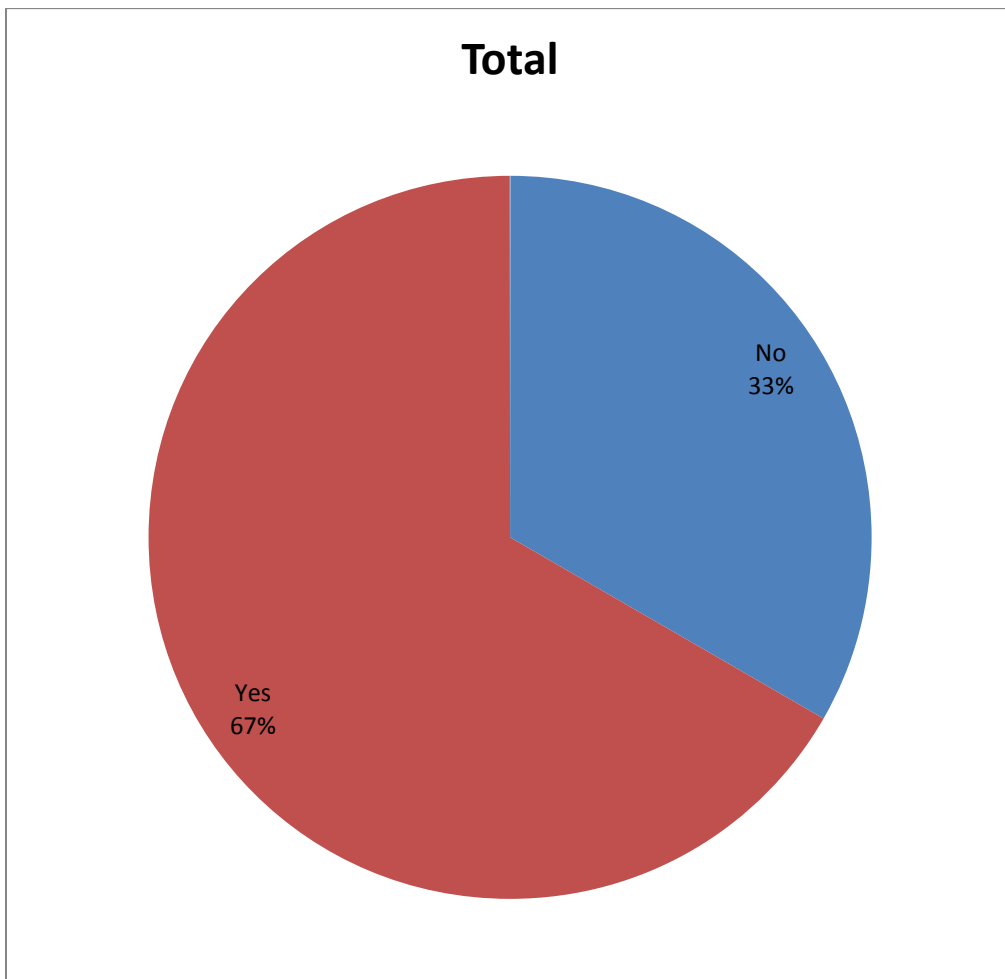
<sup>46</sup> See Bureau of Justice Statistics, *supra* note 28 at 36. A number of states have regulations regarding the collection of intelligence information, they include: Alabama, California, Florida, Georgia, Indiana, Kentucky, Michigan, Mississippi, Montana, Minnesota, Nevada, New Mexico, Oregon, Pennsylvania, South Dakota, Utah, Vermont, Washington, Wyoming.

<sup>47</sup> Id. at 38. Other states with regulations concerning dissemination of intelligence data include: Alabama, California, Colorado, Florida, Georgia, Indiana, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nevada, New Jersey, New Mexico, South Dakota, Utah, Vermont, Washington, Wyoming.

partially of the remainder of agencies that have sworn in a new Chief and have not complied with this section.

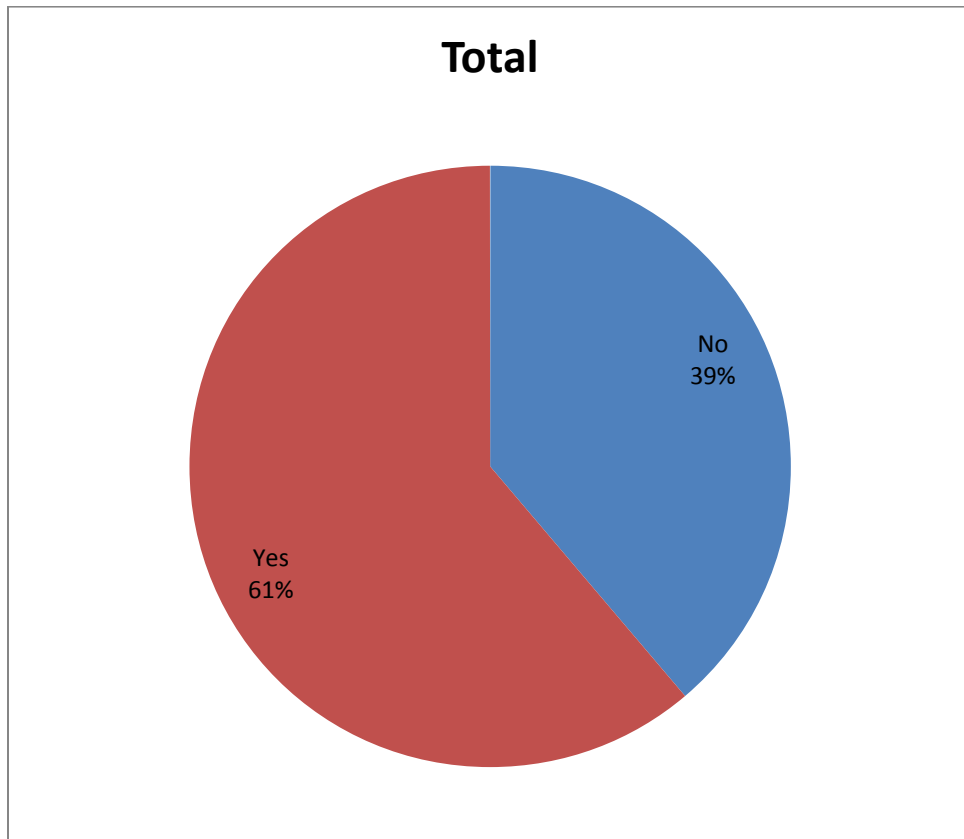
Graph 3

Does your agency allow an individual to access  
and to review their own criminal history  
records ?



Graph 4

Has your agency filed procedures under 9106 for  
Approval to the PA State Police in accordance  
With CHRIA ?





Graphs 5 through 8 address several aspects of the issues surrounding collection, maintenance and dissemination of Protected Information. They are as follows:

- Does agency extract investigative, intelligence and/or other non-public information from criminal history record before dissemination to a non-criminal justice agency or individual?
- Does agency restrict access to intelligence information?
- Does agency have a retention schedule for intelligence information?
- Does agency have procedures regarding accessing and retrieving automated information?

*See* Graph No. 5. The difficulty in determining what data is covered as protected information contributes to the confusion surrounding the classification of protected information. A generally accepted approach among agencies regarding what each considered protected information is lacking thus adding confusion to the interpretation of information and its ultimate classification by an agency. Evaluating these systems and procedures is necessary to coordinate a unified approach to defining and implementing these interpretations between criminal justice agencies.

The collection of protected information in computerized systems has made the sharing of this data with other law enforcement agencies more effective. Recent advances in computer technology and data sharing permits agencies to locate other sources of information on a particular subject or event without raising privacy concerns associated with inappropriate dissemination.<sup>48</sup>

Controlled access through qualified dissemination assures individual privacy. Investigative, intelligence and treatment information are highly charged areas of information that are “protected” by law, both federal and state. If not properly corroborated, or, if allowed to be disseminated to inappropriate parties, this information has the potential to be quite damaging, both financially and professionally to the offending agency as a result of the sanctions section of CHRIA.<sup>49</sup> A balance must be achieved for legitimate law enforcement investigations in areas of suspected criminal activity to collect this data, while safeguarding the right of privacy and protection afforded individuals under the Act.

The statistics suggest that education, through the audit process, plays a significant role in improving compliance. Education regarding the proper dissemination, techniques and training, with respect to the latest technology, that ensures privacy and provides audit trails of the data disseminated. The **Criminal History Records Information Handbook (Handbook)** and its electronic counterpart (i.e. **Website**), seminar presentations, and audit visits have improved compliance. When an agency recognizes the importance of the subject and the strategic role that it plays in the process, compliance is readily achieved. The use of the **Handbook** and **Website**, as well as outsourced computer technology training can be helpful in this regard. Many of the forms necessary to implement an organized approach to the protected information area are contained in the **Handbook** and on the **Website** for quick reference application.

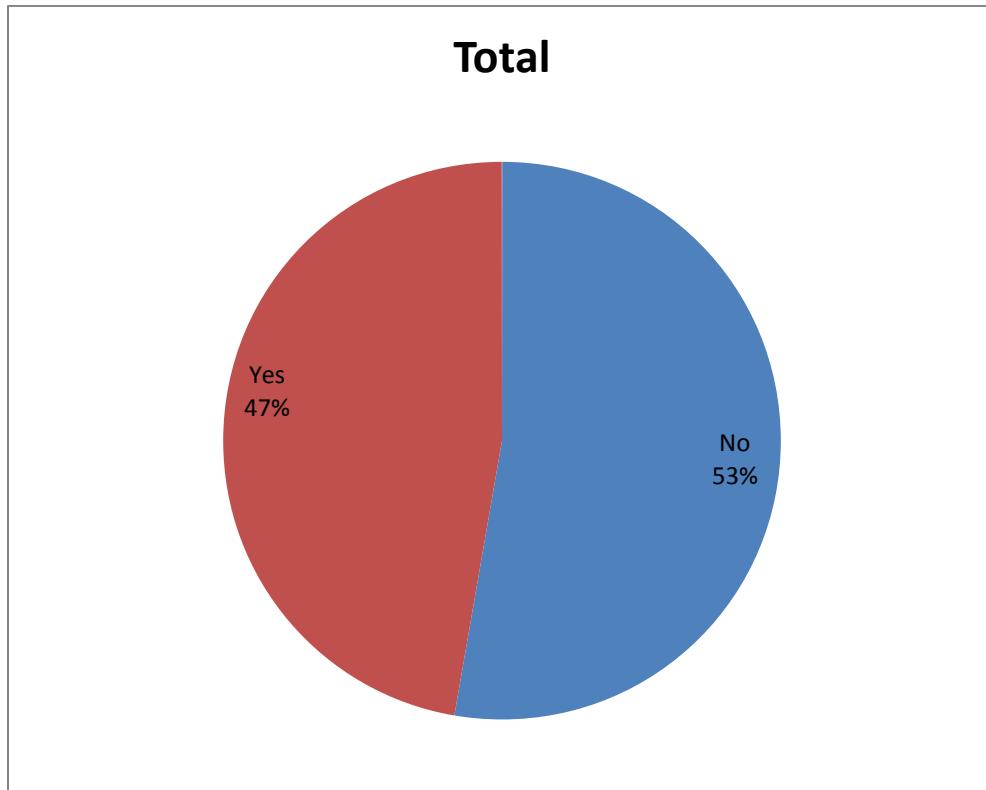
---

<sup>48</sup> The use of basic indices by the intelligence section of the criminal justice agencies permit the basic data to be shared and a “pointer” to an agency that may possess relevant data pertaining to the original entry.

<sup>49</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9183.

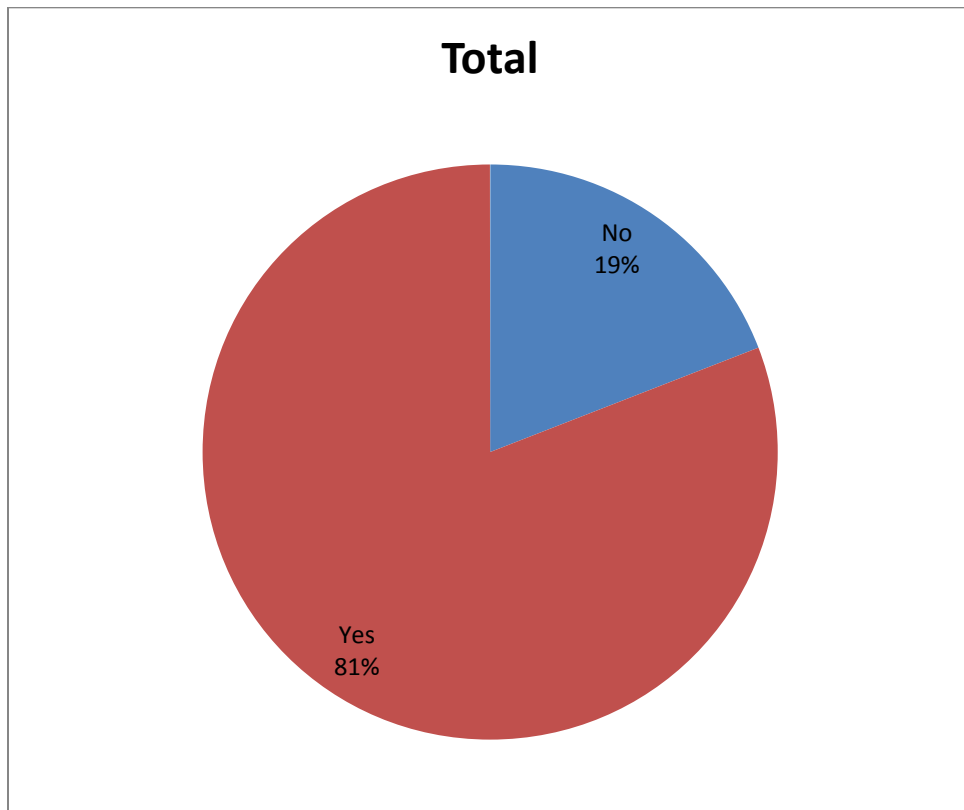
Graph 5

Does your agency extract Investigative, Intelligence, and/or other non-public Information from Criminal History Records before dissemination to a Non-Criminal Justice Agency or individual?



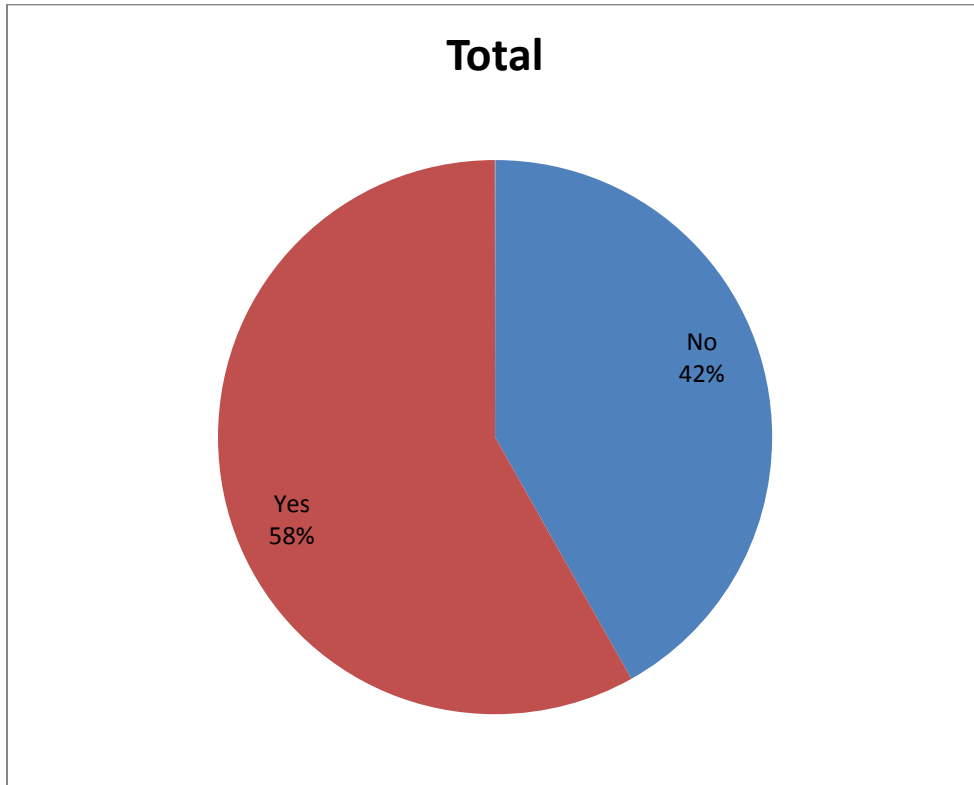
Graph 6

Does your Agency restrict access to  
Intelligence information?



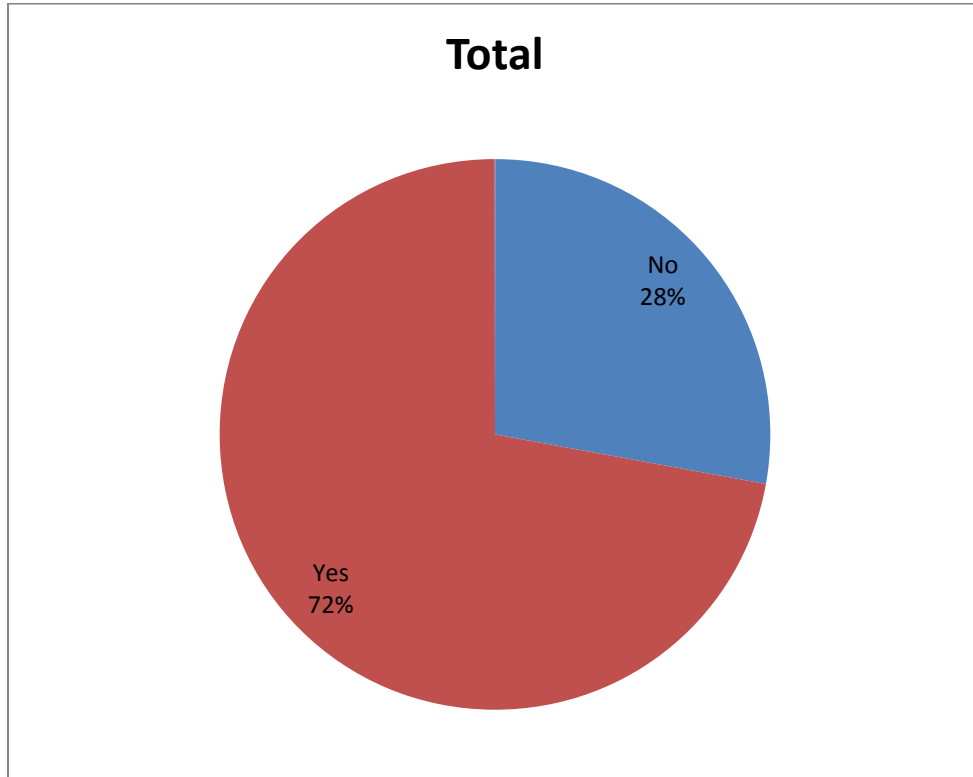
Graph 7

Does your Agency have a retention schedule for  
Intelligence information?



Graph 8

Does your Agency have procedures regarding  
Access and retrieving automated  
Information ?



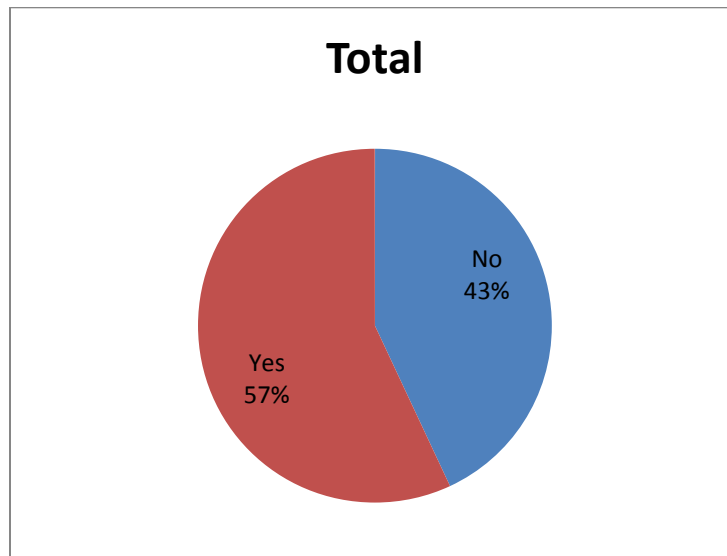
#### 4. Fingerprint Program

The single most important task, which law enforcement agencies must perform, is the proper fingerprinting of a suspected criminal and the forwarding of those prints to the central repository.<sup>50</sup> It is this process of identification that provides the most accurate form of identification of defendants in criminal proceedings.

The results of the OAG Fingerprint Audit responses are set forth in Graphs 9 through 13. CHRIA requires that this task be performed and unless these prints are on file no CHRI is available through the central repository. The print record is considered to be the basic accepted identifier within the criminal justice community. There are presently over 2,000 criminal justice agencies in the Commonwealth system.<sup>51</sup> There is a wide range of experience among these agencies. There are two person police departments using fingerprint inkpads and sophisticated Live Scan Automated Fingerprint Identification Systems (AFIS) although the responsibilities of each agency are identical. Each year more and more fingerprinting of defendants is done on automated equipment due in part to the central processing projects underway in many counties. The concept of central processing, where local jurisdictions cooperate to coordinate arrest, booking and fingerprint procedures at one location has proven to be an invaluable assist to law enforcement to ensure timely, correct and accurate CHRI on each detainee.

Graph 9

### Does another Agency fingerprint For your Agency ?

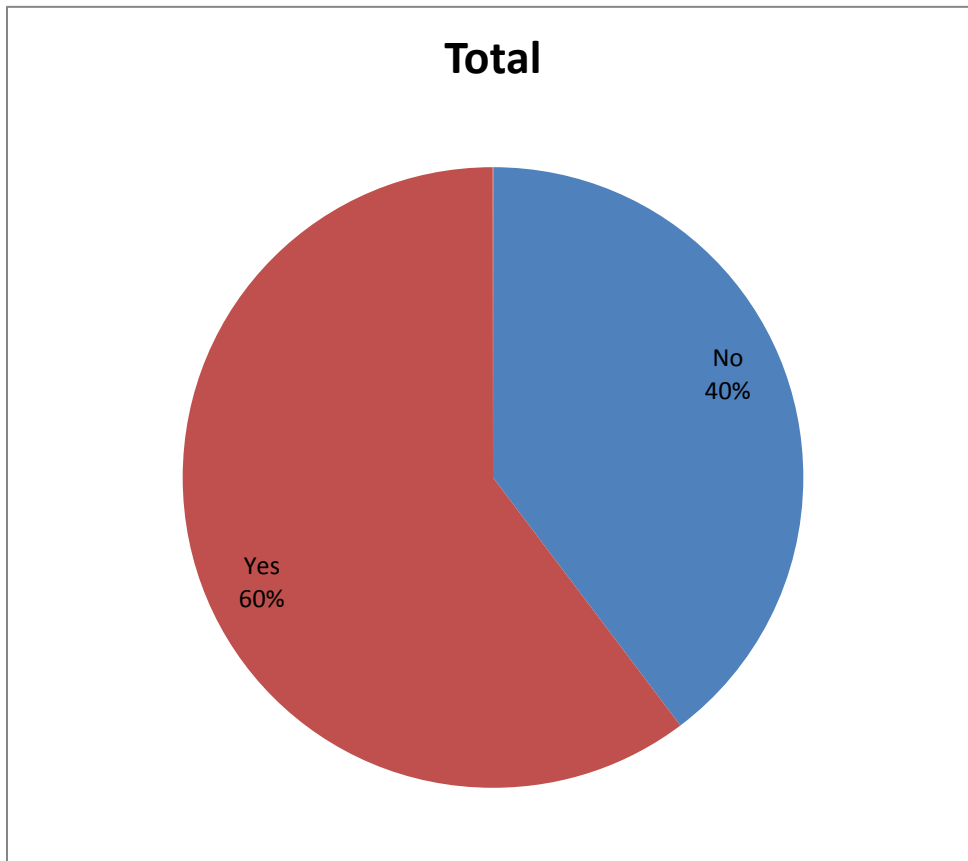


<sup>50</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9112.

<sup>51</sup> Pennsylvania State Police, CLEAN/NCIC Control Terminal Officer for Pennsylvania, Harrisburg, Pennsylvania, April 18, 2010.

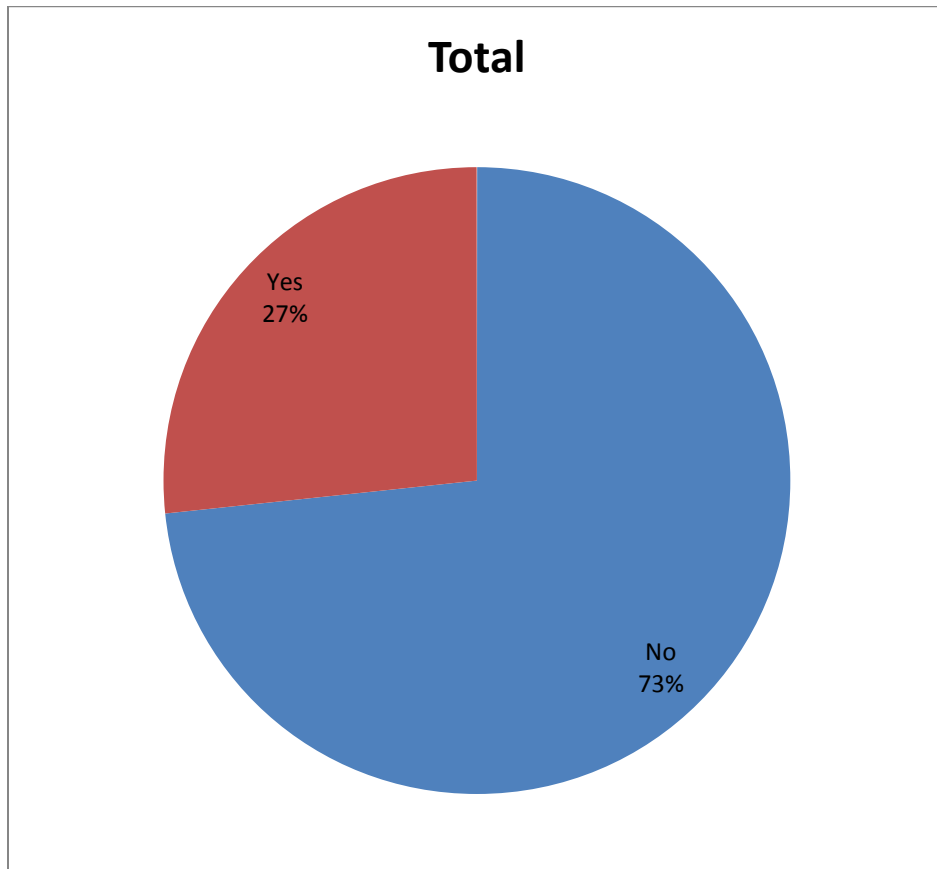
Graph 10

## Are fingerprints taken by Live Scan ?



Graph 11

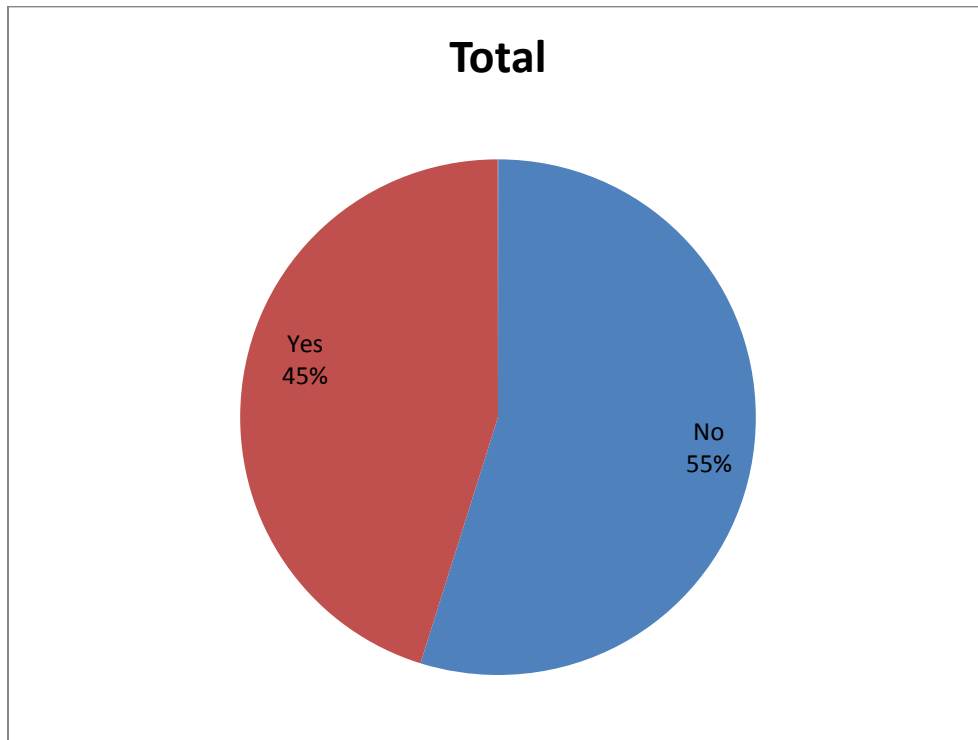
## Are fingerprints taken manually?





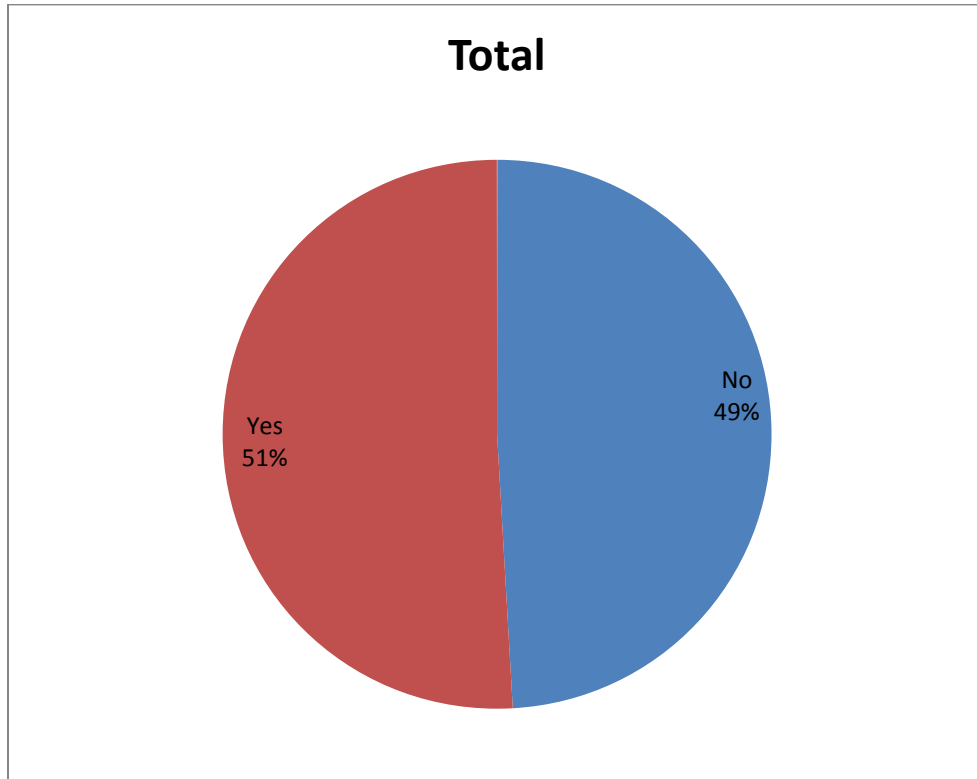
Graph 12

Does your Agency submit fingerprint cards to the Central Repository within 48 hours of an arrest



Graph 13

If your Agency DOES NOT submit fingerprint Cards within 48 hours, are they submitted at a later time?



## **5. Dissemination of CHRI to Criminal Justice Agencies**

Compliance between criminal justice agencies on recording dissemination demonstrates the high degree of cooperation between criminal justice agencies.<sup>52</sup> See Graph 14. The Act requires agencies to disseminate upon request provided that certain agency procedures be followed; i.e., name, date and purpose of request are all recorded and made a part of a separate dissemination log and inserted into the record of the file from which the information was obtained.

## **6. Dissemination of Criminal History to Individuals and Non-Criminal Justice Agencies**

Section 9121 of the Act<sup>53</sup> highlights the procedures to be followed to comply with this privacy-related disclosure provision. Compliance with this mandated function of providing this data to individuals and non-criminal justice agencies falls on local police departments and the PSP central repository. Local police departments provide local data on an individual request while the PSP may provide the necessary statewide data it requested separately. The accompanying Graph numbers 15 through 19 reflect compliance of law enforcement agencies with this responsibility to disseminate data properly as requested.

Criminal justice agencies, while required to honor proper requests for CHRI, have been slow to comply with this statutory obligation. The on-site audit process can be identified as a significant factor in substantially improving the compliance with the important aspect of criminal history record-keeping. The public access to records is important to a transparent criminal justice system and local law enforcement has been quick to respond to its obligation to provide appropriate data when properly requested. Likewise, the necessary record-keeping has followed the improvements in this process.

The **Handbook**<sup>54</sup> and **Website** provide the necessary forms to which assist law enforcement in maintaining compliance.

## **7. Law Enforcement Agency – Dissemination of Protected Information**

Foremost among concerns of the law enforcement community regarding protected information is the proper documentation in the file of an individual from which specific protected information may have been retrieved. Graph numbers 15 through 19 illustrate compliance with this important obligation in areas of any protected information – intelligence, investigative or treatment.

---

<sup>52</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9121(a) - Dissemination to criminal justice agencies. – Criminal history record information maintained by any criminal justice agency shall be disseminated without charge to any criminal justice agency or to any noncriminal justice agency that is providing a service for which a criminal justice agency is responsible.

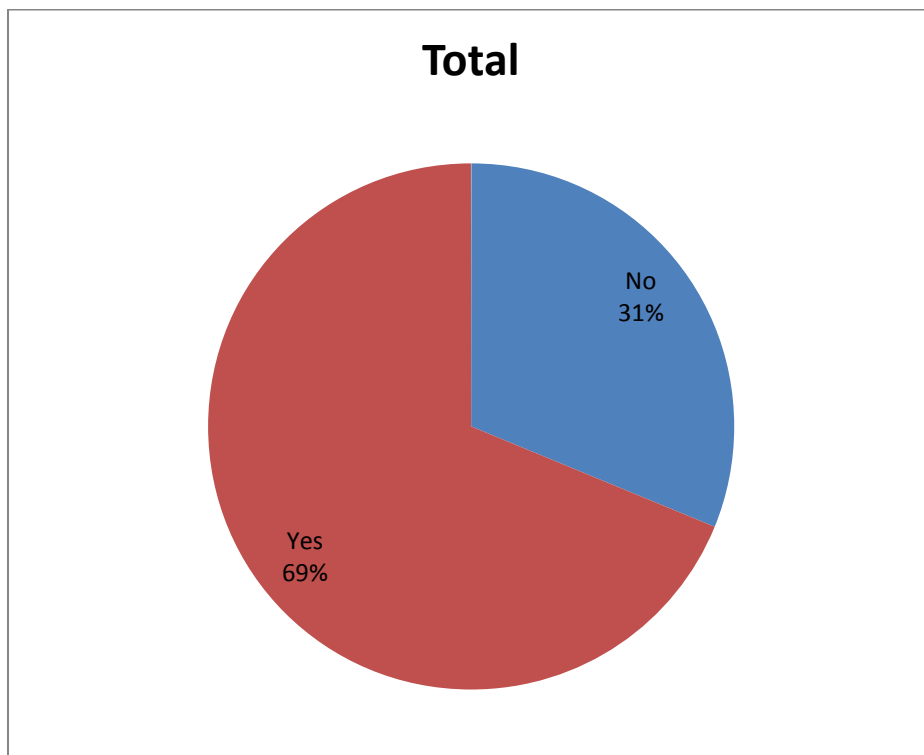
<sup>53</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9121 dissemination to individuals and non-criminal justice agencies. Specifically, the Act allows the dissemination of criminal history record information to these groups, but prohibits the disclosure of protected information. 18 Pa. C.S.A. §9121(b)-(c). In addition, the agency must notify the recipient that the central repository keeps summaries of criminal history record information and maintain certain information, such as the dissemination date and recipient's name. *Id.*

<sup>54</sup> See, supra Part III (regarding the utility of the forms in the Criminal History Records Handbook).

Section 9121(f) of the Act provides that the notation on an individual’s file must clearly identify the agency to whom and by whom and for what reason data has been sent. Information that is classified as “protected information” must be properly documented as disseminated.<sup>55</sup> Only the CHRI – and not intelligence, investigative or treatment information – may be properly transmitted under this section. Any dissemination of protected information must proceed as agencies resolve the scope of the requirements of Section 9121(d). The Legislature imposed the obligation of noting the dissemination recipient and of removing protected information because of its concern that accuracy be maintained and inappropriate dissemination of unreliable information be avoided.

Graph 14

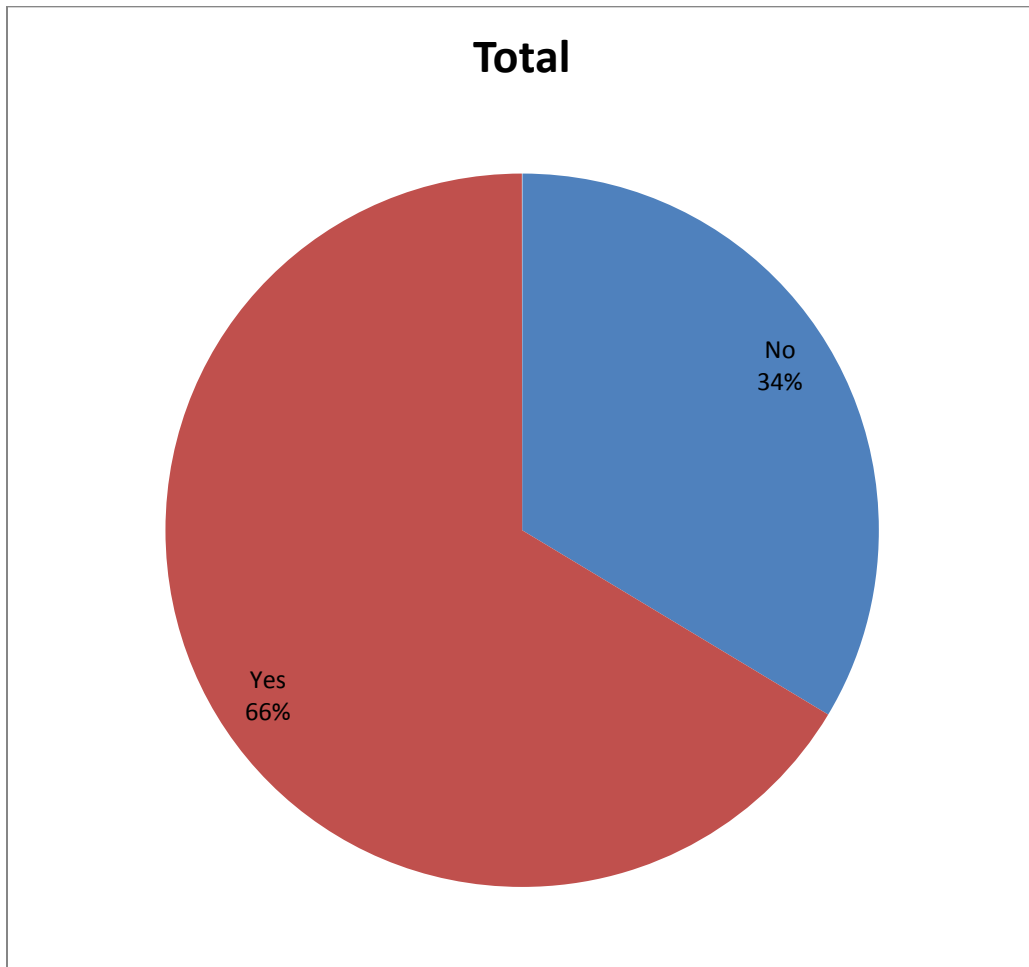
## Is dissemination list maintained separately From the record itself?



<sup>55</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9106 and §9121(d).

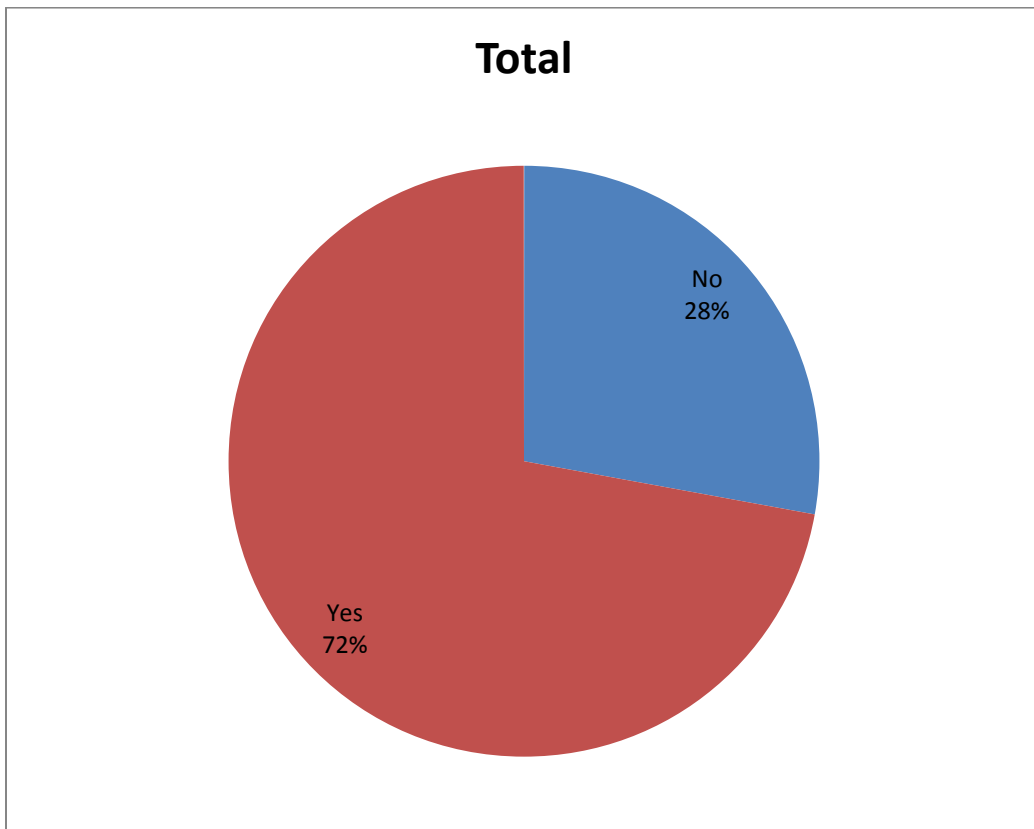
Graph 15

Does your agency have procedures concerning the  
Dissemination of criminal history records?



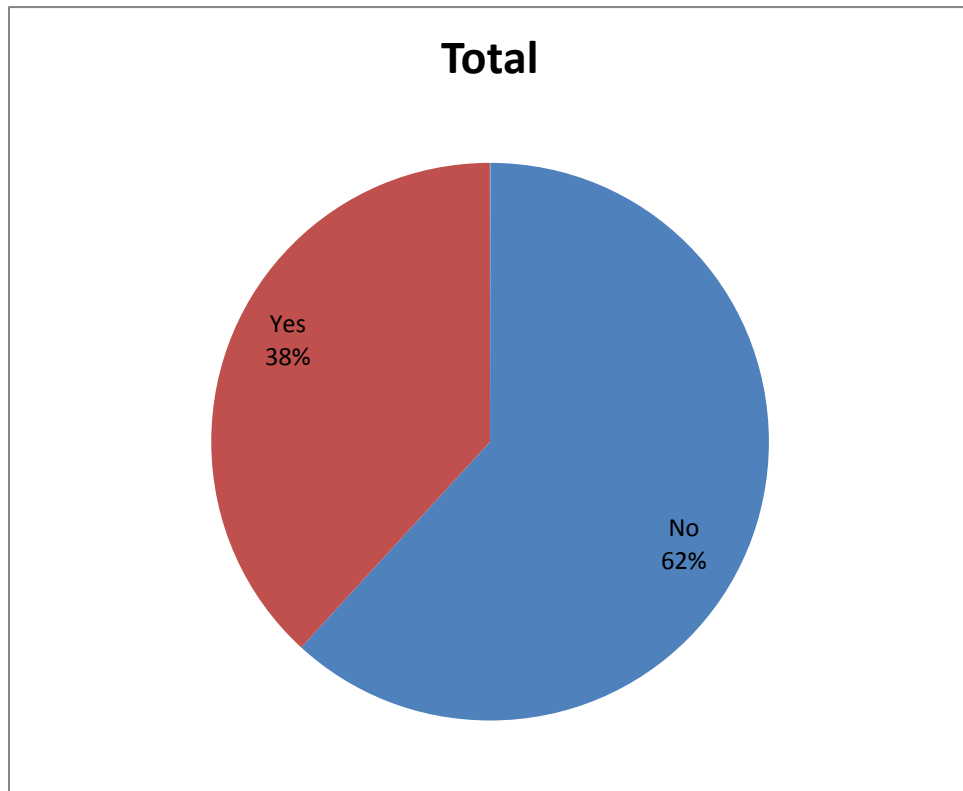
Graph 16

Does agency maintain a list of persons and agencies  
Information disseminated?



Graph 17

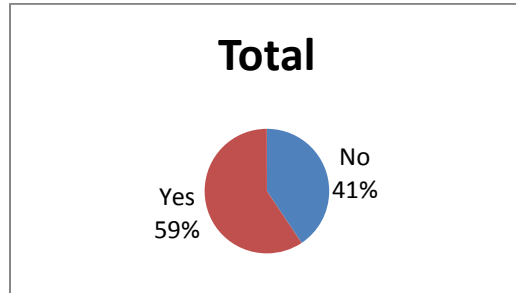
When disseminating criminal history records,  
Does the Agency use a form containing a clause  
Indicating the information is only that  
Contained within own file, and that a  
Summary of the criminal history can be  
Obtained from the Central Repository?



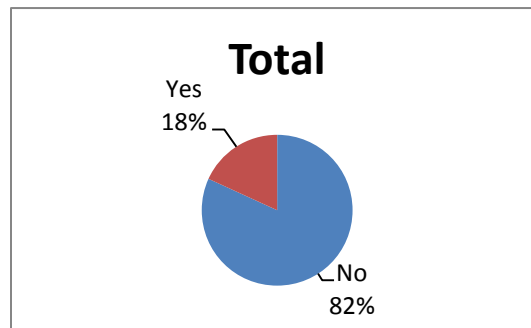
Graph 18

Who does Agencies disseminate Criminal History

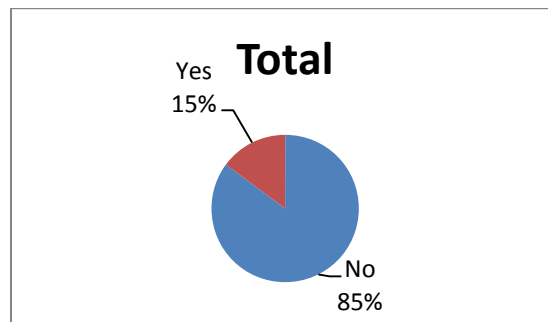
Records to?



Criminal Justice Agency



Non- Criminal Justice Agency

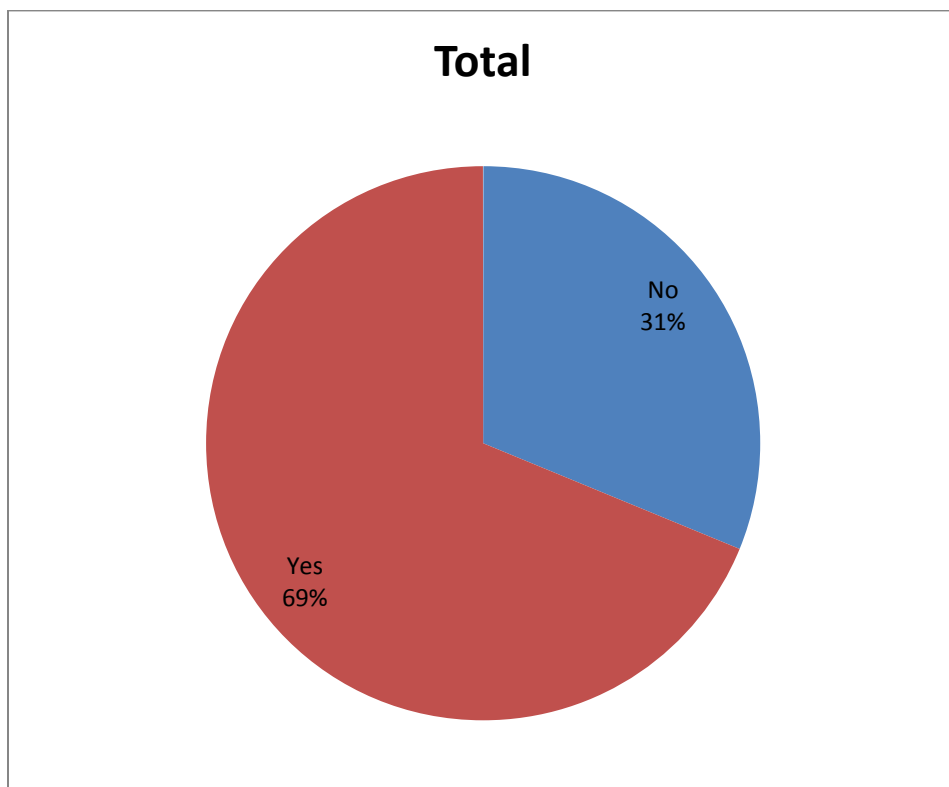


Individuals



Graph 19

When Agency disseminates Criminal History  
Record, is a record of dissemination  
Maintained per 9121(f)?



## 8. Expungement Procedures

Section 9122 of the Act addresses the CHRI procedure regarding expungements. The expungement process is set forth in the Pennsylvania Rules of Criminal Procedure.<sup>56</sup> *See*, Graph numbers 20 and 21.

Criminal justice agencies have adopted procedures to expunge criminal records which include shredding, burning, redacting and the mechanics of other means of destruction. Most of the questions raised related to the process involve “expungement.” Literally, the term “expunge” means “to obliterate; to cause to disappear.”<sup>57</sup> In many cases the agency that receives the order to expunge fails to notify the central repository of the order and directs that any references to that record be expunged. Problems are inevitable when a record is ordered to be expunged and an expungement order is not communicated to the central repository. That order is considered a final disposition and is required to be forwarded to the central repository.<sup>58</sup> An inquiry to the central repository when there is a failure to communicate the expungement order results in the dissemination of inaccurate data. Agencies that disseminate CHRI and fail to record the recipients of information in the file risk dissemination of inaccurate data at a later date by those recipient agencies.<sup>59</sup>

The State Supreme Court in John Doe v. Stephen A. Zappala, Jr., et al., 987 A.2d 190, outlined the parameters required to be considered for a proper expungement. While the specifics of the materials relate to the complex relationship between protected information and a proper expungement, this case provides a logical road map to consider when complying with appropriate expungement procedures. *See* Exhibit 1.

---

<sup>56</sup> Pa. R. Crim. P. 9017 (Contents of Order for Expungement).

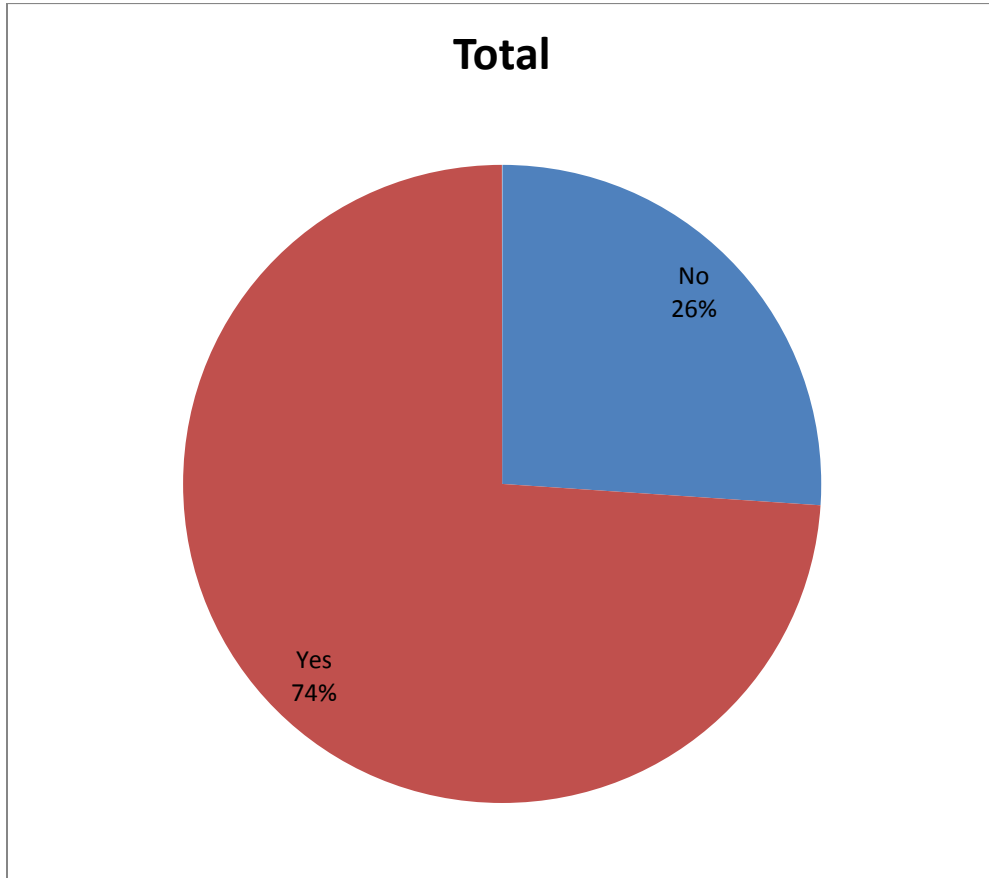
<sup>57</sup> *See supra* note 12 (defining “expungement” per CHRIA).

<sup>58</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9113(b). The Act requires the courts to submit criminal dispositions to the central repository within 90 days.

<sup>59</sup> Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9144 (regarding correction of inaccurate information). The Act requires agencies to notify the central repository and any other agencies that received inaccurate data of the incorrect information.

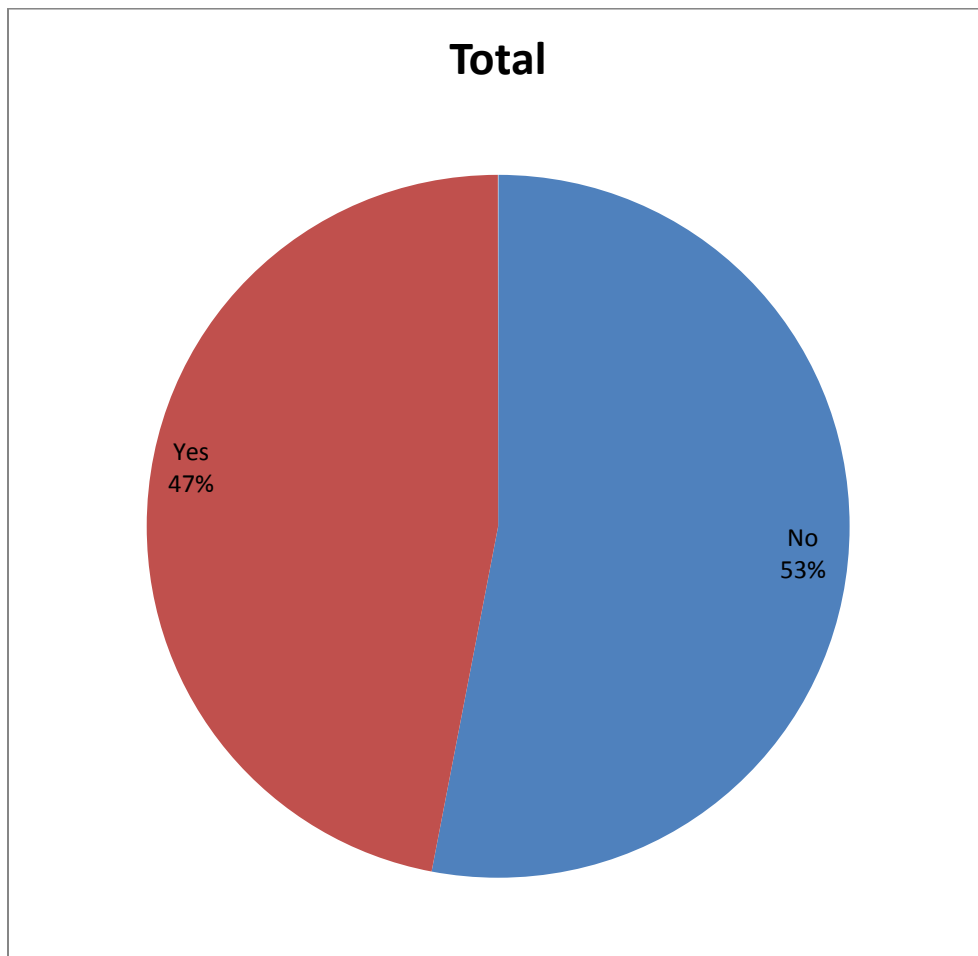
Graph 20

Does your Agency have expungement procedures?



Graph 21

Does your Agency notify the Central Repository  
If an expungement order is received from  
Somewhere other than the Central  
Repository?



## **9. Right of Access and Review – Public Notices**

Law enforcement agencies have steadily addressed a citizen's right of access and review and the posting of public notices regarding that right of access to CHRI.<sup>60</sup> The sections dealing with these issues require compliance by criminal justice agencies. Graph No. 22 illustrates the findings regarding public notice requirement. An increasing number of agencies are now providing these services, largely, no doubt, as a result of the audit program **Handbook** publication, the OAG **Website** and the educational process underway through the OAG compliance program. The significant number of criminal justice agencies in the Commonwealth suggest that with time full compliance is possible.

Graphs 23 through 29 reveal the significant improvement of law enforcement with regard to their obligation to properly track criminal history information, provide informed and controlled appropriate access to individuals while documenting this process.

- Are reasonable procedures in place to ensure only authorized persons can access criminal history record information?
- Is criminal history record information physically located so that access can be controlled?
- Is criminal history record information reasonably protected from fire?
- Is criminal history record information reasonably protected against flooding or water damage?
- Are all appropriate personnel properly trained and supervised to ensure that they are familiar with legal requirements applicable to criminal history record information, such as dissemination limitations, reporting, requirements, and access and review procedures?
- Does agency have a written standard operating procedures (SOP) manual that includes a section on record handling responsibilities and security/confidentiality requirements?
- Does agency provide notice of corrected information to all agencies that have received inaccurate records as required by 18 P.S. §9152?

All of these functions meanwhile are required to be performed in a secure environment, protecting the integrity of the record and secure from environmental and accidental destruction.

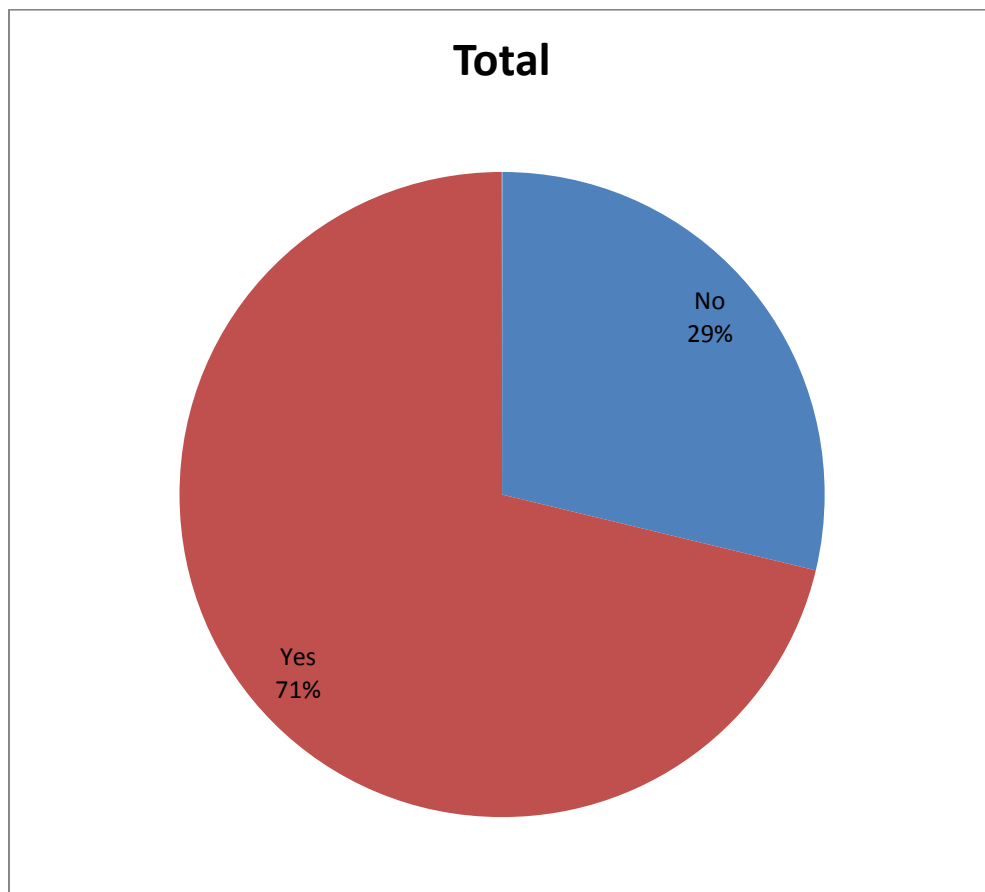
The extent of law enforcement obligations with regard to criminal history requires notification to all agencies to whom criminal history has been disseminated (based on the agency's record of dissemination) that a correction must be made to that record in the agency's possession.

---

<sup>60</sup> See Criminal History Record Information Act (CHRIA) 18 Pa. C.S.A. §9151-53 (regulating an individual's access to his or her criminal history records and setting forth procedures); 18 Pa. C.S.A. §9171 (requiring public notice regarding the availability of records).

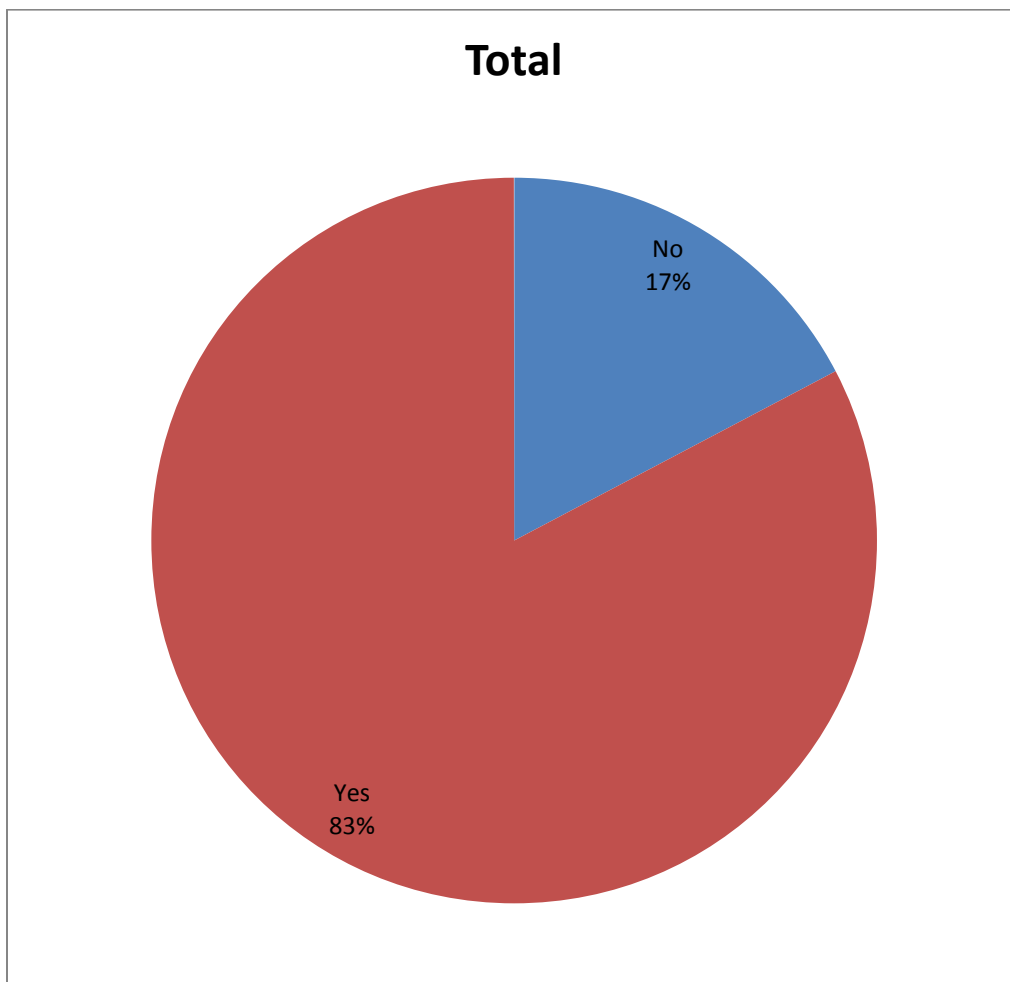
Graph 22

Does your Agency have a Public Notice  
Displayed indicating the availability and  
Requirements for the review of Criminal  
History information?



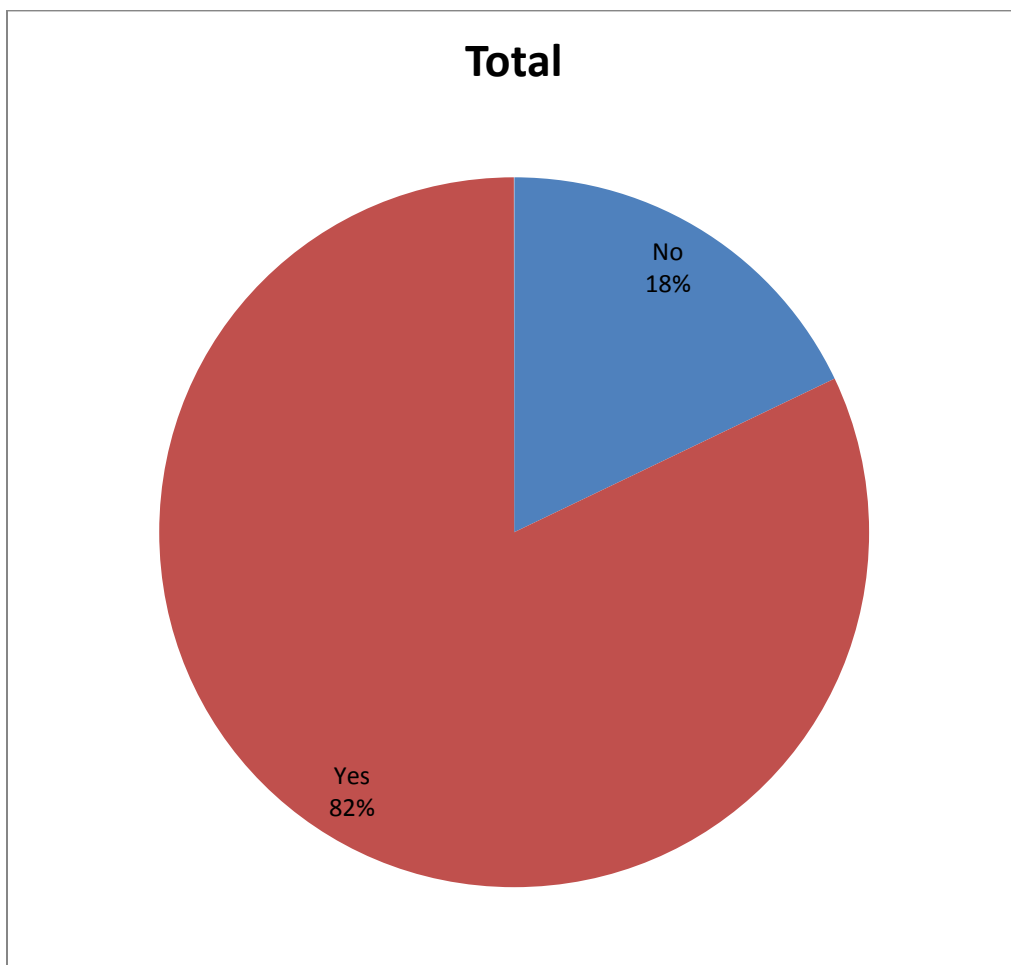
Graph 23

Are reasonable procedures in place to ensure only authorized persons can access Criminal History Record information?



Graph 24

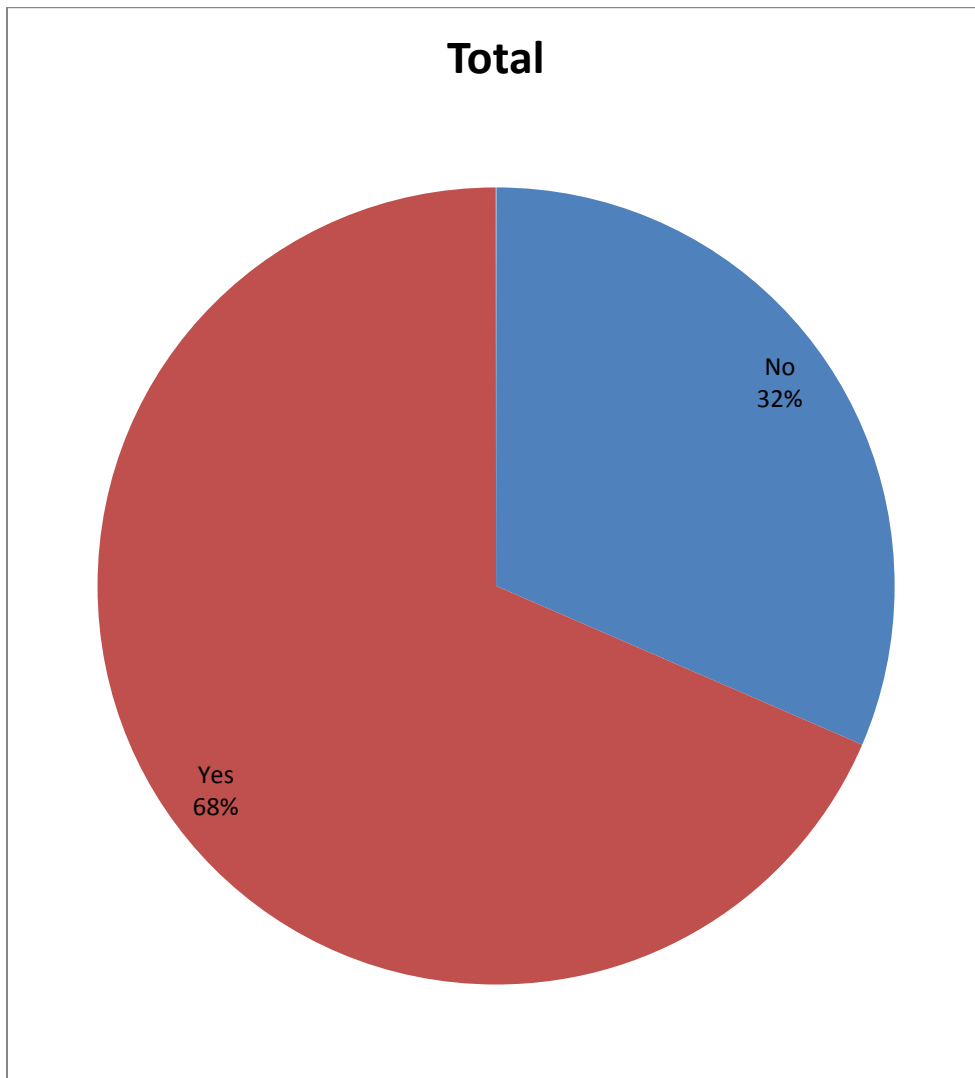
Is Criminal History Record information  
physically located so that access can be  
Controlled?





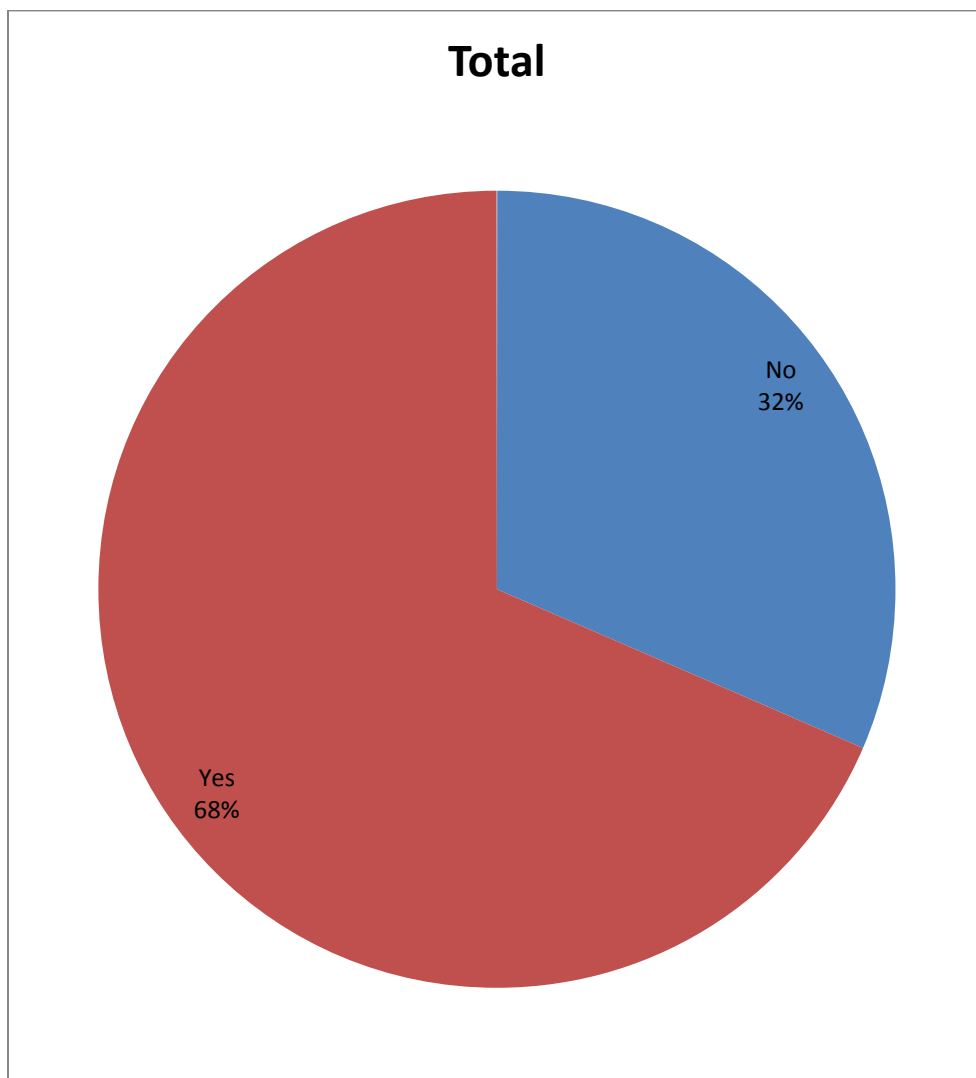
Graph 25

Is Criminal History Record information  
reasonably Protected from fire?



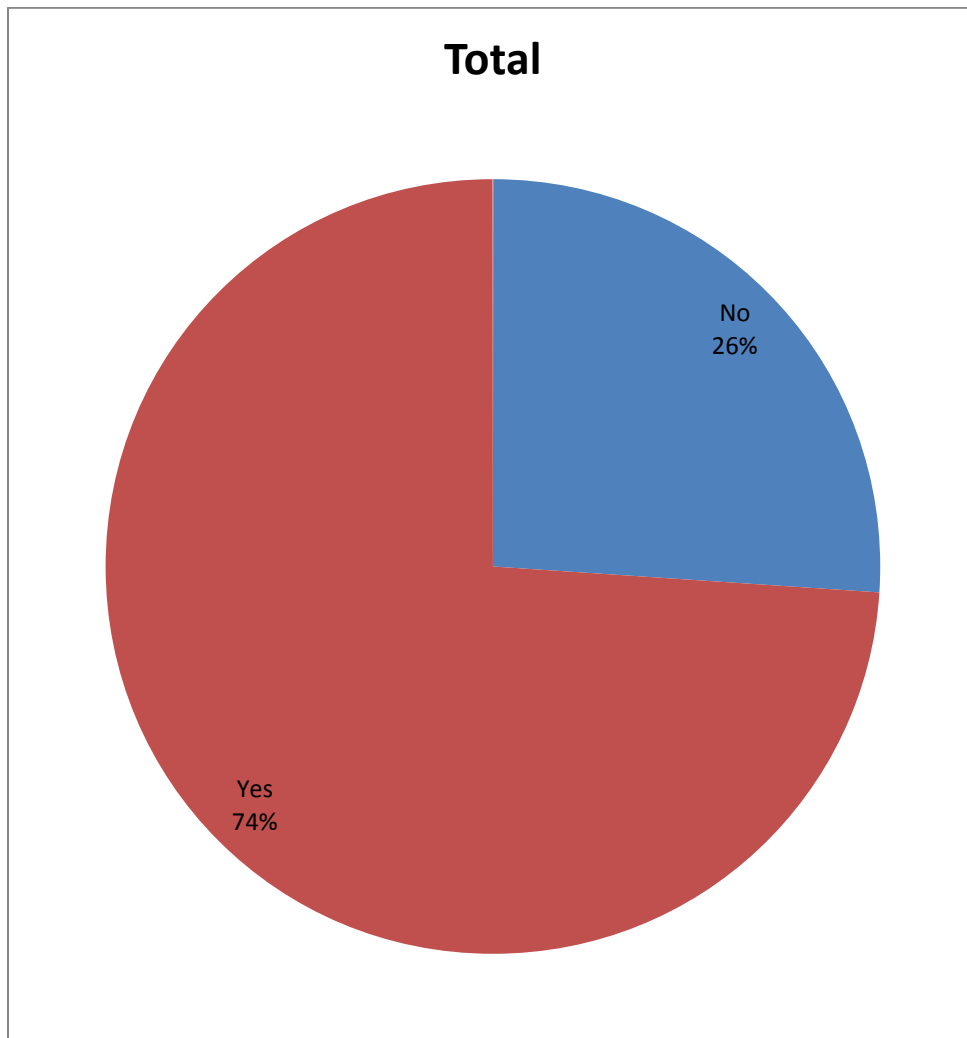
Graph 26

Is Criminal History Information  
reasonably protected against flooding or  
water damage?



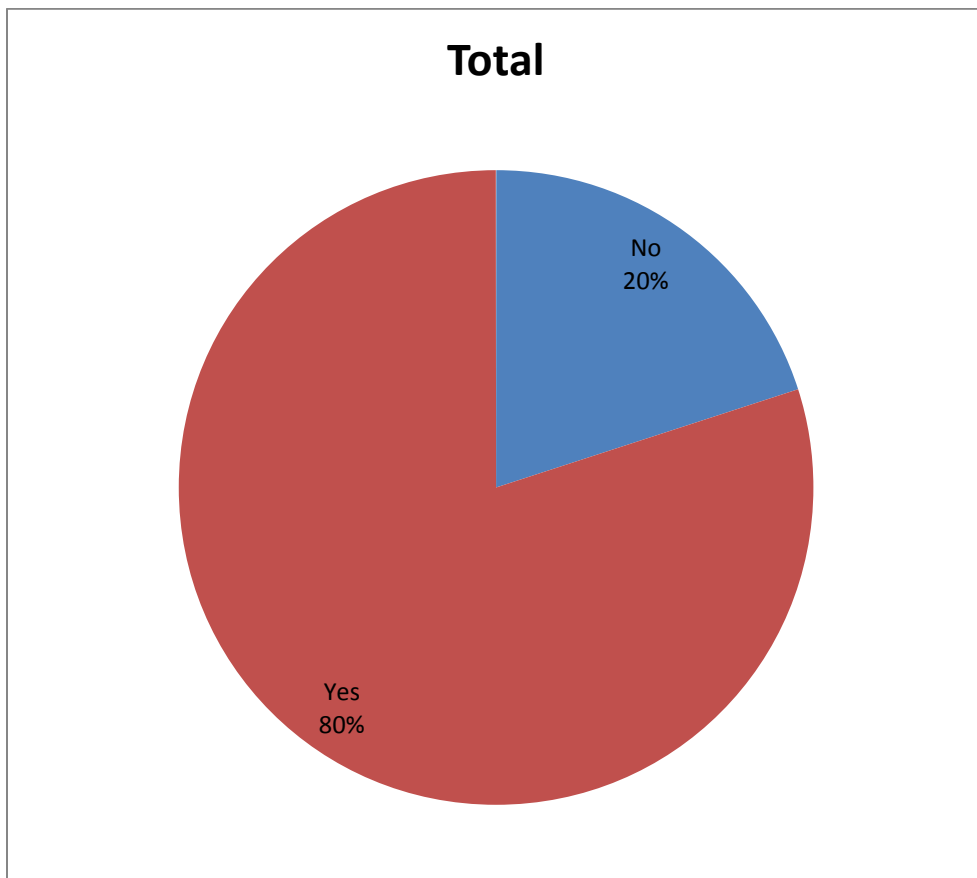
Graph 27

Are all appropriate Personnel properly trained and supervised to ensure that they are familiar with legal requirements applicable to Criminal History record information?



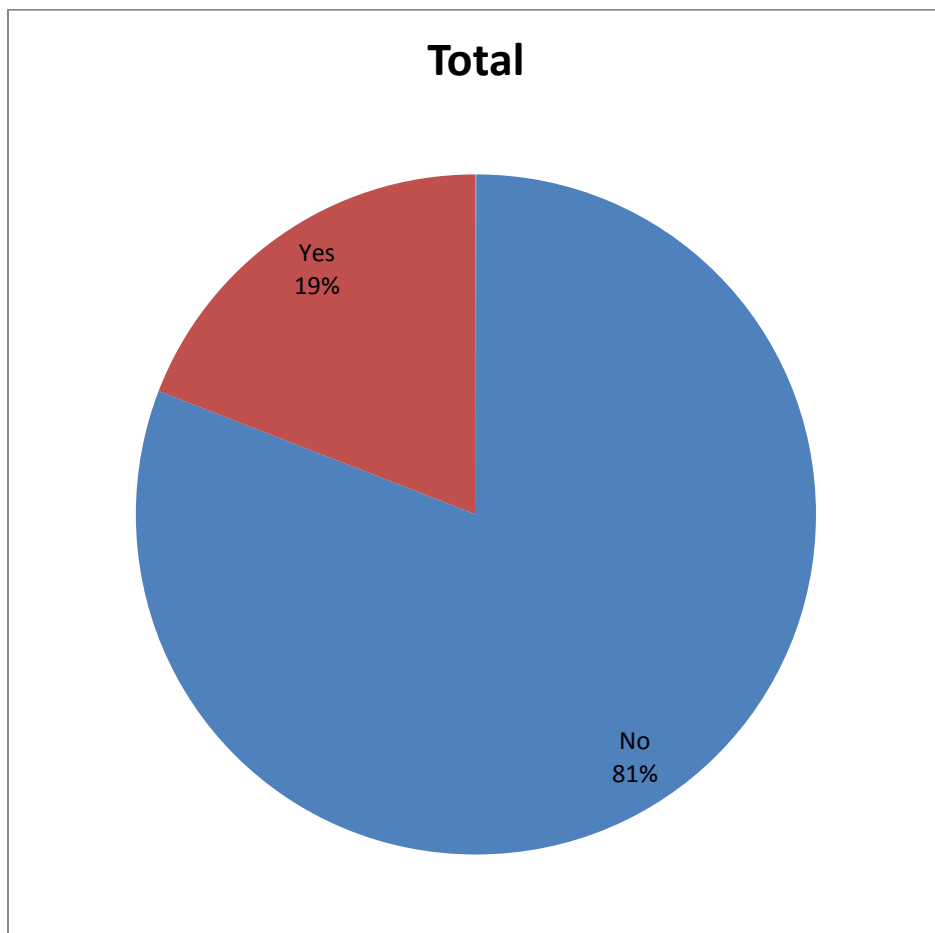
Graph 28

Does your Agency have a written standard operating procedures (SOP) manual that includes a section on Record handling responsibilities and security/confidentiality requirements?



Graph 29

Does your Agency provide notice of corrected information to all Agencies that have received inaccurate records as required by 18 P.S. Section 9152?



**Appendix I**

**Number of Criminal Justice Agencies**

**Appendix II**

**On-line Questionnaire**

**Exhibit 1**

**Decision regarding expungements**

**John Doe v. Stephen A. Zappala, Jr., et al., 987 A.2d 190**