

D R A F T
FOR APPROVAL

UNIFORM CRIMINAL RECORDS ACCURACY ACT

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ON UNIFORM STATE LAWS

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UNIFORM CRIMINAL RECORDS ACCURACY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 12, 2017

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1 notations of a reportable event. The term does not include non-criminal history record
2 information.

3 (7) “Dissemination” means oral, written, or electronic transmission or other disclosure of
4 criminal history record information to a person other than the central repository.

5 (8) “Non-criminal history record information” means information collected as a result of
6 an inquiry about an activity, habit, practice, possession, association, or financial status of an
7 individual, collected to anticipate, prevent, monitor, investigate, or prosecute criminal activity.

8 (9) “Person” means an individual, estate, business or nonprofit entity, public corporation,
9 government or governmental subdivision, agency, or instrumentality, or other legal entity.

10 (10) “Reportable event” means any of the following occurrences relating to a felony,
11 gross misdemeanor, or misdemeanor criminal offense, but not a [noncriminal offense,] [summary
12 offense,] [petty offense,] traffic violation[, or offense under the [juvenile law]]:

13 (A) arrest resulting in booking into a detention facility or collection of biometric
14 information;

15 (B) disposition after an arrest without initiation of a criminal proceeding;

16 (C) initiation of a criminal proceeding;

17 (D) disposition of a criminal proceeding, including diversion, dismissal, indefinite
18 postponement, acquittal, guilty plea, conviction, sentencing, and modification, reversal, and
19 revocation of the disposition;

20 (E) commitment to or release from a place of detention or custodial supervision;

21 (F) commencement or conclusion of noncustodial supervision;

22 (G) completion of a sentence;

23 (H) expungement, sealing, or setting-aside of criminal history record information;

1 (I) grant of clemency, including pardon or commutation, or restoration of rights;
2 and

3 (J) finding of mental incompetence by a court of this state at any stage of a
4 criminal proceeding.

5 (11) “Repository” means an entity operated by a contributing justice agency which
6 collects, maintains, stores, or disseminates criminal history record information.

7 (12) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
8 United States Virgin Islands, or any other territory or insular possession subject to the
9 jurisdiction of the United States. The term includes a federally recognized Indian tribe.

10 (13) “Subject” means the individual to whom the substance of criminal history record
11 information refers.

12 **SECTION 103. APPLICABILITY.** This [act] applies to the central repository, each
13 repository and contributing justice agency in this state, and each subject about whom criminal
14 history record information is collected, maintained, stored, or disseminated in this state.

15 **SECTION 104. PUBLIC RECORD.** In this [act], a court docket, court file, and
16 information contained in a docket or file, are public records unless otherwise provided by law or
17 ordered by a court.

18 **SECTION 105. DISSEMINATION LOG.** A dissemination log shall list each request
19 for, and dissemination of, criminal history record information. The log shall be separate from
20 non-criminal history record information and criminal history record information itself, and shall
21 include the:

22 (1) information requested;

23 (2) information disseminated;

- 1 (3) person making the request and its associated address;
- 2 (4) person effectuating the dissemination;
- 3 (5) date of the request and of the dissemination; and
- 4 (6) purpose for which the information was requested or disseminated.

5 **Legislative Note:** *Role of courts. Courts are included in the definition of a “contributing justice*
6 *agency” in Section 102(5) because their participation is crucial to the success of any effort to*
7 *promote the accuracy of criminal records. Concerns have been raised, however, about*
8 *separation of powers principles. The inclusion of courts in this definition means that, pursuant*
9 *to later provisions of the act, courts will be required to submit information about reportable*
10 *events to the central repository. If an adopting state is concerned about including courts, it is*
11 *possible to add language either exempting the courts or allowing the courts themselves to opt-*
12 *out later. Statutory language authorizing a judicial opt-out could take this form: “The [state*
13 *Supreme Court], or a judicial entity authorized to act on its behalf, may remove the courts of this*
14 *state from this sub-section under its rulemaking authority.” The drafters, however, strongly urge*
15 *that courts remain within the ambit of the contributing justice agency definition to the extent*
16 *constitutionally permissible. Including courts as contributing justice agencies will materially*
17 *enhance the accuracy of criminal history record information.*

18
19 *Responsible agency or individual. The discussion note on contributing justice agency,*
20 *infra, introduces the concept of a “responsible agency or individual.” This phrase is used in*
21 *various places in the comments and in brackets in the text of the act itself. The drafters intend it*
22 *to mean the appropriate state agency or individual charged with certain responsibilities under*
23 *this act. It is most commonly designed to signal a situation when a senior criminal justice policy*
24 *maker – either in the form of a responsible agency or individual – needs to adopt a regulation or*
25 *make a decision that is best served by honoring the principle of checks-and-balances. That is, the*
26 *regulations should be adopted by an entity or individual outside of the day-to-day operation of*
27 *the criminal history system. The central repository is a perfectly appropriate entity to create*
28 *general operational rules and no one is impugning the integrity of the individuals within the*
29 *criminal history system. This is simply a structural point. In some states, the “responsible*
30 *agency or individual” may be the Attorney General or the Office of the Attorney General. In*
31 *other states, it will be a different actor or entity. It need not be filled by the same person or*
32 *agency each time it is used. That is a decision best left to the adopting state. The phrase*
33 *“responsible agency or individual,” allows for each state to fill this position appropriately in*
34 *light of its own constitutional structure and political landscape. Ideally, in the states that use the*
35 *Attorney General position as the chief law enforcement officer and “minister of justice,” the*
36 *Attorney General is best suited to fulfill these duties.*

37
38 *Public records. Section 104 is designed to ensure that this act is not interpreted as*
39 *limiting access to court records. It provides that information in court dockets and files not under*
40 *seal, etc. remain public records to the extent provided by existing law. The drafters encourage*
41 *adopting states to examine their public records acts to determine whether conforming revisions*
42 *are required.*

1 **Comment**

2
3 *Principles.* This [act] is premised on three principles:

- 4 (1) Society at large has a vital interest in the accuracy of criminal history record
5 information.
6 (2) Subjects are entitled to have the information kept about them under this [act] be
7 accurate criminal history record information.
8 (3) The government has an obligation to collect, maintain, store, and disseminate
9 accurate criminal history record information.

10
11 *Defined terms, not substance.* The style rules of the Uniform Law Commission call for
12 consolidation of definitions for terms that recur throughout an act into a single section early in
13 the act. A definition for a term that appears in only one section should be located in that section.
14 Provisions that state a definition must be definitional only, with the substance pertaining to the
15 term addressed separately.

16
17 *Administration of criminal justice.* The definition of “administration of criminal justice”
18 is largely based upon the language found in 28 C.F.R. §20.3.

19
20 *Biometric information.* The definition of “biometric information” is designed to allow
21 the act to adapt automatically as technology evolves. Right now, fingerprints are the gold
22 standard for ensuring that a particular person is linked to arrest and disposition information. That
23 may change and the definition should be able to accommodate such changes. In light of its
24 characteristics, DNA information falls within the scope of biometric information, though this is
25 not made explicit in the text.

26
27 *Central repository.* The definition of “central repository” leaves to the adopting state the
28 decision whether this is a police function, often through the state police, or an independent
29 function. Given the central repository’s coordinating role, the definition does require the central
30 repository to be operationally independent from contributing justice agencies or other
31 repositories, although it can exist within the structure of an agency, such as the state police, that
32 also contains a separate repository.

33
34 *Contributing justice agency.* The definition of “contributing justice agency” is
35 intentionally broad. The goal is to widely distribute the duty to provide information on
36 “reportable events” – such as arrests, charges, and dispositions of all types – to the central
37 repository. This also allows for the collection and inclusion of reportable event and biometric
38 information throughout the process of adjudication and punishment, thereby allowing for
39 multiple opportunities to collect data and resolve issues. The term includes an organized state or
40 municipal police department, sheriff’s department, local detention facility or department, county,
41 regional or state correctional facility or department, probation agency, office of Attorney
42 General, district or prosecuting attorney, court with criminal jurisdiction, parole board, pardon
43 board, and any agency or sub-unit designated as a contributing justice agency by the responsible
44 agency or individual.

1 **SECTION 202. COLLECTION OF BIOMETRIC INFORMATION.**

2 (a) Each contributing justice agency that has custody of, or control, authority, or
3 jurisdiction over, an individual for an occurrence that is a reportable event shall determine or,
4 under the circumstances, cause to be determined whether biometric information about the
5 individual was collected and submitted to the central repository for the occurrence. If the
6 contributing justice agency is a court, the contributing justice agency representing the state
7 before the court shall make the determination.

8 (b) If a contributing justice agency determines under subsection (a) that biometric
9 information was not previously submitted to the central repository, the individual shall permit
10 collection of biometric information. The agency shall, using any legal procedure available to it
11 including a court order if authorized, collect or, under the circumstances, cause to be collected
12 any previously uncollected biometric information, and not later than [five] days after collection,
13 submit the information or cause it to be submitted to the central repository.

14 **SECTION 203. CORRECTION OF INACCURATE INFORMATION.**

15 (a) A contributing justice agency shall maintain accurate criminal history record
16 information in its repository in compliance with rules prescribed by the central repository.

17 (b) A contributing justice agency shall, not later than [14] days after discovery that it
18 possesses inaccurate criminal history record information in its repository:

19 (1) correct its own records;

20 (2) notify all persons, including the central repository, that submitted or received
21 the inaccurate information for a criminal justice purpose of the inaccuracy and the required
22 correction; and

23 (3) on request of the subject:

1 (A) disseminate a notice about the inaccuracy and the required correction
2 to any person identified by the subject that received the inaccurate information for a non-criminal
3 justice purpose within the previous five years; and

4 (B) provide to the subject at no cost one official, corrected copy of the
5 accurate information.

6 **SECTION 204. DISSEMINATION OF CRIMINAL HISTORY RECORD**
7 **INFORMATION.**

8 (a) A contributing justice agency may disseminate criminal history record information
9 only as provided in this [act] or by law other than this [act].

10 (b) A contributing justice agency may disseminate criminal history record information to
11 another contributing justice agency on request of the other agency in connection with the
12 requesting agency’s duties.

13 **SECTION 205. DISSEMINATION LOG OF CONTRIBUTING JUSTICE**

14 **AGENCY.** A contributing justice agency shall create, maintain, and store a dissemination log,
15 in the manner and form directed by the [responsible agency or individual]. A dissemination of
16 criminal history record information shall be entered in the dissemination log not later than [14]
17 days after the information is disseminated. The agency shall maintain an entry in the log [as long
18 as it maintains the associated information].

19 **Legislative Note:** *Responsible agency or individual. As discussed supra, the phrase*
20 *“responsible agency or individual” is used in various places in the comments and in brackets in*
21 *the text of the act itself, including in this article. The drafters intend it to mean the appropriate*
22 *state agency or individual charged with certain responsibilities under this act. It is most*
23 *commonly designed to signal a situation when a senior criminal justice policy maker – either in*
24 *the form of a responsible agency or individual – needs to adopt a regulation or make a decision*
25 *that is best served by honoring the principle of checks-and-balances. That is, the regulations*
26 *should be adopted by an entity or individual outside of the day-to-day operation of the criminal*
27 *history system. The central repository is a perfectly appropriate entity to create general*
28 *operational rules and no one is impugning the integrity of the individuals within the criminal*

1 *history system. This is simply a structural point. In some states, the “responsible agency or*
2 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
3 *will be a different actor or entity. It need not be filled by the same person or agency each time it*
4 *is used. That is a decision best left to the adopting state. The phrase “responsible agency or*
5 *individual,” allows for each state to fill this position appropriately in light of its own*
6 *constitutional structure and political landscape. Ideally, in the states that use the Attorney*
7 *General position as the chief law enforcement officer and “minister of justice,” the Attorney*
8 *General is best suited to fulfill these duties.*

9
10 *Maintaining dissemination logs. The drafters prefer that dissemination logs be*
11 *maintained as long as the associated criminal history record information is maintained.*
12 *Recognizing, however, that existing records retention provisions in certain jurisdictions may*
13 *already speak to this general issue, the language specifying duration of record maintenance is*
14 *placed in brackets.*

15 **Comment**

16
17 *Mandatory duty to collect biometric information.* Widely distributing a mandatory duty
18 to collect biometric information is vital to the effectiveness of the act. Biometric information, in
19 the form of fingerprints, is currently the gold standard for positive identification for law
20 enforcement purposes. If this information is not used to link an arrest to a charge to a
21 disposition, significant inaccuracies may and do result. In most cases, close matches using name
22 and date of birth are the alternative. This is a clear and common source of inaccuracies – both in
23 the failure to link related reportable events and in the misidentification of the subject. The act
24 puts the primary responsibility for this task on the arresting contributing justice agency, which
25 will typically be a police department. The lack of collection on the “front line” of processing is a
26 significant impediment to the accuracy of criminal records. In some jurisdictions, this appears to
27 be unrelated to funding for equipment, and instead turns on the enforcement of mandatory
28 collection procedures. *See, e.g., Jeffrey Benzing, Fingerprint Hearing: Best and Worst Pa.*
29 *Counties Have Same Equipment*, available at
30 http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html (July
31 23, 2014).

32
33 *Collection of Biometric Information.* Section 202 requires individuals to permit the
34 collection of their biometric information if it is determined at any point after the occurrence of a
35 reportable event that biometric information for that individual is missing. Not only does this
36 section put the obligation on individuals to provide biometric information, it makes that
37 obligation enforceable by court order. The drafters believe that this approach may avoid potential
38 separation-of-powers issues that could have arisen in some jurisdictions if the act directed courts
39 to obtain this information directly. This section is designed to include, inter alia, when an
40 individual, who has not been arrested, is charged by complaint, information, or indictment and
41 appears in court pursuant to summons. The drafters encourage judges in these situations to make
42 providing biometric information a condition of any pretrial release.

1 record information reported to it under this [act].

2 (b) The central repository shall collect, maintain, store, and disseminate accurate criminal
3 history record information in compliance with regulations adopted by the [responsible agency or
4 individual].

5 (c) The central repository shall prescribe rules and procedures to resolve conflicts and
6 discover missing data for accurate criminal history record information.

7 (d) The central repository may disseminate criminal history record information only as
8 required or permitted by this [act] or by other law.

9 **SECTION 302. DISSEMINATION OF INFORMATION TO PERSON OTHER**

10 **THAN SUBJECT.** When disseminating criminal history record information for a non-criminal
11 justice purpose to a person other than the subject, the central repository shall comply with the
12 following procedures:

13 (1) Before the central repository disseminates the information, it shall determine whether
14 the information contains a disposition after an arrest without the filing of a formal criminal
15 charge, or a disposition of a formal criminal charge for every arrest or charge. If the information
16 does not contain a disposition, the central repository shall make a good-faith effort to determine
17 the disposition of the arrest or charge, and if it determines the disposition, add that disposition to:

18 (A) the relevant records maintained by the central repository; and

19 (B) the report or summary to be disseminated.

20 (2) After the good faith-effort under paragraph (1) and before the central repository
21 disseminates the information, it shall remove from the report or summary to be disseminated the
22 notation of an arrest, charge, indictment or other information relating to the initiation of criminal
23 proceedings if:

- 1 (A) 18 months have elapsed after the date of arrest;
- 2 (B) no conviction has occurred or can be identified; and
- 3 (C) no proceedings are pending that may result in a conviction.

4 (3) Not later than [five] days after the central repository disseminates the information, it
5 shall send the same information to the subject, based on the contact information provided by the
6 person requesting the information.

7 **SECTION 303. DISSEMINATION OF INFORMATION TO SUBJECT.**

8 (a) The central repository shall disseminate criminal history record information to the
9 subject on request of the subject, after verification of the requester's identity and authority.

10 (b) If the central repository, in response to a request under subsection (a), identifies no
11 criminal history record information about the subject, it shall notify the subject that no
12 information concerning the subject exists and the date of its search.

13 (c) The central repository shall disseminate the criminal history record information or
14 notify the subject that no such information exists not later than [14] days after a request is
15 submitted under subsection (a).

16 (d) Criminal history record information disseminated under this section shall include a
17 prominent notification that it is provided solely for review by the subject and may not be reliable
18 or current for another use.

19 **SECTION 304. DISSEMINATION LOG.** The central repository shall create,
20 maintain, and store a dissemination log. A dissemination shall be entered in the log not later than
21 [14] days after information is disseminated. The central repository shall maintain an entry in the
22 log [as long as it maintains the associated information].

1 **SECTION 305. CORRECTION OF INACCURATE INFORMATION.** The central

2 repository shall not later than [14] days after discovery that it possesses inaccurate criminal
3 history record information:

4 (1) correct its own records;

5 (2) notify all persons that submitted or received the inaccurate information for a criminal
6 justice purpose of the inaccuracy and the required correction;

7 (3) on request of the subject:

8 (A) disseminate a notice about the inaccuracy and the required correction to any
9 person identified by the subject that received the inaccurate information for a non-criminal
10 justice purpose within the previous five years; and

11 (B) provide to the subject at no cost one official corrected copy of the accurate
12 information.

13 **SECTION 306. DUTIES OF CENTRAL REPOSITORY.** The central repository

14 shall ensure that the collection, maintenance, storage, and dissemination of criminal history
15 record information is accurate. The central repository shall:

16 (1) prescribe rules for the manner and form in which a contributing justice agency shall
17 collect, store, maintain, and submit information to the central repository on a reportable event,
18 including standards for biometric information, and ensure that multiple items of information for
19 the same subject are linked appropriately;

20 (2) prescribe rules and forms for reporting, exchanging, and challenging the accuracy of
21 information under this [act]; and

22 (3) prescribe rules necessary to carry out its duties under this [act].

1 **SECTION 307. DISSEMINATION OF INFORMATION FOR STATISTICAL**
2 **AND RESEARCH PURPOSES.** The central repository may disseminate criminal history
3 record information for statistical or research purposes if the information does not disclose the
4 identity of any individual directly or indirectly. Subsequent dissemination and use of the
5 information under this section is subject to rules prescribed by the central repository.

6 **SECTION 308. PUBLIC INFORMATION.** The central repository shall inform the
7 public about the existence, usage, and accessibility of criminal history record information
8 maintained by the central repository and other repositories. The central repository shall inform
9 the public, at least annually, concerning:

10 (1) the quantity and general nature of the criminal history record information collected,
11 stored, maintained, and disseminated in the state;

12 (2) the number of corrections to criminal history record information made by repositories
13 and the central repository;

14 (3) results of the audits under Section 602 and the status of any remediation; and

15 (4) requirements and forms for access, review, and correction of criminal history record
16 information in repositories and the central repository.

17 **SECTION 309. TRAINING.**

18 (a) The central repository shall provide regular training to contributing justice agencies
19 about submitting information on a reportable event and the importance of the information to both
20 society and the criminal justice system.

21 (b) The central repository shall identify contributing justice agencies and repositories that
22 do not meet minimum standards under this [act] and provide them remedial training.

23 *Legislative Note: Responsible agency or individual. As discussed supra, the phrase*
24 *“responsible agency or individual” is used in various places in the comments and in brackets in*

1 *the text of the act itself, including in this article. The drafters intend it to mean the appropriate*
2 *state agency or individual charged with certain responsibilities under this act. It is most*
3 *commonly designed to signal a situation when a senior criminal justice policy maker – either in*
4 *the form of a responsible agency or individual – needs to adopt a regulation or make a decision*
5 *that is best served by honoring the principle of checks-and-balances. That is, the regulations*
6 *should be adopted by an entity or individual outside of the day-to-day operation of the criminal*
7 *history system. The central repository is a perfectly appropriate entity to create general*
8 *operational rules and no one is impugning the integrity of the individuals within the criminal*
9 *history system. This is simply a structural point. In some states, the “responsible agency or*
10 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
11 *will be a different actor or entity. It need not be filled by the same person or agency each time it*
12 *is used. That is a decision best left to the adopting state. The phrase “responsible agency or*
13 *individual,” allows for each state to fill this position appropriately in light of its own*
14 *constitutional structure and political landscape. Ideally, in the states that use the Attorney*
15 *General position as the chief law enforcement officer and “minister of justice,” the Attorney*
16 *General is best suited to fulfill these duties.*

17
18 *Maintaining dissemination logs. The drafters prefer that dissemination logs be*
19 *maintained as long as the associated criminal history record information is maintained.*
20 *Recognizing, however, that existing records retention provisions in certain jurisdictions may*
21 *already speak to this general issue, the language specifying duration of record maintenance is*
22 *placed in brackets.*

23 24 **Comment**

25 *Role of the central repository.* The central repository is the hub into and out of which
26 criminal history record information will flow. It serves this role, as it does in many jurisdictions,
27 for both intra-state and inter-state purposes. There are duty of accuracy, logging, and correction
28 provisions that are similar to the ones provided for contributing justice agencies. The central
29 repository is also the primary contact for other states and the federal system, allowing it to serve
30 as a clearing house for the management of the universe of criminal history record information
31 that may be fed into the databases held within that jurisdiction.

32
33 *Verification of identity and authorization.* Verification of identity may include biometric
34 information pursuant to implementing regulations under this act.

35
36 *Role in employment and related checks.* The central repository’s primary function is to
37 act as the hub for criminal history record information used for contributing justice agency
38 purposes. There is, of course, a growing use of this information for purposes of government-
39 mandated and voluntary employment, licensing, etc. Accuracy concerns are heightened in this
40 context in part because there is no related adversarial proceeding before a neutral magistrate.
41 Inspired in part by efforts in California that many consider successful, this section requires the
42 central repository to make a good faith effort to ensure that disposition information is connected
43 to arrests and charges. *See* Cal. Code. Regs. tit. 11, § 720 (2017). Senator Grassley and others
44 introduced the Sentencing Reform and Corrections Act of 2015 (“SRCA”) on October 1, 2015.
45 Although Congress did not pass the SRCA, it is worth noting that SRCA’s Section 213, which

1 was entitled “Ensuring Accuracy of Federal Criminal Records,” provided that certain arrests
2 without disposition information that were more than two years old could not be disseminated. *Cf.*
3 Idaho Code Ann. § 67-3008(2)(iv)(“A record of an arrest that does not contain a disposition after
4 twelve (12) months from the date of arrest may only be disseminated by the department to
5 criminal justice agencies, to the subject of the record, or to a person requesting the criminal
6 history information with a signed release from the subject of the record.”).

7
8 *Duty to correct.* The act requires central repository (and in an earlier provision
9 contributing justice agencies) that learns of inaccurate criminal history record information –
10 regardless of how it learns of it – to fix it in its own records and to pass along the corrected
11 information to whomever it has provided the inaccurate information. That latter process is
12 facilitated by the maintenance of dissemination logs. Thoroughly tracking the information will
13 allow for more effective correction, as well as providing essential process data for the audit,
14 discussed *infra*.

15
16 Accuracy remains the overriding goal of the act. Of course, procedures relating to the
17 mechanics of how criminal history record information will be corrected and in what form are left
18 to the state and its central repository.

19
20 *Outreach to the public and contributing justice agencies.* This section also assigns the
21 central repository educative and supportive roles. It will try to raise public awareness about the
22 importance of criminal history record information and how individuals can access their records
23 to check for accuracy. It will also have the responsibility to train contributing justice agencies
24 and focus on those agencies that are not reporting as required because those agencies present
25 significant accuracy risks to the entire system. The act envisions a system of web-based
26 postings, webinars and guidelines, though the central repository has the flexibility to conduct this
27 outreach in the manner determined to be effective in that jurisdiction. This same system could be
28 used to update the public on the audit results and subsequent remediation. Existing central
29 repository websites could satisfy these requirements.

30 [ARTICLE] 4

31 MISTAKEN IDENTITY PREVENTION REGISTRY

32
33 **SECTION 401. CREATION AND MAINTENANCE OF REGISTRY.** The central
34 repository shall create and maintain a mistaken identity prevention registry:

35 (1) designed to prevent:

36 (A) mistaken arrest and confusion of an individual with another individual when
37 criminal history record information is searched; and

38 (B) inaccurate creation or modification of criminal history record information;

1 and

2 (2) consisting of information voluntarily provided by:

3 (A) a victim of mistaken identity; or

4 (B) an individual whose name or other identifying characteristic is similar to that
5 of another individual who is the subject of a particular item of criminal history record
6 information.

7 **SECTION 402. INFORMATION INCLUDED IN REGISTRY.**

8 (a) The central repository shall prescribe rules and procedures for an individual to be
9 entered in the mistaken identity prevention registry. The rules and procedures shall include:

10 (1) submission by the individual of a request to be entered in the registry; and

11 (2) collection of biometric information from the individual.

12 (b) An individual who satisfies the requirements and procedures under subsection (a)
13 shall be entered in the mistaken identity prevention registry. An individual improperly denied
14 entry in the registry may seek relief under [the state administrative procedure act] as a contested
15 case.

16 **SECTION 403. CERTIFICATION.** Not later than [14] days after entering an
17 individual in the mistaken identity prevention registry, the central repository shall provide the
18 individual a certification that the individual is not the individual with a similar name or
19 identifying characteristics who is the subject of a particular item of criminal history record
20 information. The certification is prima facie evidence of the facts certified.

21 **SECTION 404. DISCLOSURE OF REGISTRY INFORMATION.**

22 (a) The central repository may not use or disclose information from the mistaken identity
23 prevention registry except as provided in this [article].

1 (b) The central repository shall disclose information from the mistaken identity
2 prevention registry to a contributing justice agency when there is reason to believe that
3 identifying information on a reportable event may be inaccurate or not associated with the
4 correct individual.

5 (c) The central repository may disclose information from the mistaken identity prevention
6 registry to a national mistaken identity prevention registry with a purpose and protections similar
7 to the registry created in this [article] if the national registry is created and maintained by the
8 Federal Bureau of Investigation.

9 **SECTION 405. MISTAKEN IDENTITY MATCH.** If a contributing justice agency
10 seeks to establish the identity of an individual and the individual presents a certification issued
11 under Section 403, the agency shall accept the certification as prima facie evidence of the
12 individual's identity unless the agency has a reasonable basis to doubt the individual's identity or
13 authenticity of the certification, in which case the agency shall contact the central repository to
14 verify its authenticity using the rules prescribed by the central repository.

15 **SECTION 406. LIMITATION ON USE OF REGISTRY INFORMATION.**

16 (a) A contributing justice agency may access or use information from the mistaken
17 identity prevention registry only to:

18 (1) identify accurately an individual about whom the agency has requested or
19 received registry information; or

20 (2) investigate, prosecute, or adjudicate an individual for an offense relating to
21 participating in the registry.

22 (b) If information in the registry is intentionally, recklessly or negligently accessed or
23 used for a purpose other than permitted under subsection (a):

1 (1) the information and any information acquired as a result of the improper
2 access shall be excluded from use in any criminal or civil action; and

3 (2) the central repository shall notify the individual whose information was
4 accessed improperly not later than [five] days after discovery of the access.

5 **SECTION 407. REMOVAL OF INFORMATION FROM REGISTRY.**

6 (a) The central repository shall prescribe rules regarding a request to remove information
7 from the mistaken identity prevention registry.

8 (b) Not later [14] days after receiving a request from an individual for removal of
9 information voluntarily submitted under Section 402(b), the central repository shall remove the
10 information from the registry.

11 **Discussion Note**

12 *Mistaken Identity Prevention Registry.* Identification mistakes can lead to inaccurate
13 criminal history record information and erroneous arrests. *See, e.g.,* Stephanie Chen, *Officer,*
14 *You've Got the Wrong Person*, cnn.com (Feb. 15, 2010), available at
15 <http://www.cnn.com/2010/CRIME/02/15/colorado.mistaken.identity.arrest/> (“A mistaken
16 identity arrest occurs almost every day, said policing experts and officials at the National
17 Association of Criminal Defense Lawyers.”); Christopher N. Osher, *Wrongfully Jailed: Records*
18 *Details More Than 500 Mistaken-Identity Arrests in Denver in Seven Years*,
19 www.denverpost.com (Jan. 7, 2012), available at
20 [http://www.denverpost.com/2012/01/07/wrongfully-jailed-records-detail-more-than-500-](http://www.denverpost.com/2012/01/07/wrongfully-jailed-records-detail-more-than-500-mistaken-identity-arrests-in-denver-in-seven-years/)
21 [mistaken-identity-arrests-in-denver-in-seven-years/](http://www.denverpost.com/2012/01/07/wrongfully-jailed-records-detail-more-than-500-mistaken-identity-arrests-in-denver-in-seven-years/). This article, which is inspired in part by a
22 Minnesota provision, is designed to proactively help individuals who are the victim of identity
23 theft, while also improving the accuracy of the criminal record system more broadly. It allows
24 for these individuals to voluntarily provide information about themselves, including biometric
25 information, to a restricted registry which would be used to verify whether a particular person
26 truly is the subject of a reportable event. There are also analogies to the Voluntary Appeals File
27 (“VAF”) program associated with the FBI’s National Instant Criminal Background Check
28 System. *See* <https://www.fbi.gov/about-us/cjis/nics> and [https://www.fbi.gov/about-](https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf)
29 [us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf](https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf).

30
31 This article provides for the creation of certification for relevant individuals who choose
32 to be proactive about limiting damaging errors in their own criminal record. This article
33 envisions that this certification will help a person without a particular criminal record from
34 suffering adverse consequences of being confused with the person who actually has that record.
35 At the same time, the drafters seek to balance these considerations with the burdens imposed on

1 law enforcement during the identity verification process. It is up to the individual state to
2 determine requirements and procedures, but the drafters encourage states to consult with law
3 enforcement and look to NLETS as a potential partner. See <http://www.nlets.org>.

4
5 **[ARTICLE] 5**

6 **SUBJECT’S RIGHT TO CORRECT CRIMINAL HISTORY RECORD INFORMATION**

7 **SECTION 501. RIGHT OF ACCESS AND REVIEW.** A subject may access and
8 review the subject’s criminal history record information collected, maintained, or stored by a
9 repository or the central repository. The repository or central repository shall permit access not
10 later than [five] days after submission of a proper request and, if appropriate, verification of the
11 requester’s identity and authority.

12 **SECTION 502. CHALLENGE OF ACCURACY.** A subject may challenge and seek
13 correction of criminal history record information by sending the repository or central repository
14 maintaining the information a challenge specifying the item of information alleged to be
15 inaccurate and providing correct information.

16 **SECTION 503. ACTION ON CHALLENGE.**

17 (a) Not later than [40] days after receipt of a challenge under this [article], a repository or
18 the central repository shall review and act on the challenge unless the director of the repository
19 or central repository certifies, and notifies the subject, that there is good cause for a
20 nonrenewable [21]-day extension.

21 (b) If the repository or central repository does not act within the time provided in
22 subsection (a), the challenge is deemed sustained.

23 (c) [The state administrative procedure act] governs administrative and judicial review of
24 an action by a repository or the central repository on a challenge under this [article].

1 [ARTICLE] 6

2 SYSTEMS SECURITY AND AUDITS

3 SECTION 601. SECURITY REQUIREMENTS FOR CONTRIBUTING JUSTICE

4 AGENCIES AND CENTRAL REPOSITORY. A contributing justice agency, repository, and
5 the central repository, in compliance with regulations adopted by the [responsible agency or
6 individual], shall ensure the confidentiality and security of the criminal history record
7 information it collects, maintains, stores, and disseminates. The agency or repository shall:

8 (1) prescribe rules and procedures to reasonably protect each location where
9 information is stored or maintained from loss or damage;

10 (2) ensure that only authorized persons have access to the information;

11 (3) select, supervise, and train persons authorized to have access to the
12 information;

13 (4) if computerized data processing is used, ensure that the equipment maintaining
14 the information meets computer security standards promulgated by the [responsible agency or
15 individual]; and

16 (5) maintain an index of all data breaches, which shall be made available on
17 request to the [senior elected or appointed official responsible for governmental oversight, audit,
18 or integrity] and the [responsible agency or individual].

19 SECTION 602. MANDATORY REPRESENTATIVE AUDIT.

20 (a) The [senior elected or appointed official responsible for governmental oversight,
21 audit, or integrity] shall ensure that an audit of the central repository and a representative sample
22 of all repositories is conducted at least every [three] years. The audits may be done in
23 conjunction with another audit.

1 (b) An audit under this section shall assess the integrity of each computerized system and
2 database and each physical location storing criminal history record information for compliance
3 with this [act].

4 (c) An audit under this section of the central repository, shall:

5 (1) evaluate the operational practices of the central repository to assess
6 consistency, efficiency, and security; and

7 (2) assess any data breach in the central repository and response to the breach.

8 (d) An audit under this section of a repository shall:

9 (1) collect data from a representative sample of all criminal history record
10 information stored at the repository to assess consistency, efficiency, and security;

11 (2) determine the number of missing reportable events and amount and nature of
12 missing biometric information in the samples, in part by examining public records of the courts
13 of this state;

14 (3) assess any data breach in the repository and response to the breach;

15 (4) be representative of the overall status of the system of criminal history record
16 information management and ensure that selection of repositories audited is random and in
17 accordance with best practices; and

18 (5) review the plans, policies, and procedures of a representative sample
19 comprising at least [five] percent of all police and sheriff's departments and [10] percent of all
20 [judicial districts] for compliance with this [act].

21 (e) The repository or central repository shall give the [senior elected or appointed official
22 responsible for governmental oversight, audit, or integrity] access to the records, reports, listings,
23 and information required to conduct an audit under this section. All officers, employees, and

1 contractors of the state or a political subdivision of the state with relevant information shall
2 cooperate with the [senior elected or appointed official responsible for governmental oversight,
3 audit, or integrity] and provide information requested for an audit.

4 (f) The [senior elected or appointed official responsible for governmental oversight,
5 audit, or integrity] shall prepare and make available a public report containing the results of the
6 audits under this section and a list of any deficiencies and recommendations for correction of
7 deficiencies.

8 **Legislative Note:** *Responsible agency or individual. As discussed supra, the phrase*
9 *“responsible agency or individual” is used in various places in the comments and in brackets in*
10 *the text of the act itself, including in this article. The drafters intend it to mean the appropriate*
11 *state agency or individual charged with certain responsibilities under this act. It is most*
12 *commonly designed to signal a situation when a senior criminal justice policy maker – either in*
13 *the form of a responsible agency or individual – needs to adopt a regulation or make a decision*
14 *that is best served by honoring the principle of checks-and-balances. That is, the regulations*
15 *should be adopted by an entity or individual outside of the day-to-day operation of the criminal*
16 *history system. The central repository is a perfectly appropriate entity to create general*
17 *operational rules and no one is impugning the integrity of the individuals within the criminal*
18 *history system. This is simply a structural point. In some states, the “responsible agency or*
19 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
20 *will be a different actor or entity. It need not be filled by the same person or agency each time it*
21 *is used. That is a decision best left to the adopting state. The phrase “responsible agency or*
22 *individual,” allows for each state to fill this position appropriately in light of its own*
23 *constitutional structure and political landscape. Ideally, in the states that use the Attorney*
24 *General position as the chief law enforcement officer and “minister of justice,” the Attorney*
25 *General is best suited to fulfill these duties.*

26
27 *Senior elected or appointed official responsible for governmental oversight, audit, or*
28 *integrity. The act envisions that the senior elected or appointed official responsible for*
29 *governmental oversight, audit, or integrity is an individual outside of the day-to-day operation of*
30 *the criminal history record information system who is qualified to conduct these audits. While*
31 *the “responsible agency or individual” concept can be filled in different ways and need not be*
32 *the same at all points in this act, the drafters believe that the auditing role in this article deserves*
33 *different language. Depending on existing state structures, potential appropriate individuals to*
34 *fill this role might be the Attorney General, the Auditor General, the Ombudsperson, or the*
35 *Inspector General. Of course, adopting states are free to designate others as they see fit.*

36
37

Comment

38 *Data Security.* In an effort ensure accuracy, the act requires that basic security measures

1 be in place given the sensitive nature of criminal history record information. These provisions of
2 the act should be more than satisfied by compliance with current federal regulations.
3

4 *Mandatory audits.* This article provides for mandatory and representative audits. Audits
5 are essential to understanding how the criminal history record information structure is actually
6 working and to prevent the automatic replication of systematic errors. If policy makers do not
7 understand the nature and prevalence of the inaccuracies, they cannot address them effectively.
8 The auditing process will also facilitate the identification of agencies or departments failing to
9 meet their obligations under the act. While the central repository and other parties have a range
10 of formal options to remediate these deficiencies, the public distribution of the results of the
11 audit results alone may serve to increase system-wide compliance.
12

13 [ARTICLE] 7

14 ENFORCEMENT AND IMPLEMENTATION

15 SECTION 701. SANCTIONS AND REMEDIES.

16 (a) An individual or contributing justice agency that violates this [act], in addition to
17 other remedies provided by this [act] or by other law, may:

18 (1) be denied access specified criminal history record information, specified
19 repositories, and the central repository for a time determined by the [responsible agency or
20 individual];

21 (2) be subject to a civil penalty or other remedy under subsection (c); and

22 (3) consistent with law of this state other than this [act], if the violator is a
23 government employee, be administratively disciplined.

24 (b) In addition to other available remedies, the [responsible agency or individual], central
25 repository, or a subject, may bring an action concerning an item of criminal history record
26 information to compel compliance with this [act] or enjoin the central repository, a repository, a
27 contributing justice agency, or another person from violating this [act]. The court may award
28 costs of litigation and reasonable attorney's fees to a subject who prevails in the action.

29 (c) In addition to other available remedies, a subject injured by an intentional or reckless

1 violation of this [act] or implementing regulations, may bring an action for actual damages. If
2 the court determines by a preponderance of the evidence that the subject was injured by an
3 intentional or reckless violation, the court shall award the greater of actual damages, or not less
4 than \$[500] per violation up to a maximum of \$[2,000] per action, in addition to the costs of
5 litigation and reasonable attorney’s fees.

6 **SECTION 702. DUTIES AND AUTHORITY OF RESPONSIBLE AGENCY.**

7 (a) The [responsible agency or individual] shall adopt regulations necessary to implement
8 this [act]. The regulations shall include a provision that:

9 (1) governs the security, accuracy, dissemination and review of, and individual
10 access to, criminal history record information; [and]

11 (2) ensures that electronic data, including biometric information, are stored in a
12 manner that reflects best practices for personally identifiable information; and

13 (3) sets a reasonable maximum fee for the cost of disseminating criminal history
14 record information and provides an indigent subject at least one free annual access to the
15 subject’s information.

16 (b) The [responsible agency or individual] may designate any governmental agency or
17 sub-unit, other than the central repository or a court, as a contributing justice agency.

18 (c) The [responsible agency or individual] may investigate any matter relating to the
19 administration and enforcement of this [act].

20 (d) The [responsible agency or individual] may bring a civil action to enforce this [act].

21 **Legislative Note:** *Responsible agency or individual. As discussed supra, the phrase*
22 *“responsible agency or individual” is used in various places in the comments and in brackets in*
23 *the text of the act itself, including in this article. The drafters intend it to mean the appropriate*
24 *state agency or individual charged with certain responsibilities under this act. It is most*
25 *commonly designed to signal a situation when a senior criminal justice policy maker – either in*
26 *the form of a responsible agency or individual – needs to adopt a regulation or make a decision*

1 *that is best served by honoring the principle of checks-and-balances. That is, the regulations*
2 *should be adopted by an entity or individual outside of the day-to-day operation of the criminal*
3 *history system. The central repository is a perfectly appropriate entity to create general*
4 *operational rules and no one is impugning the integrity of the individuals within the criminal*
5 *history system. This is simply a structural point. In some states, the “responsible agency or*
6 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
7 *will be a different actor or entity. It need not be filled by the same person or agency each time it*
8 *is used. That is a decision best left to the adopting state. The phrase “responsible agency or*
9 *individual,” allows for each state to fill this position appropriately in light of its own*
10 *constitutional structure and political landscape. Ideally, in the states that use the Attorney*
11 *General position as the chief law enforcement officer and “minister of justice,” the Attorney*
12 *General is best suited to fulfill these duties.*

13
14 **Comment**

15 *Individual sanctions.* This article provides for an array of sanctions against individuals
16 who violate the act. It also allows both subjects and the relevant government official, again in
17 brackets, to seek injunctive relief. The article affords a subject who is injured by a violation of
18 the act a civil damages remedy with a modest minimum (\$500 per violation up to \$2,000 for
19 related violations) and a fee-shifting provision on the theory that the true extent of actual
20 damages may be difficult to prove. *Cf.* 18 U.S.C. § 2724(b). These sanctions are modeled after
21 some existing provisions, and are limited in scope. All of this, of course, is also designed to
22 serve as a clear and enforceable incentive to minimize inaccuracies.

23
24 *Criminal sanctions.* The drafters do not propose a criminal sanction, in part because they
25 believe that existing criminal statutes cover behavior that warrants a response by the criminal
26 justice system. While anyone can report a suspected criminal violation to the appropriate
27 prosecutorial authorities, the drafters anticipate that the responsible agency or individual and the
28 senior elected or appointed official responsible for governmental oversight, audit, or integrity
29 will be particularly attentive to such circumstances. Of course, the act does not limit the
30 prosecutorial power of any individual or entity to enforce existing law.

31
32 **[ARTICLE] 8**

33 **MISCELLANEOUS PROVISIONS**

34 **SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

35 applying and construing this uniform act, consideration shall be given to the need to promote
36 uniformity of the law with respect to its subject matter among states that enact it.

37 **[SECTION 802. SEVERABILITY.** If any provision of this [act] or its application to

38 any person or circumstance is held invalid, the invalidity does not affect other provisions or

1 applications of this [act] which can be given effect without the invalid provision or application,
2 and to this end the provisions of this [act] are severable.]

3 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
4 *decision by the highest court of this state stating a general rule of severability.*

5 **SECTION 803. REPEALS; CONFORMING AMENDMENTS.**

6 (a)

7 (b)

8 (c)

9 **SECTION 804. EFFECTIVE DATE.** This [act] takes effect