

DRAFT  
FOR DISCUSSION ONLY

# CRIMINAL RECORDS ACCURACY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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March 24 – 25, 2017 Drafting Committee Meeting

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March 9, 2017

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1 **CRIMINAL RECORDS ACCURACY ACT**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Criminal Records  
5 Accuracy Act.

6 **SECTION 102. DEFINITIONS.** In this [act]:

7 (1) “Accurate criminal history record information” means criminal history record  
8 information that correctly and completely reflects all reportable events relating to a subject.

9 (2) “Administration of criminal justice” means detection, apprehension, detention,  
10 pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or  
11 rehabilitation of an accused person or criminal offender. The term includes criminal  
12 identification activities and the collection, storage, and dissemination of criminal history record  
13 information.

14 (3) “Biometric identifying information” means unique attributes of an individual used for  
15 identification. The term includes, at a minimum, fingerprints.

16 (4) “Central repository” means the single, centralized entity for collection, compilation,  
17 storage, maintenance, and dissemination of criminal history record information operated by the  
18 [office, department, or State Police].

19 (5) “Contributing justice agency” means a court, political subdivision or agent of a  
20 political subdivision, or governing entity of the state authorized to engage in the administration  
21 of criminal justice. The term does not include the central repository. [The [state Supreme Court],  
22 or a judicial entity authorized to act on its behalf, may remove the courts of this state from this  
23 sub-section under its rulemaking authority.]

1           (6) “Criminal history record information” means information collected or maintained by  
2 a contributing justice agency or the central repository consisting of identifiable descriptions of a  
3 subject, including biometric identifying information and notations of a reportable event. The  
4 term does not include extraneous information.

5           (7) “Dissemination” means oral, written, or electronic transmission or other disclosure of  
6 criminal history record information to a person other than the central repository or the  
7 contributing justice agency that maintains the information.

8           (8) “Dissemination log” means a listing of each request for, and dissemination of,  
9 criminal history record information, indicating the information requested, information  
10 disseminated, person making the request and its associated address, person effectuating the  
11 dissemination, date of the request and of the dissemination, and purpose for which the  
12 information was requested or disseminated. The dissemination log is separate and distinct from  
13 extraneous information or the criminal history record information itself.

14           (9) “Extraneous information” means information collected as a result of an inquiry,  
15 formal or informal, about the activities, habits, practices, possessions, associations, or financial  
16 status of a person collected to anticipate, prevent, monitor, investigate, or prosecute criminal  
17 activity.

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

21           (11) “Reportable event” means any of the following occurrences relating to a felony [,  
22 gross misdemeanor,] [or] misdemeanor criminal offense, but excluding [a noncriminal offense,]  
23 [summary offenses,] [a petty offense,] a traffic violation [, or an offense under the [Juvenile

1 Court Act]]:

2 (A) arrest and booking into a detention facility or arrest resulting in collection of  
3 biometric identifying information;

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

5 (C) initiation of a criminal proceeding;

6 (D) disposition of a criminal proceeding, including diversion, dismissal, indefinite  
7 postponement, acquittal, guilty plea, conviction, sentencing, and modification, reversal, or  
8 revocation of the disposition;

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

10 (F) commencement or conclusion of noncustodial supervision;

11 (G) completion of a sentence of any kind;

12 (H) expungement, sealing, or set-aside of criminal history record information;

13 (I) grant of clemency, including pardon or commutation, or restoration of rights;

14 and

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

17 (12) “Repository” means an entity operated by a contributing justice agency which  
18 collects, compiles, maintains, or disseminates criminal history record information.

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

22 (14) “Subject” means the individual to whom the substance of criminal history record  
23 information refers.





1 repositories, although it can exist within the structure of an agency, such as the state police, that  
2 also contains a separate repository.

3  
4 *Contributing justice agency.* The definition of “contributing justice agency” is  
5 intentionally broad. The goal is to widely distribute the duty to provide information on  
6 “reportable events” – such as arrests, charges, and dispositions of all types – to the central  
7 repository. This also allows for the collection and inclusion of reportable event and identifying  
8 information throughout the process of adjudication and punishment, thereby allowing for  
9 multiple opportunities to collect data and resolve issues. The term includes an organized state or  
10 municipal police department, sheriff’s department, local detention facility or department, county,  
11 regional or state correctional facility or department, probation agency, [office of Attorney  
12 General,] [district or prosecuting] attorney, court with criminal jurisdiction, parole board, pardon  
13 board, and any agency or sub-unit designated as a contributing justice agency by the [responsible  
14 agency or individual].

15  
16 *Courts.* Courts are included in the presumptive definition of a “contributing justice  
17 agency” because their participation is crucial to the success of any effort to promote the accuracy  
18 of criminal records. Concerns have been raised, however, about separation of powers principles.  
19 The presumptive inclusion of courts in this definition means that, pursuant to later provisions of  
20 the act, courts will be required to submit information about reportable events to the central  
21 repository as long as the state’s highest court, or its designee, does not opt out. The Drafting  
22 Committee concluded that this provision allows those jurisdictions that are concerned to  
23 legislatively allow their courts to resolve the matter independently. The Drafting Committee,  
24 however, strongly urges those courts to remain within the ambit of the contributing justice  
25 agency definition to the extent constitutionally permissible. Including courts as a contributing  
26 justice agency will materially enhance the accuracy of criminal history record information.

27  
28 *Responsible agency or individual.* The note on contributing justice agency, *supra*,  
29 introduces the concept of a “responsible agency or individual.” This phrase is used in various  
30 places in the notes and in brackets in the text of the act itself. The Drafting Committee intends it  
31 to mean the appropriate state agency or individual charged with certain responsibilities under this  
32 act. It is most commonly designed to signal a situation when a senior criminal justice policy  
33 maker – either in the form of a responsible agency or individual – needs to promulgate a policy  
34 or make a decision that is best served by honoring the principle of checks-and-balances. In some  
35 states, that will be the Attorney General or the Office of the Attorney General. In other states, it  
36 will be a different actor or entity. It need not be filled by the same person or agency each time it  
37 is used. That is a decision best left to the adopting state. The phrase “responsible agency or  
38 individual,” allows for each state to fill this position appropriately in light of its own  
39 constitutional structure and political landscape.

40  
41 *Extraneous information.* This definition clarifies that information may be held by a  
42 contributing justice agency that is not deemed to be criminal history record information.

43  
44 *Reportable event.* The definition of a “reportable event” is designed to capture all of the  
45 significant moments in the life of a criminal case that future actors in the criminal justice system  
46 would want to know about that defendant and that case. Though the nomenclature may vary by

1 jurisdiction, these are almost universal in their presence and importance.

2  
3 *Reportable Event – Disposition.* The Drafting Committee attempted to provide an  
4 inclusive yet manageable definition of disposition. If more detail is desired, we could include  
5 the current definition found at 28 CFR § 20.3(i), which provides:

6 Disposition means information disclosing that criminal proceedings have been concluded  
7 and the nature of the termination, including information disclosing that the police have  
8 elected not to refer a matter to a prosecutor or that a prosecutor has elected not to  
9 commence criminal proceedings; or disclosing that proceedings have been indefinitely  
10 postponed and the reason for such postponement. Dispositions shall include, but shall not  
11 be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental  
12 incompetence, case continued without finding, charge dismissed, charge dismissed due to  
13 insanity, charge dismissed due to mental incompetency, charge still pending due to  
14 insanity, charge still pending due to mental incompetency, guilty plea, nolle prosequi, no  
15 paper, nolo contendere plea, convicted, youthful offender determination, deceased,  
16 deferred disposition, dismissed-civil action, found insane, found mentally incompetent,  
17 pardoned, probation before conviction, sentence commuted, adjudication withheld,  
18 mistrial-defendant discharged, executive clemency, placed on probation, paroled, or  
19 released from correction supervision.

20 <http://www.gpo.gov/fdsys/pkg/CFR-2002-title28-vol1/pdf/CFR-2002-title28-vol1-sec20-3.pdf>.

21  
22 *Public records.* Section 103(2) is designed to ensure that this act is not interpreted as  
23 limiting access to court records. It provides that information in court dockets and files not under  
24 seal, etc. remain public records to the extent provided by existing law. It does so without  
25 relieving courts of the obligation to provide information to the central repository as a  
26 contributing justice agency, although the state’s highest court, or its designee, may do so by  
27 removing the state courts from the definition of contributing justice agency as set forth in Section  
28 102(5).

29 **ARTICLE 2**

30 **DUTIES AND AUTHORITY OF CONTRIBUTING JUSTICE AGENCIES**

31 **Alternative A**

32 **SECTION 201. DISSEMINATION OF CRIMINAL HISTORY RECORD**

33 **INFORMATION.** A contributing justice agency may disseminate criminal history record  
34 information only as provided in this [act] or by law of this state other than this [act].

35 **SECTION 202. COLLECTION OF BIOMETRIC IDENTIFYING**

36 **INFORMATION.**

37 (a) A contributing justice agency shall collect biometric identifying information in the

1 manner and form directed by the central repository from an individual the agency arrested under  
2 circumstances that make it a reportable event and forward the information to the central  
3 repository, in the manner and form directed by the central repository, not later than [three] days  
4 after the arrest.

5 (b) If an individual charged by complaint, information, or indictment under  
6 circumstances that make it a reportable event is not arrested and appears instead in court  
7 pursuant to summons, the individual shall report to the [local municipal police department] or  
8 [designated contributing justice agency] not later than [10] days after the court appearance and  
9 permit the [department] or [agency] to collect biometric identifying information in the manner  
10 and form directed by the central repository. The obligation under this subsection may be  
11 enforced by court order. The [department] or [agency] shall forward the information to the  
12 central repository, in the manner and form directed by the central repository, not later than  
13 [three] days after collection.

14 (c) During an investigation, adjudication, or correctional process, the head of each  
15 contributing justice agency responsible for a reportable event relating to an accused person,  
16 criminal offender, or subject shall designate an official to promptly determine whether biometric  
17 identifying information has previously been collected for the individual in the manner and form  
18 directed by the central repository and forwarded to the central repository in the manner and form  
19 directed by the central repository.

20 (d) If the head of each contributing justice agency responsible for a reportable event  
21 relating to an accused person, criminal offender, or subject determines under subsection (c) that  
22 biometric identifying information has not been collected and forwarded to the central repository,  
23 the accused person, criminal offender, or subject shall report to the [local municipal police

1 department] or [designated contributing justice agency] not later than [10] days after that  
2 determination and permit the [department] or [agency] to collect biometric identifying  
3 information in the manner and form directed by the central repository. The obligation under this  
4 subsection may be enforced by court order. The [department] or [agency] shall forward the  
5 information to the central repository, in the manner and form directed by the central repository,  
6 not later than [three] days after collection.

7 **SECTION 203. COLLECTION AND SUBMISSION OF INFORMATION TO**  
8 **CENTRAL REPOSITORY.**

9 (a) A contributing justice agency shall collect, store, and maintain, in the manner and  
10 form directed by the central repository, information on a reportable event with which the  
11 contributing justice agency is involved. The agency shall submit the information, in the manner  
12 and form directed by the central repository, to the central repository not later than [three] days  
13 after the reportable event.

14 (b) In compliance with regulations adopted by the central repository, a contributing  
15 justice agency shall maintain accurate criminal history record information.

16 **SECTION 204. CORRECTION OF INACCURATE INFORMATION.** Regardless  
17 of the manner of discovery or identity of the person who discovered it, once a contributing  
18 justice agency is aware it possesses inaccurate criminal history record information, the agency  
19 shall, not later than [10] days after discovery:

20 (1) correct its own records;

21 (2) notify all persons that submitted or received inaccurate criminal history record  
22 information for criminal justice purposes of the inaccuracy and the required correction;

23 (3) on request of the subject or the subject's lawyer or guardian:

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

4 (B) provide one corrected copy of the accurate criminal history record  
5 information to the person making the request at no cost.

6 **SECTION 205. DISSEMINATION LOG.**

7 (a) A contributing justice agency may disseminate criminal history record information to  
8 another contributing justice agency on request in connection with the requesting agency's duties.

9 (b) A contributing justice agency shall create and maintain a dissemination log, in the  
10 manner and form directed by the [responsible agency or individual] listing disseminations of  
11 criminal history record information. Each dissemination must be entered into the dissemination  
12 log not later than [10] days after the criminal history record information is disseminated. The  
13 agency shall maintain entries in the log for as long as it maintains the associated criminal history  
14 record information.

15 **Alternative B**

16 **SECTION 201. DISSEMINATION OF CRIMINAL HISTORY RECORD**

17 **INFORMATION.** A contributing justice agency may disseminate criminal history record  
18 information only as provided in this [act] or by law of this state other than this [act].

19 **SECTION 202. COLLECTION OF BIOMETRIC IDENTIFYING**

20 **INFORMATION.**

21 (a) A contributing justice agency that is an arresting police agency shall collect biometric  
22 identifying information, in the manner and form directed by law or the director of the central  
23 repository, from an individual arrested by the agency under circumstances that make it a

1 reportable event and forward the information to the central repository, in the manner and form  
2 directed by the director of the central repository, not later than [48] hours after the arrest.

3 (b) A contributing justice agency that is a court in which an individual is charged by  
4 complaint, information, or indictment under circumstances that make it a reportable event shall  
5 order the collection of biometric identifying information in the following manner:

6 (1) If the individual is not arrested, is not in custody, and appears instead in court  
7 pursuant to summons, and the court is informed that biometric identifying information was not  
8 collected from the individual, the court shall order the individual to report to the [local municipal  
9 police department or [designated contributing justice agency] not later than [10] days after the  
10 order and permit the police to collect biometric identifying information in the manner and form  
11 directed by the director of the central repository. The [department] or [agency] shall forward the  
12 information to the central repository, in the manner and form directed by the central repository,  
13 not later than [48] hours after collection.

14 (2) If an individual who is arrested or is in custody appears in court, and the court  
15 is informed that biometric identifying information was not collected from the individual, the  
16 court shall order the appropriate contributing justice agency to collect the biometric identifying  
17 information. The [department] or [agency] shall forward the information to the central  
18 repository, in the manner and form directed by the central repository, not later than [48] hours  
19 after collection.

20 (c) A contributing justice agency that is a prosecuting agency engaged in an investigation,  
21 arrest, prosecution, adjudication, sentencing, supervision, or custody of an individual for a  
22 reportable event shall determine whether biometric identifying information has been collected  
23 for the individual and collect or cause to be collected previously uncollected biometric

1 identifying information in the manner and form directed by the director of the central repository.

2 (d) A contributing justice agency that is a correctional agency engaging in an arrest,  
3 prosecution, adjudication, sentencing, supervision, or custody of an individual for a reportable  
4 event shall determine whether biometric identifying information has previously been collected  
5 for the individual within [72] hours of taking the individual into custody and collect or cause to  
6 be collected previously uncollected biometric identifying information in the manner and form  
7 directed by the director of the central repository and forward the information to the central  
8 repository not later than [48] hours after its collection.

9 **SECTION 203. COLLECTION OF INFORMATION ON REPORTABLE EVENT.**

10 (a) A contributing justice agency that is an arresting policy agency or correctional agency  
11 shall collect, store, and maintain, in the manner and form directed by the director of the central  
12 repository, information on a reportable event with which the contributing justice agency is  
13 involved. The agency shall submit the information, in the form and manner directed by the  
14 director of the central repository, to the central repository not later than [72] hours after the  
15 reportable event.

16 (b) A contributing justice agency that is a court or prosecuting agency shall:

17 (1) collect, store, and maintain, in the manner and form directed by the director of  
18 the central repository, information on a reportable event with which the contributing justice  
19 agency is involved; and

20 (2) maintain the information on a reportable event and submit the information on  
21 a reportable event in the form and manner directed by the director of the central repository, to the  
22 central repository not later than [72] hours after the reportable event.



1           **SECTION 204. MAINTENANCE OF ACCURATE CRIMINAL HISTORY**

2   **RECORD INFORMATION.**

3           (a) A contributing justice agency shall maintain complete and accurate criminal history  
4 record information and report the information as required by this [act] or law of this state other  
5 than this [act]. The director of the central repository shall establish effective procedures, in  
6 compliance with regulations adopted by the [board], to create and store complete and accurate  
7 criminal history record information.

8           (b) An agent of a contributing justice agency that discovers inaccurate criminal history  
9 record information shall within [10] days after discovery:

10                   (1) correct its own records;

11                   (2) notify all persons that submitted or received inaccurate criminal history record  
12 information for criminal justice purposes of the inaccuracy and the required correction;

13                   (3) on request of the subject or the subject’s lawyer or guardian:

14                           (A) disseminate a notice about the inaccuracy and the required correction  
15 to any person that received inaccurate criminal history record information for a non-criminal  
16 justice purpose within the previous five years; and

17                           (B) provide one corrected copy of the accurate criminal history record  
18 information to the person making the request at no cost.

19           **SECTION 205. DISSEMINATION LOG.**

20           (a) A contributing justice agency may disseminate criminal history record information to  
21 another contributing justice agency on request in connection with the requesting agency’s duties.

22           (b) A contributing justice agency shall create and maintain a dissemination log, in the  
23 manner and form directed by the [responsible agency or individual] listing disseminations of

1 criminal history record information. Each dissemination must be entered into the dissemination  
2 log not later than [10] days after the criminal history record information is disseminated. The  
3 agency shall maintain entries in the log for as long as it maintains the associated criminal history  
4 record information.

5 **End of Alternatives**

6 **Discussion Notes**

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

22  
23 *Duty of Individuals.* The act puts the obligation on individuals to provide biometric  
24 information and makes that obligation enforceable by court order. The Drafting Committee  
25 believes that this approach may avoid potential separation-of-powers issues that could have  
26 arisen in some jurisdictions if the act directed courts to obtain this information directly. The  
27 Drafting Committee encourages judges in these situations to make providing biometric  
28 information a condition of any pretrial release.

29  
30 *Duty of other contributing justice agencies.* If the arresting agency fails to obtain  
31 fingerprints, the act provides a backstop by requiring other, typically chronologically  
32 downstream, actors in the contributing justice system to fingerprint the subject. The Drafting  
33 Committee believes that this “belt-and-suspenders approach” is warranted given the wide  
34 variation of fingerprint compliance rates between and within states. For example, the Drafting  
35 Committee learned that in one large state, there are tens of thousands – if not hundreds of  
36 thousands – of essentially orphaned files in the central repository because disposition  
37 information cannot be definitively linked by fingerprint to a subject. Furthermore, in that state,  
38 the state prison receiving center felt the need to install a Livescan machine (a common biometric  
39 data collection station) because of the number of sentenced offenders arriving without  
40 fingerprints in the system.



1 central repository shall maintain accurate criminal history record information.

2 (c) The central repository shall facilitate the creation and maintenance of accurate  
3 criminal history record information by establishing practices and procedures necessary to as  
4 efficiently and automatically as possible resolve conflicts and discover missing data on the same  
5 incident or subject.

6 (d) The central repository may only disseminate criminal history record information as  
7 required or permitted by this [act] or by law of this [state] other than this [act] or of the United  
8 States.

9 **SECTION 302. DISSEMINATION OF INFORMATION TO PERSON OTHER**  
10 **THAN SUBJECT.** The central repository shall comply with the following procedures when  
11 disseminating information for a non-criminal justice purpose to a person other than the subject:

12 (1) Before it disseminates the information, the central repository shall determine whether  
13 the information contains a disposition after an arrest without the filing of a formal criminal  
14 charge, or a disposition of a formal criminal charge for every arrest or charge. If disposition  
15 information is missing, the central repository shall make a good faith effort to determine the  
16 disposition of the arrest or charge, and if the central repository determines the disposition, add  
17 that information to:

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

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

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

- 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 [three] days after it disseminates the information, the central repository  
5 shall send the same information to the subject.

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

7 (a) The central repository shall disseminate criminal history record information to the  
8 subject of the information on request of the subject or the subject’s lawyer or guardian, after  
9 positive verification of identity and authorization, if appropriate.

10 (b) If the central repository identifies no criminal history record information, it shall  
11 indicate to the subject or the subject’s lawyer or guardian that no such information concerning  
12 the subject exists and the date of its search.

13 (c) The central repository shall disseminate the criminal history record information or  
14 indicate that no such information exists not later than [10] days after the request is properly  
15 submitted.

16 **SECTION 304. DISSEMINATION LOG.** The central repository shall create,  
17 maintain, and store a dissemination log containing a list of all disseminations of criminal history  
18 record information. All disseminations shall be entered into the log not later than [10] days after  
19 criminal history record information is disseminated. The central repository shall maintain an  
20 entry in the dissemination log as long as it maintains the associated criminal history record  
21 information.

22 **SECTION 305. CORRECTION OF INACCURATE INFORMATION.** Regardless  
23 of the manner of discovery or the identity of the person who discovered it, once the central

1 repository is aware it possesses inaccurate criminal history record information, it shall not later  
2 than [10] days after discovery:

3 (1) correct its own records;

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

6 (3) on request of the subject or the subject's lawyer or guardian:

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

10 (B) provide one corrected copy of the accurate criminal history record  
11 information to the person making the request at no cost.

12 **SECTION 306. ESTABLISHMENT OF PROCEDURES.** The central repository  
13 shall comply with applicable statutes and regulations to ensure that the collection, storage, and  
14 maintenance of criminal history record information is accurate. The central repository shall:

15 (1) specify the manner and form in which a contributing justice agency must submit  
16 criminal history record information to the central repository concerning a reportable event,  
17 including standards for biometric identifying information, to ensure that multiple pieces of  
18 criminal history record information for the same subject are appropriately linked;

19 (2) adopt procedures, standards, and forms for reporting and exchanging information  
20 under this [act]; and

21 (3) adopt other regulations necessary to carry out its duties under this [act].



1 repository is also the primary contact for other states and the federal system, allowing it to serve  
2 as a clearing house for the management of the universe of criminal history record information  
3 that may be fed into the databases held within that jurisdiction.  
4

5 *Positive verification of identify and authorization.* Positive verification of identity may  
6 include biometric identifying information pursuant to implementing regulations under this act.  
7

8 *Role in employment and related checks.* The central repository’s primary function is to  
9 act as the hub for criminal history record information used for contributing justice agency  
10 purposes. There is, of course, a growing use of this information for government-mandated  
11 employment, licensing and certification purposes. Accuracy concerns are heightened in this  
12 context in part because there is no related adversarial proceeding before a neutral magistrate.  
13 Inspired in part by efforts in California that many consider successful, this section requires the  
14 central repository to make a good faith effort to ensure that disposition information is connected  
15 to arrests and charges. *See*. Cal. Code. Regs. tit. 11, § 720 (2017). Senator Grassley and others  
16 introduced the Sentencing Reform and Corrections Act of 2015 (“SRCA”) on October 1, 2015.  
17 Although Congress did not pass the SRCA, it is worth noting that SRCA’s Section 213, which  
18 was entitled “Ensuring Accuracy of Federal Criminal Records,” provided that certain arrests  
19 without disposition information that were more than two years old could not be disseminated. *Cf.*  
20 Idaho Code Ann. § 67-3008(2)(iv)(“A record of an arrest that does not contain a disposition after  
21 twelve (12) months from the date of arrest may only be disseminated by the department to  
22 criminal justice agencies, to the subject of the record, or to a person requesting the criminal  
23 history information with a signed release from the subject of the record.”).  
24

25 *Outreach to the public and contributing justice agencies.* This section also assigns the  
26 central repository educative and supportive roles. It will try to raise public awareness about the  
27 importance of criminal history record information and how individuals can access their records  
28 to check for accuracy. It will also have the responsibility to train contributing justice agencies  
29 and focus on those agencies that are not reporting as required because those agencies present  
30 significant accuracy risks to the entire system. The act envisions a system of web-based  
31 postings, webinars and guidelines, though the central repository has the flexibility to conduct this  
32 outreach in the manner determined to be effective in that jurisdiction.  
33

## 34 **ARTICLE 4**

### 35 **MISTAKEN IDENTITY PREVENTION REGISTRY**

#### 36 **SECTION 401. CREATION AND MAINTENANCE OF REGISTRY.**

37 (a) The central repository shall create and maintain a mistaken identity prevention  
38 registry as a database designed to prevent:

39 (1) mistaken arrest and confusion of an individual with another when criminal  
40 history record information is searched; and



1 (2) inaccurate creation or modification of criminal history record information.

2 (b) The registry consists of identifying information voluntarily provided by:

3 (1) a victim of mistaken identity or theft of identity; or

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

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

7 (a) The central repository shall establish reasonable requirements and procedures for an  
8 individual to be included in the mistaken identity prevention registry. The requirements must  
9 include collecting biometric identifying information from an individual seeking to be included in  
10 the registry and submission of a request to be included in the registry in a manner determined by  
11 the central repository.

12 (b) An individual may voluntarily provide information to be considered for inclusion in  
13 the registry. If the information meets the requirements established under subsection (a), the  
14 individual's name and information must be entered in the registry. An individual improperly  
15 denied inclusion in the registry may seek relief under the [state administrative procedure act] as a  
16 contested case.

17 **SECTION 403. DOCUMENTATION.** Not later than [10] days after entering an  
18 individual in the mistaken identity prevention registry, the central repository shall issue the  
19 individual a paper or electronic document, which is prima facie evidence establishing that the  
20 individual is a victim or potential victim of identity theft or fraud, or that the individual is not the  
21 individual with a similar name or identifying characteristics who has a particular criminal record.

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

23 (a) The central repository may not disclose information from the mistaken identity

1 prevention registry except as provided in this [article].

2 (b) The central repository shall disclose information from the registry to a contributing  
3 justice agency to prevent the victimization of an individual on the registry at the request of the  
4 agency and when there is reason to believe that identifying information concerning a reportable  
5 event may be inaccurate or not associated with the correct individual.

6 **SECTION 405. MISTAKEN IDENTITY MATCH.**

7 (a) A contributing justice agency, during the process of identifying an individual who is  
8 the subject of a reportable event, shall submit to the central repository biometric identifying  
9 information provided by the individual for comparison with information in the mistaken identity  
10 prevention registry. If the information or data provided matches, wholly or in part, information  
11 in the registry, the central repository shall promptly notify the contributing justice agency. If  
12 there is a potential inaccuracy or fraud, the contributing justice agency shall use biometric  
13 identifying information and any other identification methodologies available to ensure the  
14 accurate identity of the subject of the reportable event before creating any criminal history record  
15 information.

16 (b) After receiving information from the registry that identifying information may be  
17 associated with another individual or when an individual produces a valid paper or electronic  
18 document issued by the central repository, a contributing justice agency shall use good faith to  
19 identify accurately the subject in question.

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

21 (a) A contributing justice agency may not use information from the mistaken identity  
22 prevention registry for a purpose other than to:

23 (1) identify accurately an individual about whom the agency has requested or

1 received registry information; or

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

4 (b) If information in the registry is accessed for a purpose other than expressly permitted  
5 under this [article]:

6 (1) the information and any information acquired as a result must be excluded  
7 from use in any criminal or civil matter; and

8 (2) the central repository shall notify the individual whose information was  
9 obtained improperly from the registry within [three] days after discovery of the improper access.

10 (c) The central repository shall ensure the security of all information in the registry. The  
11 protections must meet, and may exceed, those provided in Section 601.

## 12 **SECTION 407. REMOVAL OF INFORMATION FROM REGISTRY.**

13 (a) The central repository shall establish reasonable requirements for a request for  
14 removal of information from the mistaken identity prevention registry.

15 (b) Within [10] days after receiving a request from an individual for removal of  
16 information voluntarily submitted under Section 402(b) to the mistaken identity prevention  
17 registry, the central repository shall permanently remove the information from the registry.

### 18 **Discussion Note**

19 *Mistaken Identity Prevention Registry.* Identification mistakes can lead to inaccurate  
20 criminal history record information and erroneous arrests. *See, e.g.,* Stephanie Chen, *Officer,*  
21 *You've Got the Wrong Person*, cnn.com (Feb. 15, 2010), available at  
22 <http://www.cnn.com/2010/CRIME/02/15/colorado.mistaken.identity.arrest/> (“A mistaken  
23 identity arrest occurs almost every day, said policing experts and officials at the National  
24 Association of Criminal Defense Lawyers.”); Christopher N. Osher, *Wrongfully Jailed: Records*  
25 *Details More Than 500 Mistaken-Identity Arrests in Denver in Seven Years*,  
26 [www.denverpost.com](http://www.denverpost.com) (Jan. 7, 2012), available at  
27 [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/)  
28 [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 on a

1 Minnesota provision, is designed to proactively help individuals who are the victim of identity  
2 theft or believe that they may be, while also improving the accuracy of the criminal record  
3 system more broadly. It allows for these individuals to voluntarily provide information about  
4 themselves, including biometric identifying information, to a restricted registry which would be  
5 used to verify whether a particular person truly is the subject of a reportable event. There are  
6 also analogies to the Voluntary Appeals File (“VAF”) program associated with the FBI’s  
7 National Instant Criminal Background Check System. See [https://www.fbi.gov/about-](https://www.fbi.gov/about-us/cjis/nics)  
8 [us/cjis/nics](https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf) and [https://www.fbi.gov/about-us/cjis/nics/appeals/nics\\_vaf\\_brochure\\_eng.pdf](https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf).

9  
10 The act provides for the creation of a paper or electronic document for all individuals  
11 who may seek to be proactive about limiting damaging errors in their own criminal record. The  
12 act envisions that this paper or electronic document will help a person without a particular  
13 criminal record from suffering adverse consequences of being confused with the person who  
14 actually has that record. At the same time, we sought to balance these considerations with the  
15 burdens imposed on law enforcement during the identity verification process. It would be up to  
16 the individual state to determine requirements and procedures, but the Drafting Committee  
17 encourages states to consult with law enforcement and look to NLETS as a potential partner. See  
18 <http://www.nlets.org>.

## 19 20 **ARTICLE 5**

### 21 **SUBJECT’S RIGHT TO CORRECT CRIMINAL HISTORY RECORD INFORMATION**

22 **SECTION 501. RIGHT OF ACCESS AND REVIEW.** A subject or the subject’s  
23 lawyer or guardian may access and review the subject’s criminal history record information  
24 maintained by a repository or the central repository. The repository or central repository shall  
25 permit access not later than [three] days after submission of a proper request and, if appropriate,  
26 positive verification of identity and authorization.

27 **SECTION 502. CHALLENGE OF ACCURACY.** A subject or the subject’s lawyer  
28 or guardian may challenge and seek correction of criminal history record information by sending  
29 the repository or central repository maintaining the information a challenge specifying the part of  
30 the criminal history record information alleged to not be accurate criminal history record  
31 information and providing the correct information.

### 32 **SECTION 503. ACTION ON CHALLENGE.**

33 (a) Not later than [40] days after the date of receipt of a challenge under this [article] the

1 repository or central repository shall review and act on the challenge.

2 (b) If the repository or central repository does not act within the time provided in  
3 subsection (a), the challenge is deemed valid for non-criminal justice purposes and the repository  
4 or central repository shall, on request of the subject or the subject’s lawyer or guardian:

5 (1) disseminate a notice about the inaccuracy and the required correction to any  
6 person that received inaccurate criminal history record information for a non-criminal justice  
7 purpose within the previous five years; and

8 (2) provide one corrected copy of the accurate criminal history record information  
9 to the person making the request at no cost.

10 **SECTION 504. ADMINISTRATIVE REVIEW OF CHALLENGE.** If the repository  
11 or central repository denies a challenge under this [article], the subject or the subject’s lawyer or  
12 guardian may seek de novo review before [an administrative law judge]. Before the  
13 [administrative law judge], the repository or central repository has the burden of proving the  
14 accuracy of the challenged information by a preponderance of the evidence. The [administrative  
15 law judge’s] decision on the challenge must state all information that formed the basis for the  
16 decision, including the jurisdiction and docket number of any relevant court decision.

17 **SECTION 505. CORRECTION OF RECORDS.** If the repository or central  
18 repository or the [administrative law judge] determines a challenge under this [article] is valid,  
19 the repository or central repository shall, not later than [three] days after the challenge is  
20 determined valid:

21 (1) correct its own records;

22 (2) notify all persons that submitted or received inaccurate criminal history record  
23 information for criminal justice purposes of the inaccuracy and the required correction;

1 (3) on request of the subject or the subject’s lawyer or guardian:

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

5 (B) provide one corrected copy of the accurate criminal history record  
6 information to the person making the request at no cost.

7 **SECTION 506. JUDICIAL REVIEW.** If the [administrative law judge] determines a  
8 challenge under this [article] is not valid, the subject or the subject’s lawyer or guardian may, not  
9 later than [40] days after notification of the determination, bring an action de novo in the  
10 [appropriate trial court]. Before the [appropriate trial court], which must receive new evidence if  
11 offered, the subject or the subject’s lawyer or guardian has the burden of proving validity of the  
12 challenge by a preponderance of the evidence.

### 13 **Discussion Note**

14 *Access, review, challenge, correction and appeal.* This article provides individuals rights  
15 to access and challenge the criminal history record information about them for the explicit  
16 purpose of ensuring that all of the criminal history record information managed by the state,  
17 regardless of its source, is correct and up-to-date. The Drafting Committee concluded that most,  
18 if not all, jurisdictions already have procedures in place to addresses matters of this nature. The  
19 first review would be resolved internally. In response to an adverse ruling, the individual may  
20 demand a *de novo* appeal before a separate entity. Although the act uses brackets to account for  
21 the potential variation in state practice, the Drafting Committee supports the view that this *de*  
22 *novo* appeal be assigned to an administrative law judge. Upon losing this round, the individual  
23 may bring a complaint *de novo* in a trial court and will bear the burden of proof by  
24 preponderance of the evidence.

1 **ARTICLE 6**

2 **SYSTEMS SECURITY AND AUDITS**

3 **SECTION 601. SECURITY REQUIREMENTS FOR CONTRIBUTING JUSTICE**  
4 **AGENCIES AND CENTRAL REPOSITORY.**

5 (a) A contributing justice agency that collects, stores, or disseminates criminal history  
6 record information and the central repository shall, in compliance with regulations adopted by  
7 the [responsible agency or individual], ensure the confidentiality and security of the information  
8 by, at a minimum:

9 (1) establishing procedures to reasonably protect each location where information  
10 is maintained from theft, fire, sabotage, flood, wind, and other natural or man-made disasters;

11 (2) ensuring that only authorized personnel have access to the information;

12 (3) selecting, supervising, and training personnel authorized to have access to the  
13 information;

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

17 (5) maintaining an index of all data breaches, which shall be made available, upon  
18 request, to the [senior elected or appointed official responsible for governmental oversight, audit,  
19 or integrity] and the [responsible agency or individual or that individual's designee.]

20 **SECTION 602. MANDATORY REPRESENTATIVE AUDIT.**

21 (a) The [senior elected or appointed official responsible for governmental oversight,  
22 audit, or integrity] or that individual's designee shall ensure that an audit of the central repository  
23 and of a representative sample of all repositories is conducted at least every [two] years. The

1 audits may be done in conjunction with other audits.

2 (b) An audit under this section must assess the integrity of each computerized system and  
3 database and each physical location storing criminal history record information to ensure this  
4 [act] is implemented.

5 (c) As part of an audit under this section the [senior elected or appointed official  
6 responsible for governmental oversight, audit, or integrity] or that individual's designee shall  
7 ensure that the audit:

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

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

14 (3) assesses any data breach and response to any data breach in the central  
15 repository and the audited repositories;

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

19 (5) reviews the plans, policies, and procedures of at least five percent of all  
20 municipal police departments and ten percent of all [judicial districts] to ensure this [act] is  
21 implemented.

22 (d) The [senior elected or appointed official responsible for governmental oversight,  
23 audit, or integrity] or that individual's designee must be given access to the government records,



1 reports, listings, and information required to conduct an audit under this section. All officers and  
2 employees of the state or a political subdivision of the state with relevant information shall  
3 cooperate with the [senior elected or appointed official responsible for governmental oversight,  
4 audit, or integrity] or designee and provide information requested for an audit.

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

### 9 **Discussion Notes**

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

18  
19 *Senior elected or appointed official responsible for governmental oversight, audit, or*  
20 *integrity.* The act envisions that the senior elected or appointed official responsible for  
21 governmental oversight, audit, or integrity is an individual outside of the day-to-day criminal  
22 history record system be responsible for the audits. While the “responsible agency or individual”  
23 concept introduced *supra* can be filled in different ways and need not be the same at all points in  
24 this act, the Drafting Committee believes that the auditing role in this article deserves different  
25 language. Depending on existing state structures, potential appropriate individuals to fill this  
26 role might be the Attorney General, the Auditor General, the Ombudsperson, or the Inspector  
27 General. Of course, adopting states are free to designate others as they see fit.

## 28 **ARTICLE 7**

### 29 **ENFORCEMENT AND IMPLEMENTATION**

#### 30 **SECTION 701. SANCTIONS AND REMEDIES.**

31 (a) An individual or contributing justice agency that violates this [act] may, in addition to  
32 other remedies provided by law:  
33

1 (1) be denied access to specified criminal history record information for a time  
2 determined by the [responsible agency or individual];

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

4 (3) consistent with the law of this state other than this [act], if the violator is a  
5 government employee, be administratively disciplined by discharge, suspension, reduction in  
6 grade, transfer, or other formal action as the employer determines is appropriate.

7 (b) The [responsible agency or individual], central repository, or a subject may bring an  
8 action concerning an item of criminal history record information to compel compliance with this  
9 [act] or enjoin the central repository, a repository, a contributing justice agency, or another  
10 person from violating this [act]. The court may award costs of litigation and reasonable  
11 attorneys' fees to a subject who prevails in such an action.

12 (c) In addition to other available remedies, an individual injured by an intentional or  
13 reckless violation of this [act] or implementing regulations may bring an action for actual  
14 compensatory damages. If the court determines by a preponderance of the evidence that the  
15 individual was injured by an intentional or reckless violation of this [act] or implementing  
16 regulations, the court shall award the greater of actual compensatory damages or not less than  
17 \$500 for each violation, in addition to the costs of litigation and reasonable attorneys' fees.

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

19 (a) The [responsible agency or individual or that individual's designee] shall adopt  
20 regulations necessary to implement this [act]. At a minimum, the regulations must include a  
21 provision that:

22 (1) governs the security, accuracy, dissemination and review of, and individual  
23 access to, criminal history record information;

1 (2) governs the conduct of an audit under Section 602; [and]

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

4 [(4) sets a reasonable maximum fee for the cost of disseminating criminal history  
5 record information and adopts a policy providing at least one free annual access to criminal  
6 history record information for an indigent subject or that subject's lawyer or guardian seeking  
7 access to the subject's own information].

8 (b) The [responsible agency or individual or that individual's designee] may designate  
9 any governmental agency or sub-unit, other than the central repository, as a contributing justice  
10 agency.

11 (c) The [responsible agency or individual or that individual's designee] may investigate  
12 any matter relating to the administration and enforcement of this [act].

13 (d) The [responsible agency or individual or that individual's designee] may bring a civil  
14 action for a violation of this [act].

15 (e) The [responsible agency or individual or that individual's designee] may refer a  
16 suspected criminal violation discovered while or because of discharging a duty or authority  
17 under this [act] to the appropriate prosecutorial authorities for further review and action. This  
18 [act] does not limit the prosecutorial power of any individual or entity to enforce existing law.

### 19 **Discussion Notes**

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

