

DRAFT  
FOR DISCUSSION ONLY

# CRIMINAL RECORDS ACCURACY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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~~September 23~~—March 24, 2016 – 25, 2017 Drafting Committee Meeting

## *REDLINE COMPARISON DRAFT*

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~~September~~March 9, 20162017

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**CRIMINAL RECORDS ACCURACY ACT**

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1 **CRIMINAL RECORDS ACCURACY ACT**

2 **ARTICLE 1**

3 **GENERAL PROVISIONS**

4 **SECTION ~~1~~101. SHORT TITLE.** This [act] may be cited as the Criminal Records  
5 Accuracy Act.

6 **SECTION ~~2~~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 ~~\_\_\_\_\_~~ (2) “Audit” means the audit required by section 10 of this act.

15 (3) “Biometric identifying information” means unique attributes of an individual used for  
16 identification, including. The term includes, at a minimum, fingerprints, deoxyribonucleic acid  
17 (DNA), or other information.

18 ~~[Alternate (3) “Biometric identifying information” means fingerprints.]~~

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

22 (5) “Contributing justice agency” means a court, political subdivision or agent of a  
23 political subdivision, or governing entity of ~~this~~the state authorized to engage in the

1 administration of criminal justice. The term does not include the central repository. [The [state  
2 Supreme Court], or ~~any~~ judicial entity authorized to act on its behalf, may remove the courts of  
3 this state from this ~~definition to the extent constitutionally required~~ sub-section under its  
4 rulemaking authority.]

5 (6) “Criminal history record information” means information collected or maintained by  
6 a contributing justice agency or the central repository consisting of identifiable descriptions of a  
7 subject, ~~possibly including, but not limited to,~~ biometric identifying information, and notations of  
8 a reportable event. The term does not include ~~investigative~~ extraneous information.

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

12 (8) “Dissemination log” means a listing of ~~every~~ each request for, and dissemination of,  
13 criminal history record information, indicating the information requested, information  
14 disseminated, ~~the~~ person making the request and ~~their~~ its associated address, ~~the~~ person  
15 effectuating the dissemination, ~~the~~ date of the request and of the dissemination, and ~~the~~ purpose  
16 for which the information was requested or disseminated. The dissemination log is separate and  
17 distinct from extraneous information or the criminal history record ~~information or investigative~~  
18 information itself.

19 (9) “~~Investigative~~ Extraneous information” means information collected as a result of an  
20 inquiry, formal or informal, about the activities, habits, practices, ~~characteristics,~~ possessions,  
21 associations, or financial status of a person collected to anticipate, prevent, monitor, investigate,  
22 or prosecute criminal activity.

23 (10) “Person” means an individual, estate, business or nonprofit entity, public



1 corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
2 entity.

3 (11) “Reportable event” means any of the following occurrences relating to a felony [,  
4 gross misdemeanor,] [or] misdemeanor criminal ~~offenses,~~ [~~summary offenses that become~~  
5 ~~misdemeanors on a second arrest after conviction of the summary~~ offense],<sup>2</sup> but excluding [a  
6 noncriminal ~~offenses,~~] [~~other offense,~~] [summary offenses,] [a petty offense,] [~~offense,~~] a traffic  
7 violations violation [, or ~~offenses~~ an offense under the [Juvenile Court Act]]:

8 (A) ~~an~~ arrest and booking into a detention facility or ~~an~~ arrest resulting in ~~the~~  
9 collection of biometric identifying information;

10 (B) ~~a~~ disposition after an arrest without ~~the~~ initiation of a criminal proceeding;

11 (C) ~~an~~ initiation of a criminal proceeding;

12 (D) ~~a~~ disposition of a criminal proceeding, including ~~a~~ diversion, dismissal,  
13 indefinite postponement, acquittal, guilty plea, conviction, sentencing, and modification,  
14 reversal, or revocation of the disposition;

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

16 (F) ~~the~~ commencement or conclusion of noncustodial supervision;

17 (G) ~~the~~ completion of a sentence of any kind;

18 (H) ~~an~~ expungement, sealing,<sup>2</sup> or set-aside of criminal history record information;

19 (I) ~~a~~ grant of clemency, including pardon or commutation, or restoration of rights;

20 and

21 (J) ~~a~~ finding of mental incompetence by a court of this state at any stage of a  
22 criminal proceeding.

23 (12) “Repository” means an entity operated by a contributing justice agency which

1 collects, compiles, maintains, or disseminates criminal history record information.

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

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

7 **SECTION 103. APPLICABILITY.**

8 (1) This [act] applies to a person or subject about whom criminal history record  
9 information is maintained in this state, the central repository, and each contributing justice  
10 agency within this state that collects, maintains, modifies, disseminates, or receives criminal  
11 history record information.

12 (2) For purposes of this [act], a court docket, court file, and information contained in a  
13 docket or file, is a public record unless otherwise provided by law or otherwise ordered by a  
14 court of competent jurisdiction.

15 **Discussion Notes**

16 **Discussion Notes**

17  
18  
19 *Animating Principles.* This [act] is premised on ~~at least~~ three animating principles:

20 (1) Society at large has a vital interest in the accuracy of criminal history record  
21 information.

22 ~~(1) Society at large has a vital interest in the accuracy of criminal history record~~  
23 ~~information.~~

24 (2) Subjects ~~of criminal history record information~~ are entitled to have ~~that~~the  
25 information kept about them under this [act] be accurate. ~~criminal history record~~  
26 information.

27 (3) The government has an obligation to collect, store and maintain, and to  
28 disseminate accurate criminal history record information.

29  
30 *Defined terms, not substance.* The style rules of the Uniform Law Commission call for  
31 consolidation of definitions for terms that recur throughout an act into a single section early in  
32 the act. A definition for a term that appears in only one section should be located in that section.

1 Provisions that state a definition must be definitional only, with the substance pertaining to the  
2 term addressed separately.

3  
4 *Administration of criminal justice.* The definition of “administration of criminal justice”  
5 is largely based upon the language found in 28 C.F.R. §20.3.

6  
7 *Biometric identifying information.* The definition of “biometric identifying information”  
8 is designed to allow the act to adapt automatically as technology evolves. Right now,  
9 fingerprints are the gold standard for ensuring that a particular person is linked to arrest and  
10 disposition information. That may change and the definition should be able to accommodate  
11 such changes. ~~In this case, we~~The drafters consider DNA information to fall inside the scope of  
12 biometric identifying information, though this is not made explicit in the text.

13  
14 *Central repository.* The definition of “central repository” leaves to the adopting state the  
15 decision whether this is a police function, often through the state police, or an independent  
16 function. Given the central repository’s coordinating role, the definition does require the central  
17 repository to be operationally independent from contributing justice agencies or other  
18 repositories, although it can exist within the structure of an agency, such as the state police, that  
19 also contains a separate repository.

20  
21 ~~———— *Responsible agency/individual.* The note on contributing justice agency, *infra*, introduces  
22 the concept of a “responsible agency/individual.” This draft phrase is used in various places in  
23 the notes and in brackets in the text of the act itself. Based on numerous and extensive  
24 discussions in the Drafting Committee, we use it to mean the appropriate state agency or  
25 individual charged with certain responsibilities under this act. It is most commonly designed to  
26 signal a situation when a senior criminal justice policy maker — either in the form of a  
27 responsible agency or individual — needs to promulgate a policy or make a decision that is best  
28 served by honoring the principle of checks and balances. In some states, that will be the  
29 Attorney General or the Office of the Attorney General. In other states, it will be a different  
30 actor or entity. It need not be filled by the same person or agency each time it is used. That is a  
31 decision best left to the adopting state. The phrase “responsible agency/individual,” although  
32 perhaps cumbersome, should allow for each state to fill this position appropriately in light of its  
33 own constitutional structure and political landscape.~~

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 identifying  
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].

45  
46 *Courts.* Courts are included in the presumptive definition of a “contributing justice

1 agency” because their participation is crucial to the success of any effort to promote the accuracy  
2 of criminal records. ~~There are~~Concerns have been raised, however, ~~concerns~~ about separation of  
3 powers principles. The presumptive inclusion of courts in ~~Section 1(5)~~this definition means that,  
4 pursuant to ~~Section 5~~later provisions of the act, courts will be required to submit information  
5 about reportable events to the central repository as long as the state’s highest court, or its  
6 designee, does not opt out ~~on constitutional grounds~~. ~~An alternative would be to create an opt-in~~  
7 ~~approach through language along these lines: “Contributing justice agency” means a court, if so~~  
8 ~~directed by a rule promulgated by the [state Supreme Court], a political subdivision or agent of a~~  
9 ~~political subdivision, or governing entity of this state authorized to engage in the administration~~  
10 ~~of criminal justice. The term does not include the central repository.”~~. The Drafting Committee  
11 concluded that this provision allows those jurisdictions that are concerned to legislatively allow  
12 their courts to resolve the matter independently. The Drafting Committee, however, strongly  
13 urges those courts to remain within the ambit of the contributing justice agency definition to the  
14 extent constitutionally permissible. Including courts as a contributing justice agency will  
15 materially enhance the accuracy of criminal history record information.

16  
17 Responsible agency or individual. The note on contributing justice agency, supra,  
18 introduces the concept of a “responsible agency or individual.” This phrase is used in various  
19 places in the notes and in brackets in the text of the act itself. The Drafting Committee intends it  
20 to mean the appropriate state agency or individual charged with certain responsibilities under this  
21 act. It is most commonly designed to signal a situation when a senior criminal justice policy  
22 maker – either in the form of a responsible agency or individual – needs to promulgate a policy  
23 or make a decision that is best served by honoring the principle of checks-and-balances. In some  
24 states, that will be the Attorney General or the Office of the Attorney General. In other states, it  
25 will be a different actor or entity. It need not be filled by the same person or agency each time it  
26 is used. That is a decision best left to the adopting state. ~~Investigative~~The phrase “responsible  
27 agency or individual,” allows for each state to fill this position appropriately in light of its own  
28 constitutional structure and political landscape.

29  
30 Extraneous information. ~~At the suggestion of various ULC Commissioners, this~~This  
31 definition ~~combines the former definitions of investigative~~clarifies that information and  
32 intelligence may be held by a contributing justice agency that is not deemed to be criminal history  
33 record information, which were viewed as inappropriately overlapping.

34  
35 Reportable event. The definition of a “reportable event” is designed to capture all of the  
36 significant moments in the life of a criminal case that future actors in the criminal justice system  
37 would want to know about that defendant and that case. Though the nomenclature may vary by  
38 jurisdiction, these are almost universal in their presence and importance.

39  
40 Reportable Event – Disposition. ~~We~~The Drafting Committee attempted to provide an  
41 inclusive yet manageable definition of disposition. If more detail is desired, we could include  
42 the current definition found at 28 CFR § 20.3(i), which provides:

43 Disposition means information disclosing that criminal proceedings have been concluded  
44 and the nature of the termination, including information disclosing that the police have  
45 elected not to refer a matter to a prosecutor or that a prosecutor has elected not to  
46 commence criminal proceedings; or disclosing that proceedings have been indefinitely

1 postponed and the reason for such postponement. Dispositions shall include, but shall not  
2 be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental  
3 incompetence, case continued without finding, charge dismissed, charge dismissed due to  
4 insanity, charge dismissed due to mental incompetency, charge still pending due to  
5 insanity, charge still pending due to mental incompetency, guilty plea, nolle prosequi, no  
6 paper, nolo contendere plea, convicted, youthful offender determination, deceased,  
7 deferred disposition, dismissed-civil action, found insane, found mentally incompetent,  
8 pardoned, probation before conviction, sentence commuted, adjudication withheld,  
9 mistrial-defendant discharged, executive clemency, placed on probation, paroled, or  
10 released from correction supervision.

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

12  
13 ~~SECTION 3. APPLICABILITY. This [act] applies to persons within this state, to the~~  
14 ~~central repository, and to each contributing justice agency within [this state] that collects,~~  
15 ~~maintains, modifies, disseminates, or receives criminal history record information.~~

16 ~~SECTION 4. SCOPE. For purposes of this [act], a court docket, court file, and~~  
17 ~~information contained in a docket or file, is a public record unless otherwise ordered by a court~~  
18 ~~of competent jurisdiction, promulgated by court rule, or otherwise provided by law.~~

### 19 Discussion Notes

20 ~~Public records.~~ Section 4103(2) is designed to ensure that this act is not  
21 interpreted as limiting access to court records. It provides that information in court dockets and  
22 files not under seal, etc. remain public records to the extent provided by existing law. It does so  
23 without relieving courts of the obligation to provide information to the central repository as a  
24 contributing justice agency ~~under Section 5,~~ although the state's highest court, or its designee,  
25 may do so by removing the state courts from the definition of contributing justice agency ~~to the~~  
26 ~~extent constitutionally required~~ as set forth in Section ~~4102~~(5).

### 27 ~~SECTION 5. ARTICLE 2~~

## 28 DUTIES AND AUTHORITY OF CONTRIBUTING JUSTICE AGENCIES

### 29 Alternative A

## 30 ~~AGENCY FOR~~ SECTION 201. DISSEMINATION OF CRIMINAL HISTORY 31 RECORD INFORMATION.

32  
33 ~~(a)~~ A contributing justice agency may disseminate criminal history record information

1 only as provided in this [act] or ~~as provided by the~~ law of [this state] other than this [act].

2 ~~(b) The following provisions govern the collection of biometric identifying information:~~

3 ~~—————(1~~ **SECTION 202. COLLECTION OF BIOMETRIC IDENTIFYING**  
4 **INFORMATION.**

5 ~~—————(a)~~ (a) A contributing justice agency shall collect biometric identifying information in the  
6 manner and form directed by the central repository from an individual ~~arrested, as set forth in~~  
7 ~~Section 2(11)(a), by the agency for felony or misdemeanor criminal offenses, [summary offenses~~  
8 ~~that become misdemeanors on a second arrest after conviction of the summary offense], but~~  
9 ~~excluding [noncriminal offenses,] [other summary offenses,] [petty offenses,] traffic violations,~~  
10 ~~or offenses under the [Juvenile Court Act], the agency arrested under circumstances that make it a~~  
11 ~~reportable event~~ and forward the information to the central repository, in the manner and form  
12 directed by the central repository, not later than ~~3-business~~[three] days after the arrest.

13 ~~—————(2(b))~~ (b) If an individual charged by complaint, information, or indictment ~~with~~  
14 ~~felony or misdemeanor criminal offenses, [summary offenses~~under circumstances that ~~become~~  
15 ~~misdemeanors on~~make it a ~~second arrest after conviction of the summary offense], but excluding~~  
16 ~~[noncriminal offenses,] [other summary offenses,] [petty offenses,] traffic violations, or offenses~~  
17 ~~under the [Juvenile Court Act]~~reportable event is not arrested and appears instead ~~appears~~ in  
18 court pursuant to summons, the individual shall report to the [local municipal police department]  
19 or [designated contributing justice agency] not later than ~~ten-business~~[10] days after the court  
20 appearance and permit ~~that~~the [department] or [agency] to collect biometric identifying  
21 information in the manner and form directed by the central repository. ~~This~~The obligation under  
22 this subsection may be enforced by court order. The [department] or [agency] shall forward the  
23 information to the central repository, in the manner and form directed by the central repository,

1 not later than ~~3~~business~~[three]~~ days after collection.

2           ~~—(3(c))~~ During an investigation, adjudication, or correctional process, the head of  
3 each contributing justice agency responsible for ~~the detection, apprehension, detention, pretrial~~  
4 ~~release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation~~  
5 ~~of a reportable event relating to~~ an accused person ~~or~~, criminal offender ~~for felony or~~  
6 ~~misdemeanor criminal offenses, [summary offenses that become misdemeanors on a second~~  
7 ~~arrest after conviction of the summary offense], but excluding [noncriminal offenses,] [other~~  
8 ~~summary offenses,] [petty offenses], traffic violations, or offenses under the [Juvenile Court~~  
9 ~~Act], or subject shall designate an official to promptly determine whether biometric identifying  
10 information has previously been collected for ~~that~~the individual in the manner and form directed  
11 by the central repository and forwarded to the central repository in the manner and form directed  
12 by the central repository.~~

13           ~~—(4(d))~~ If the head of ~~a~~each contributing justice agency responsible for ~~the~~  
14 ~~detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication,~~  
15 ~~correctional supervision, or rehabilitation of a reportable event relating to~~ an accused person ~~or~~,  
16 criminal offender ~~for felony or misdemeanor criminal offenses, [summary offenses that become~~  
17 ~~misdemeanors on a second arrest after conviction of the summary offense], but excluding~~  
18 ~~[noncriminal offenses,] [other summary offenses,] [petty offenses], traffic violations, or offenses~~  
19 ~~under the [Juvenile Court Act], or subject determines, pursuant to paragraph 3 above, under~~  
20 subsection (c) that biometric identifying information has not been collected and forwarded to the  
21 central repository, the ~~individual~~accused person, criminal offender, or subject shall report to the  
22 [local municipal police department] or [designated contributing justice agency] not later than ~~ten~~  
23 business~~[10]~~ days after that determination and permit ~~that~~the [department] or [agency] to collect

1 biometric identifying information in the manner and form directed by the central repository.  
2 ~~This~~The obligation under this subsection may be enforced by court order. The [department] or  
3 [agency] shall forward the information to the central repository, in the manner and form directed  
4 by the central repository, not later than ~~3 business~~[three] days after collection.

5 ~~(e)~~**SECTION 203. COLLECTION AND SUBMISSION OF INFORMATION TO**  
6 **CENTRAL REPOSITORY.**

7 (a) A contributing justice agency shall collect, store, and maintain, in the manner and  
8 form directed by the central repository, information on a reportable event~~event~~ with which the  
9 contributing justice agency is involved. The agency shall submit the information, in the manner  
10 and form directed by the central repository, to the central repository not later than ~~3~~  
11 ~~business~~[three] days after the reportable event.

12 ~~(d)~~Ab In compliance with regulations adopted by the central repository, a contributing  
13 justice agency shall maintain ~~complete and~~ accurate criminal history record information ~~and~~  
14 ~~report the information as required by this [act] or law of this state other than this [act]. An~~  
15 ~~agency shall establish effective procedures, in compliance with regulations adopted by the~~  
16 ~~[responsible agency/individual], to create and store complete and accurate criminal history record~~  
17 ~~information.~~

18 ~~(e)~~ **SECTION 204. CORRECTION OF INACCURATE INFORMATION.**

19 Regardless of the manner of ~~discovering inaccurate, including incomplete, criminal history~~  
20 ~~record information or the~~discovery or identity of the person who discovered it, once a  
21 contributing justice agency is aware it possesses inaccurate criminal history record information,  
22 the agency shall, not later than ~~ten business~~[10] days after discovery, ~~the agency shall:~~

23 (1) correct its own records; ~~and~~



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

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

4 ~~\_\_\_\_\_~~ (A) disseminate a notice about the inaccuracy and the required correction to ~~the~~  
5 ~~central repository and all other persons~~ any person that received ~~the~~ inaccurate criminal history  
6 record information as reflected in its dissemination logs for a non-criminal justice purpose  
7 within the previous five years; and

8 ~~\_\_\_\_\_~~ ~~(f)~~ (B) provide one corrected copy of the accurate criminal history record  
9 information to the person making the request at no cost.

#### 10 **SECTION 205. DISSEMINATION LOG.**

11 ~~\_\_\_\_\_~~ (a) A contributing justice agency may disseminate criminal history record information to  
12 another contributing justice agency on request in connection with the requesting agency's duties.

13 ~~\_\_\_\_\_~~ ~~(g) A contributing justice agency shall disseminate criminal history record information to~~  
14 ~~the subject of the information on request of the subject or the subject's designee, after positive~~  
15 ~~verification of identity and authorization, if appropriate. Positive identification may include~~  
16 ~~biometric identifying information pursuant to implementing regulations under this [act]. If~~  
17 ~~criminal history record information sought by the subject or the subject's designee is maintained~~  
18 ~~by an agency in a record that also contains investigative information or other nonpublic~~  
19 ~~information, the agency may remove that information and disseminate only the criminal history~~  
20 ~~record information. If the agency identifies no criminal history record information concerning~~  
21 ~~the subject, the agency shall indicate to the subject or the subject's designee that no criminal~~  
22 ~~history record information concerning the subject exists and the date of the search. The agency~~  
23 ~~shall respond by disseminating the information or indicating that no such information exists not~~

1 ~~later than ten business days after the request is properly submitted.~~

2 ~~(h~~ (b) A contributing justice agency shall create and maintain a dissemination log, in the  
3 manner and form directed by the [responsible agency/or individual~~],~~ listing disseminations of  
4 criminal history record information. ~~All disseminations shall~~ Each dissemination must be entered  
5 into the dissemination log not later than ~~ten business~~ [10] days after ~~the~~ criminal history record  
6 information is disseminated. The agency shall maintain entries in ~~a dissemination~~ the log for as  
7 long as it maintains the associated criminal history record information.

## 8 Alternative B

### 9 Discussion Notes

10 ~~Mandatory duty to collect biometric identifying information. Section 5(b) is vital to the~~  
11 ~~effectiveness of the act. Biometric identifying information, in the form of fingerprints, is~~  
12 ~~currently the gold standard for positive identification for law enforcement purposes. If this~~  
13 ~~information is not used to link an arrest to a charge to a disposition, significant inaccuracies may~~  
14 ~~and do result. In most cases, close matches using name and date of birth are the alternative. This~~  
15 ~~is a clear and common source of inaccuracies—both in the failure to link related reportable~~  
16 ~~events and in the misidentification of the subject. Section 5(b) puts the primary responsibility for~~  
17 ~~this task on the arresting contributing justice agency, which will typically be a police department.~~  
18 ~~In our preliminary explorations, the lack of collection on the “front line” of processing was a~~  
19 ~~significant impediment to the accuracy of criminal records. In some jurisdictions, this appears to~~  
20 ~~be unrelated to funding for equipment, and instead turns on the enforcement of mandatory~~  
21 ~~collection procedures. See, e.g., Jeffrey Benzing, *Fingerprint Hearing: Best and Worst Pa-*~~  
22 ~~*Counties Have Same Equipment*, available at~~  
23 ~~[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~~  
24 ~~23, 2014).~~

25  
26 ~~Duty of other contributing justice agencies. If the arresting agency fails to obtain~~  
27 ~~fingerprints, the act provides a backstop by requiring other, typically chronologically~~  
28 ~~downstream, actors in the contributing justice system to fingerprint the subject. We believe that~~  
29 ~~this “belt and suspenders approach” is warranted given the wide variation of fingerprint~~  
30 ~~compliance rates between and within states. For example, we were told that in one large state,~~  
31 ~~there are tens of thousands—if not hundreds of thousands—of essentially orphaned files in the~~  
32 ~~central repository because disposition information cannot be definitively linked by fingerprint to~~  
33 ~~a subject. Furthermore, in that state, the state prison receiving center felt the need to install a~~  
34 ~~Livescan machine (a common biometric data collection station) because of the number of~~  
35 ~~sentenced offenders arriving without fingerprints in the system. At the same time, this~~  
36 ~~jurisdiction has a nearly uniform collection provision for fingerprint information, which~~  
37 ~~highlights the need for multiple opportunities to obtain these key data.~~

1  
2 ~~*Duty to report reportable events.* Section 5(e) requires contributing justice agencies to~~  
3 ~~submit information on reportable events—such as arrests, charges, convictions, sentences,~~  
4 ~~commitments, etc.—with which they were involved to the central repository. If followed, this~~  
5 ~~mandate should go a long way towards solving the problem of missing dispositions. We again~~  
6 ~~took a “belt and suspenders approach” by putting this responsibility broadly on multiple actors,~~  
7 ~~even if that means some duplicative reporting to the central repository. Given the large and~~  
8 ~~growing use of electronic records, this should not be burdensome on the contributing justice~~  
9 ~~agencies and may help to reduce inaccuracies.~~

10  
11 ~~*Duty to correct inaccuracies.* Section 5(e), which has a corollary for the central~~  
12 ~~repository as well, requires a contributing justice agency that learns of an inaccuracy—regardless~~  
13 ~~of how it learns of it—to fix it in its own records and to pass along the corrected information to~~  
14 ~~whomever it has provided the inaccurate information. That latter process is facilitated by the~~  
15 ~~maintenance of dissemination logs. Thoroughly tracking the information will allow for more~~  
16 ~~effective correction, as well as providing essential process data for the audit, discussed in Section~~  
17 ~~10.~~

18  
19 ~~*Authority to disseminate and duty to log.* These provisions allow contributing justice~~  
20 ~~agencies to disseminate criminal history record information to other contributing justice agencies~~  
21 ~~and to the subject of the information upon request, and require those agencies to keep track of~~  
22 ~~those disseminations. The central repository, as part of its duties, will set reasonable standards~~  
23 ~~and procedures for this process, ensuring a degree of uniformity in the requesting and~~  
24 ~~dissemination processes.~~

25  
26 ~~These are some of the several provisions that call for implementing regulations. See~~  
27 ~~Section 1, Discussion Notes. The act the idea of checks and balances and thus anticipates some~~  
28 ~~of these regulations, such as those governing the nature of the dissemination logs, to be~~  
29 ~~controlled by an entity or individual outside of the day-to-day operation of the criminal history~~  
30 ~~system. The central repository is a perfectly appropriate entity to create general operational~~  
31 ~~rules, as in Section 5(b)(1), and no one is impugning the integrity of the individuals within the~~  
32 ~~criminal history system. This is simply a structural point. As noted earlier, the act has provided~~  
33 ~~a generic description of a “responsible agency/individual” in order to accommodate the disparate~~  
34 ~~state practices. Ideally, in the states that use the Attorney General position as the chief law~~  
35 ~~enforcement officer and “minister of justice,” the Attorney General is best suited to fulfill these~~  
36 ~~duties.~~

37  
38 ~~*Fees.* Section 5(g) does not address the cost, if any, the state may charge subjects to obtain~~  
39 ~~criminal history record information about themselves. See also Section 6(f). One justification~~  
40 ~~for that choice is the fact that some states may have existing records laws that govern this~~  
41 ~~situation. There was support on the Drafting Committee for the idea that the government should~~  
42 ~~provide this information at no cost to subjects. If, however, the state does charge a fee, there was~~  
43 ~~support on the Drafting Committee for language requiring the cost to be reasonable and~~  
44 ~~consistent with regulations adopted by the [responsible agency/individual] that include a no-cost~~  
45 ~~option for indigent subjects. See Section 12(a)(4).~~

1 ~~———— [Alternative Section 5 with parenthetical commentary from Judge Reigle]~~

2 ~~SECTION 5. DUTIES AND AUTHORITY~~ 201. DISSEMINATION OF  
3 ~~CONTRIBUTING JUSTICE AGENCY FOR~~ **CRIMINAL HISTORY RECORD**  
4 **INFORMATION.**

5 ~~———— (a) A contributing justice agency may disseminate criminal history record information~~  
6 ~~only as provided in this [act]. (This section is unchanged.)~~ or by law of this state other than this  
7 [act].

8 ~~———— (b) The following provisions govern the collection of fingerprints and other biometric~~  
9 ~~identifying information: (this phrase is unchanged.)~~

10 ~~———— (1~~ SECTION 202. COLLECTION OF BIOMETRIC IDENTIFYING  
11 INFORMATION.

12 ———— (a) A contributing justice agency, that is an arresting police agency, shall collect  
13 biometric identifying information, in the manner and form directed by law or the director of the  
14 central repository, from an individual arrested by the agency ~~for a felony or misdemeanor [, or~~  
15 ~~summary offense that becomes a misdemeanor on a second arrest after conviction of the~~  
16 ~~summary offense,]~~ under circumstances that make it a reportable event and forward the  
17 information to the central repository, in the manner and form directed by the director of the  
18 central repository, not later than [48] hours after the arrest. ~~(bold language added).~~

19 ~~———— (2(b) A contributing justice agency, that is a court, in which an individual is~~  
20 ~~charged by complaint, information, or indictment ~~with a felony or misdemeanor [, or summary~~  
21 ~~offense~~ under circumstances that ~~becomes a misdemeanor on a second arrest after conviction of~~  
22 ~~the summary offense,]~~ make it a reportable event shall order the collection of biometric  
23 identifying information, in the following manner: ~~(bold language added.)~~~~

1                   ~~——(A) if an~~(1) If the individual is not arrested, is not in custody, and appears  
2 instead in court pursuant to summons, and the court is informed that biometric identifying  
3 information was not collected from the individual~~;~~; the court shall order the ~~defendant~~individual  
4 to report to the [local municipal police department or [designated contributing justice agency]  
5 not later than ~~seven business~~[10] days after the order and permit the police to collect biometric  
6 identifying information in the manner and form directed by the director of the central repository.  
7 The [department] or [agency] shall forward the information to the central repository, in the  
8 manner and form directed by the central repository, not later than [48] hours after collection.

9                   ~~——(B) if~~(2) If an individual who is arrested or is in custody appears in court,  
10 and the court is informed that biometric identifying information was not collected from the  
11 individual~~;~~; the court shall order the appropriate contributing justice agency to collect the  
12 biometric identifying information. The [department] or [agency] shall forward the information  
13 to the central repository, in the manner and form directed by the central repository, not later than  
14 [48] hours after collection. *(This is the duty for courts—I broke section (2) into A and B to*  
15 *account for the scenarios that may occur.)*

16                   ~~——(3)~~(c) A contributing justice agency~~;~~; that is a prosecuting agency  
17 ~~engaging~~engaged in an investigation, arrest, prosecution, adjudication, sentencing, supervision,  
18 or custody of ~~a person~~an individual for a ~~felony or misdemeanor~~ ~~[, or summary offense that~~  
19 ~~becomes a misdemeanor on a second arrest after conviction of the summary offense.]~~reportable  
20 event shall determine whether biometric identifying information has been collected for the  
21 ~~defendant~~individual and collect or cause to be collected~~;~~; previously uncollected biometric  
22 identifying information in the manner and form directed by the director of the central repository.  
23 *(This is the duty for prosecutors.)*

1           ~~(4(d))~~ A contributing justice agency, that is a correctional agency engaging in an  
2 arrest, prosecution, adjudication, sentencing, supervision, or custody of ~~a person~~ an individual for  
3 a ~~felony or misdemeanor~~ ~~[-, or summary offense that becomes a misdemeanor on a second arrest~~  
4 ~~after conviction of the summary offense.]~~ reportable event shall determine whether biometric  
5 identifying information has previously been collected for the ~~defendant~~ individual within [72]  
6 hours of taking the ~~defendant~~ individual into custody and collect or cause to be collected,  
7 previously uncollected biometric identifying information in the manner and form directed by the  
8 director of the central repository and forward the information to the central repository not later  
9 than [48] hours after its collection. ~~(This is the duty for corrections but I beefed it up a bit~~  
10 ~~thinking that it might be the place for the most mischief. I bracketed the times for more~~  
11 ~~discussion.)~~

12           ~~(e) The following provisions govern the collection and dissemination of reportable~~  
13 ~~events:~~

14           ~~(1~~ **SECTION 203. COLLECTION OF INFORMATION ON**  
15 **REPORTABLE EVENT.**

16           ~~(a)~~ A contributing justice agency, that is an arresting police agency or correctional  
17 agency, shall collect, store, and maintain, in the manner and form directed by the director of the  
18 central repository, information on a reportable ~~event~~ event with which the contributing justice  
19 agency is involved. The agency shall submit the information, in the form and manner directed  
20 by the director of the central repository, to the central repository not later than [72] hours after  
21 the reportable event. ~~(For the police & prisons—I left the language the same as in the original~~  
22 ~~(e)).~~

23           ~~(2(b))~~ A contributing justice agency, that is a court or prosecuting agency, shall:

1 *(Here is where I created the 3 alternatives to account for separation of powers & resource*  
2 *problem arguments.)*

3 ~~\_\_\_\_\_ (A(1) collect, store, and maintain, in the manner and form directed by the~~  
4 ~~director of the central repository, information on a reportable event with which the~~  
5 ~~contributing justice agency is involved; and~~

6 ~~Alternative A~~

7 ~~\_\_\_\_\_ (B) \_\_\_\_\_ (2) maintain the information on a reportable event~~  
8 ~~and submit the information on a reportable event in the form and manner directed by the~~  
9 ~~director of the central repository, to the central repository not later than [72] hours after the~~  
10 ~~reportable event.~~

11 ~~Alternative B~~

12 ~~\_\_\_\_\_ (B) maintain the information on reportable events and make the~~  
13 ~~information on reportable events available for retrieval and collection by the director of~~  
14 ~~the central repository, to the central repository not later than 72 hours after the reportable~~  
15 ~~event.~~

16 ~~Alternative C~~

17 ~~\_\_\_\_\_ (B) maintain the information on reportable events.~~

18 ~~\_\_\_\_\_ (d) SECTION 204. MAINTENANCE OF ACCURATE CRIMINAL HISTORY~~  
19 ~~RECORD INFORMATION.~~

20 ~~\_\_\_\_\_ (a) A contributing justice agency shall maintain complete and accurate criminal history~~  
21 ~~record information and report the information as required by this [act] or law of this state other~~  
22 ~~than this [act]. The ~~Director~~director of the central repository shall establish effective~~  
23 ~~procedures, in compliance with regulations adopted by the [~~Board~~board], to create and store~~

1 complete and accurate criminal history record information. *(bold language added and I used*  
2 *“Board” as a replacement device for “senior elected or appointed executive branch office*  
3 *responsible for criminal justice policy ..)*

4 ~~End of Alternatives~~

5 (e**b**) An agent of a contributing justice agency ~~who~~that discovers inaccurate criminal  
6 history record information shall within ~~15~~[10] days ~~of~~after discovery:

7 (1) correct its own records;

8 ~~\_\_\_\_\_ (2) \_\_\_\_\_ (2) notify all persons that submitted or received inaccurate criminal~~  
9 ~~history record information for criminal justice purposes of the inaccuracy and the required~~  
10 ~~correction;~~

11 ~~\_\_\_\_\_ (3) on request of the subject or the subject’s lawyer or guardian:~~

12 ~~\_\_\_\_\_ (A) disseminate a notice about the inaccuracy and the required correction~~  
13 ~~to the central repository and all other personsany person that received ~~the~~ inaccurate criminal~~  
14 ~~history record information ~~as reflected in its dissemination logs. (Just bold language added.)~~for a~~  
15 ~~non-criminal justice purpose within the previous five years; and~~

16 ~~\_\_\_\_\_ (f) \_\_\_\_\_ (B) provide one corrected copy of the accurate criminal history~~  
17 ~~record information to the person making the request at no cost.~~

18 ~~**SECTION 205. DISSEMINATION LOG.**~~

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

21 ~~\_\_\_\_\_ (b) A contributing justice agency shall create and maintain a dissemination log listing~~  
22 ~~disseminations of criminal history record information to another contributing justice agency.~~

23 *(This is the same)*



1 ~~\_\_\_\_\_ (g) A contributing justice agency shall disseminate criminal history record information to~~  
2 ~~the subject of the information on request of the subject or the subject's designee, **subject to the**~~  
3 ~~**following provisions:**~~

4 ~~\_\_\_\_\_ (1), in the ~~contributing justice agency may promulgate rules to determine the~~  
5 ~~identity of the subject and the subject's designee, which may include a requirement that~~  
6 ~~biometric information be collected from the subject;~~~~

7 ~~\_\_\_\_\_ (2) the cost for the dissemination of the criminal history information must be~~  
8 ~~reasonable manner and there must be a waiver provision for indigent subjects;~~

9 ~~\_\_\_\_\_ (3) form directed by the ~~dissemination must be made within a reasonable time~~  
10 ~~of the request;~~~~

11 ~~\_\_\_\_\_ (4) the contributing justice [responsible] agency ~~may redact investigation~~  
12 ~~information, intelligence information or other nonpublic information from the~~  
13 ~~dissemination;~~~~

14 ~~\_\_\_\_\_ (5) if the agency identifies no criminal history information record~~  
15 ~~information, it shall indicate to the subject or the subject's designee that no criminal~~  
16 ~~history records were identified and the date of the search. *(I left this section substantially*  
17 *unchanged in what was included but added some other things that were suggested in the*  
18 *discussion and broke it into numbered sections to make it easier to follow).*~~

19 ~~\_\_\_\_\_ (h) A contributing justice agency shall create and maintain a dissemination log individual]~~  
20 ~~listing disseminations of criminal history record information to a subject. All disseminations~~  
21 ~~shall be. Each dissemination must be entered into the ~~relevant~~ dissemination log not later than~~  
22 ~~[10-business] days after the criminal history record information is disseminated. The agency~~  
23 ~~shall maintain entries in a dissemination the log for at least one year. *(This section is the same) as*~~

1 long as it maintains the associated criminal history record information.

## 2 End of Alternatives

### 3 Discussion Notes

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

19  
20 Duty of Individuals. The act puts the obligation on individuals to provide biometric  
21 information and makes that obligation enforceable by court order. The Drafting Committee  
22 believes that this approach may avoid potential separation-of-powers issues that could have  
23 arisen in some jurisdictions if the act directed courts to obtain this information directly. The  
24 Drafting Committee encourages judges in these situations to make providing biometric  
25 information a condition of any pretrial release.

26  
27 Duty of other contributing justice agencies. If the arresting agency fails to obtain  
28 fingerprints, the act provides a backstop by requiring other, typically chronologically  
29 downstream, actors in the contributing justice system to fingerprint the subject. The Drafting  
30 Committee believes that this “belt-and-suspenders approach” is warranted given the wide  
31 variation of fingerprint compliance rates between and within states. For example, the Drafting  
32 Committee learned that in one large state, there are tens of thousands – if not hundreds of  
33 thousands – of essentially orphaned files in the central repository because disposition  
34 information cannot be definitively linked by fingerprint to a subject. Furthermore, in that state,  
35 the state prison receiving center felt the need to install a Livescan machine (a common biometric  
36 data collection station) because of the number of sentenced offenders arriving without  
37 fingerprints in the system.

38 Duty to report reportable events. The act requires contributing justice agencies to submit  
39 information on reportable events – such as arrests, charges, convictions, sentences,  
40 commitments, etc. – with which they were involved to the central repository. If followed, this  
41 mandate should go a long way towards solving the problem of missing dispositions. The act  
42 takes a “belt-and-suspenders approach” by putting this responsibility broadly on multiple actors,  
43 even if that means some duplicative reporting to the central repository. Given the large and

1 growing use of electronic records, this should not be burdensome on the contributing justice  
2 agencies and may help to reduce inaccuracies.

3  
4 *Duty to correct.* The act requires a contributing justice agency (and in a later provision  
5 the central repository) that learns of inaccurate criminal history record information – regardless  
6 of how it learns of it – to fix it in its own records and to pass along the corrected information to  
7 whomever it has provided the inaccurate information. That latter process is facilitated by the  
8 maintenance of dissemination logs. Thoroughly tracking the information will allow for more  
9 effective correction, as well as providing essential process data for the audit, discussed *infra.*

10  
11 *Authority to disseminate and duty to log.* The act allows contributing justice agencies to  
12 disseminate criminal history record information to other contributing justice agencies and to the  
13 subject of the information upon request, and requires those agencies to keep track of those  
14 disseminations. The central repository, as part of its duties, will set reasonable standards and  
15 procedures for this process, ensuring a degree of uniformity in the requesting and dissemination  
16 processes.

17  
18 These are some of the several provisions that call for implementing regulations. The act  
19 reflects the idea of checks-and-balances and thus anticipates some of these regulations, such as  
20 those governing the nature of the dissemination logs, to be controlled by an entity or individual  
21 outside of the day-to-day operation of the criminal history system. The central repository is a  
22 perfectly appropriate entity to create general operational rules and no one is impugning the  
23 integrity of the individuals within the criminal history system. This is simply a structural point.  
24 As noted earlier, the act has provided a generic concept of a “responsible agency or individual”  
25 in order to accommodate disparate state practices. Ideally, in the states that use the Attorney  
26 General position as the chief law enforcement officer and “minister of justice,” the Attorney  
27 General is best suited to fulfill these duties.

### 28 ARTICLE 3

#### 29 DUTIES AND AUTHORITY OF CENTRAL REPOSITORY

#### 30 End of Alternative Section 5

#### 31 SECTION 6. ~~DUTIES AND AUTHORITY OF CENTRAL REPOSITORY~~ 301.

#### 32 ROLE OF CENTRAL REPOSITORY.

33  
34 (a) The central repository shall collect, store, and maintain the criminal history record  
35 information reported to it under this [act]. ~~The central repository may only disseminate criminal~~  
36 ~~history record information as provided in this [act].~~

37 ~~—(b) The central repository may request, access, and disseminate records relating to an~~

1 ~~offense committed outside of this state. The records may include federal summary criminal~~  
2 ~~history information provided by the United States Department of Justice and other information~~  
3 ~~that would qualify as criminal history record information if submitted by a contributing justice~~  
4 ~~agency. For purposes of dissemination, the central repository shall treat information from outside~~  
5 ~~of this state as if it were from this state.~~

6 (b) In compliance with regulations adopted by the [responsible agency or individual], the  
7 central repository shall maintain accurate criminal history record information.

8 (c) The central repository shall facilitate the creation and maintenance of ~~complete and~~  
9 accurate criminal history record information by establishing practices and procedures necessary  
10 to as efficiently and automatically as possible resolve conflicts and discover missing data on the  
11 same incident or subject.

12 (d) The central repository ~~shall~~may only disseminate criminal history record information  
13 as

14 ~~—————(1) disseminate criminal history record information to a contributing justice~~  
15 ~~agency on request by the agency for information sought in connection with the agency's duties;—~~

16 ~~(2) disseminate criminal history record information to the Governor, or the~~  
17 ~~governor's designee, to aid in a decision concerning exercise of the power of [pardon, reprieve,~~  
18 ~~commutation or reduction of sentence, executive clemency, or] interstate extradition or rendition;~~

19 ~~—————(3) disseminate criminal history record information as constitutionally required or~~  
20 ~~as directed permitted by this [act] or by a law of [this [state] or the United States;~~

21 ~~—————(4) disseminate criminal history record information to a contributing justice~~  
22 ~~agency of another state on request for the information by the agency in connection with the~~  
23 ~~agency's duties; and~~

~~(5) disseminate criminal history record information to the Federal Bureau of Investigation and United States Department of Justice as part of the state's participation in the Interstate Identification Index System, National Fingerprint File, National Identification Index, National Instant Criminal Background Check System Index, and related programs.~~

~~(e) When directed by a law of the state other than this [act] or of the United States, the~~

**SECTION 302. DISSEMINATION OF INFORMATION TO PERSON OTHER THAN SUBJECT.** ~~The~~ central repository shall ~~disseminate criminal history record information it maintains~~ comply with the following procedures when disseminating information for a non-criminal justice purpose to a person ~~for employment, licensing, or certification purposes, other than the~~ subject ~~to the following rules:~~

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

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

(B) the report or summary to be disseminated.

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

(A) ~~eighteen~~ 18 months have elapsed after the date of arrest;

1 (B) no conviction has occurred or can be identified; and

2 (C) no proceedings are pending that may result in a conviction.

3 (3) Not later than ~~3 business~~[three] days after ~~the central repository it~~ disseminates the  
4 information, ~~it the central repository~~ shall send the same information to the subject ~~in the form~~  
5 ~~and manner selected by the subject and provided to the requesting entity.~~

6 ~~—(f)~~ **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 ~~designee~~lawyer or guardian,  
9 after positive verification of identity and authorization, if appropriate. ~~Positive identification~~  
10 ~~may include biometric identifying information pursuant to implementing regulations under this~~  
11 ~~[act]. If criminal history record information sought by the subject or the subject's designee is~~  
12 ~~maintained by the central repository in a record that also contains investigative information or~~  
13 ~~other nonpublic information, the central repository may remove that information and disseminate~~  
14 ~~only the criminal history record information.~~

15 ~~\_\_\_\_\_~~ (b) If the central repository identifies no criminal history record information, it shall  
16 indicate to the subject or the subject's ~~designee~~lawyer or guardian that no ~~criminal history~~  
17 ~~records~~such information concerning the subject exists and the date of ~~the~~its search.

18 ~~\_\_\_\_\_~~ (c) The central repository shall ~~respond by disseminating~~disseminate the criminal history  
19 record information or ~~indicating~~indicate that no such information exists not later than [10  
20 business] days after the request is properly submitted.

21 ~~(g)~~ **SECTION 304. DISSEMINATION LOG.** The central repository shall create ~~and,~~  
22 maintain, and store a dissemination log, ~~in the manner and form directed by the [responsible~~  
23 ~~agency/individual], listing containing a list of all~~ disseminations of criminal history record

1 information. All disseminations shall be entered into the ~~dissemination~~ log not later than ~~ten~~  
2 ~~business~~[10] days after criminal history record information is disseminated. The central  
3 repository shall maintain ~~entries~~an entry in ~~at~~the dissemination log ~~for~~ as long as it maintains the  
4 associated criminal history record information.

5 ~~(h) Not later than 10 business days after discovery of inaccurate, including incomplete, criminal~~  
6 ~~history record information, and regardless~~ SECTION 305. CORRECTION OF  
7 INACCURATE INFORMATION. Regardless of the manner of discovery or the identity of  
8 the person who discovered it, once the central repository is aware it possesses inaccurate  
9 criminal history record information, it shall not later than [10] days after discovery:

- 10 (1) correct its own records; ~~and~~
- 11 ~~\_\_\_\_\_ (2) notify all persons that submitted or received inaccurate criminal history record~~  
12 ~~information for a criminal justice purpose 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 to any~~  
15 ~~person that received inaccurate criminal history record information for a non-criminal justice~~  
16 ~~purpose within the previous five years; and~~
- 17 ~~each contributing justice agency that submitted information about a reportable event concerning~~  
18 ~~the subject of the inaccuracy of the information and the required correction; and~~
- 19 ~~\_\_\_\_\_ (3) notify persons that received the inaccurate information, as reflected in the~~  
20 ~~dissemination logs, including the Federal Bureau of Investigation and United States Department~~  
21 ~~of Justice if the state participates in the Interstate Identification Index System, National~~  
22 ~~Fingerprint File, National Identification Index, National Instant Criminal Background Check~~  
23 ~~System Index, and related federal programs.~~

1 ~~(i)~~ (B) provide one corrected copy of the accurate criminal history record  
2 information to the person making the request at no cost.

3 **SECTION 306. ESTABLISHMENT OF PROCEDURES.** The central repository  
4 shall ~~establish effective procedures, in compliance~~comply with ~~any applicable statutes and~~  
5 regulations ~~adopted by the [responsible agency/individual],~~ to ensure that the  
6 ~~completeness~~collection, storage, and ~~accuracy~~maintenance of criminal history record information  
7 is accurate. The central repository shall:

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

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

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

15 ~~(j)~~ **SECTION 307. DISSEMINATION OF INFORMATION FOR**  
16 **STATISTICAL AND RESEARCH PURPOSES.** The central repository may disseminate  
17 criminal history record information for statistical or research purposes, if the identity of the  
18 subject of the information is not publicly disclosed directly or indirectly. ~~The~~  
19 ~~dissemination~~Dissemination and use of the information is subject to procedures established by  
20 the central repository to implement this ~~subsection~~section and other applicable law.

21 ~~(k)~~ **SECTION 308. PUBLIC INFORMATION.** The central repository shall inform the  
22 public about the existence, usage, and accessibility of ~~the~~ criminal history record information  
23 maintained by the central repository and other repositories. The central repository ~~also~~ shall



1 ~~provide~~inform the public ~~notice, updated,~~ at least annually, concerning:

2 (1) items of information used to retrieve and link criminal history record information;

3 (2) results of the ~~annual~~-audit required by Section ~~10602~~ and the status of any  
4 remediation; and

5 (3) requirements and forms for access ~~and,~~ review, and correction of criminal history  
6 record information by an individual.

7 ~~\_\_\_\_\_~~ **SECTION 309. TRAINING.**

8 ~~\_\_\_\_\_~~ (a) The central repository shall:

9 ~~\_\_\_\_\_~~ ~~(1)~~ provide regular training to contributing justice agencies on how to submit  
10 information about a reportable event and why the information is important to both society and  
11 the administration of criminal justice; ~~and,~~

12 ~~\_\_\_\_\_~~ ~~(2)~~ (b) The central repository shall identify contributing justice agencies and  
13 repositories that do not meet minimum standards under this [act] and provide them with remedial  
14 training.

15 **Discussion Notes**

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

23  
24 ~~\_\_\_\_\_~~ ~~*Fees.* Section 6(f) does not address the cost, if any, the state may charge subjects to~~  
25 ~~obtain criminal history record information about themselves. See also Section 5(g). One~~  
26 ~~justification for that choice is the fact that some states may have existing records laws that~~  
27 ~~govern this situation. There was support on the Drafting Committee for the idea that the~~  
28 ~~government should provide this information at no cost to subjects. If, however, the state does~~  
29 ~~charge a fee, there was support on the Drafting Committee for language requiring the cost to be~~  
30 ~~reasonable and consistent with regulations adopted by the [responsible agency/individual] that~~  
31 ~~include a no-cost option for indigent subjects. See Section 12(a)(4).~~

1 ~~\_\_\_\_\_~~ Positive verification of identify and authorization. Positive verification of identity  
2 may include biometric identifying information pursuant to implementing regulations under this  
3 act.

4  
5 *Role in employment and related checks.* The central repository’s primary function is to  
6 act as the hub for criminal history record information used for contributing justice agency  
7 purposes. There is, of course, a growing use of this information for government-mandated  
8 employment, licensing and certification purposes. Accuracy concerns are heightened in this  
9 context in part because there is no related adversarial proceeding before a neutral magistrate.  
10 ~~Paralleling Inspired in part by~~ efforts in California that ~~are considered to be~~ many consider  
11 ~~successful by some~~, this section requires the central repository to make a good faith effort to  
12 ensure that disposition information is connected to arrests and charges. See. Cal. Code. Regs. tit.  
13 11, § 720 (2017). Senator Grassley and others introduced the Sentencing Reform and Corrections  
14 Act of 2015 (“SRCA”) on October 1, 2015. Although Congress did not pass the SRCA, it is  
15 worth noting that SRCA’s Section 213 of the SRCA is, which was entitled “Ensuring Accuracy  
16 of Federal Criminal Records.” ~~It is worth noting for that pursuant to the SRCA,~~ provided that  
17 certain arrests without disposition information that are were more than two years old could not be  
18 disseminated. Cf. Idaho Code Ann. § 67-3008(2)(iv) (“A record of an arrest that does not contain  
19 a disposition after twelve (12) months from the date of arrest may only be disseminated by the  
20 department to criminal justice agencies, to the subject of the record, or to a person requesting the  
21 criminal history information with a signed release from the subject of the record.”).

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

31  
32 ~~\_\_\_\_\_~~ **SECTION 7. ARTICLE 4**

33 **MISTAKEN IDENTITY PREVENTION REGISTRY.**

34 **SECTION 401. CREATION AND MAINTENANCE OF REGISTRY.**

35 (a) ~~In this section,~~ “The central repository shall create and maintain a mistaken identity  
36 prevention registry” or “registry” means as a database designed to:

37 ~~\_\_\_\_\_~~ (1) prevent;

38 ~~\_\_\_\_\_~~ (1) mistaken ~~arrests~~ arrest and confusion of an individual with another when  
39 criminal history record information is searched; and

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

3 (b) The ~~central repository shall create and maintain a mistaken identity prevention~~  
4 registry ~~consisting~~ consists of identifying information voluntarily provided by:

5 \_\_\_\_\_ (1) ~~anya~~ victim of mistaken identity or theft of identity ~~theft;~~ or  
6 ~~fraud;~~ (2) anyan individual whose name or other identifying characteristic is  
7 similar to that of another ~~individual~~ who is the subject of a criminal history record, ~~and (3) any~~  
8 ~~individual concerned about being.~~

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

10 \_\_\_\_\_ ~~(a potential identity theft or fraud victim.~~

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

16 ~~(d)~~ (b) An individual may voluntarily provide information to be considered for inclusion in  
17 the registry. If the information meets the requirements established ~~in~~ under subsection ~~(ea)~~, the  
18 individual's name and information ~~shall~~ must be entered in the registry. An individual  
19 improperly denied inclusion in the registry may seek relief under the [state administrative  
20 ~~procedures~~ procedure act] as a contested case.

21 ~~(e)~~ **SECTION 403. DOCUMENTATION.** Not later than ~~ten business~~ [10] days after  
22 entering an individual in the mistaken identity prevention registry, the central repository shall  
23 issue ~~to~~ the individual a paper or electronic document, which ~~shall be deemed is~~ is prima facie

1 evidence ~~in non-criminal cases~~ establishing that the individual is a victim or potential victim of  
2 identity theft, or fraud, or that the individual is not the individual with a similar name or  
3 identifying characteristics who has a particular criminal record.

4 ~~(f)~~ **SECTION 404. DISCLOSURE OF REGISTRY INFORMATION.**

5        (a) The central repository may not disclose information from the mistaken identity  
6 prevention registry except as provided in this [~~ae~~article].

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

11 ~~(h)~~ **SECTION 405. MISTAKEN IDENTITY MATCH.**

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

21 ~~(i)~~ (b) After receiving information from the registry that identifying information may be  
22 associated with another individual or when an individual produces a valid paper or electronic  
23 document issued by the central repository, a contributing justice agency shall use good faith to

1 identify accurately the subject in question.

2 ~~§~~ **SECTION 406. LIMITATION ON USE OF REGISTRY INFORMATION.**

3 \_\_\_\_\_ (a) A contributing justice agency may not use information from the mistaken identity  
4 prevention registry for a purpose other than to:

5 \_\_\_\_\_ (1) ~~to~~ identify accurately an individual about whom ~~#the agency~~ has requested or  
6 received registry information; or

7 (2) ~~to~~ investigate, prosecute, or adjudicate an individual for ~~offenses~~ an offense  
8 relating to participating in the registry.

9 ~~(k)~~ \_\_\_\_\_ (b) If information ~~from~~ in the registry is accessed for a ~~reason~~ purpose other ~~the one than~~  
10 expressly permitted under this ~~[aetarticle]~~:

11 (1) the information and any information acquired as a result ~~shall~~ must be  
12 excluded from use in any criminal or civil matter; and

13 (2) the central repository shall notify the individual whose information was  
14 obtained improperly from the registry ~~in writing~~ within ~~[three-business]~~ days ~~of~~ after discovery of  
15 the improper access.

16 ~~(l)~~ \_\_\_\_\_ (c) The central repository shall ensure the security of all information in the registry. The  
17 protections ~~shall~~ must meet, and may exceed, those provided in Section ~~8-~~ 601.

18 ~~(m) On receiving a request, pursuant to~~ \_\_\_\_\_

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

20 \_\_\_\_\_ (a) The central repository shall ~~establish~~ reasonable requirements ~~established by the~~  
21 ~~central repository, from the~~ for a request for removal of information from the mistaken identity  
22 prevention registry.

23 \_\_\_\_\_ (b) Within [10] days after receiving a request from an individual ~~who~~ for removal of

1 ~~information~~ voluntarily submitted ~~information to the registry~~ under ~~subsection (d), Section 402(b)~~  
2 ~~to the mistaken identity prevention registry~~, the central repository shall permanently remove the  
3 information from the registry ~~within ten business days~~.

#### 4 Discussion Note

5 *Mistaken Identity Prevention Registry*. Identification mistakes can lead to inaccurate  
6 criminal history record information and erroneous arrests. *See, e.g., Stephanie Chen, Officer,*  
7 *You've Got the Wrong Person*, *cnn.com* (Feb. 15, 2010), available at  
8 <http://www.cnn.com/2010/CRIME/02/15/colorado.mistaken.identity.arrest/> (“A mistaken  
9 identity arrest occurs almost every day, said policing experts and officials at the National  
10 Association of Criminal Defense Lawyers.”); Christopher N. Osher, *Wrongfully Jailed: Records*  
11 *Details More Than 500 Mistaken-Identity Arrests in Denver in Seven Years*,  
12 [www.denverpost.com](http://www.denverpost.com) (Jan. 7, 2012), available at  
13 [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/)  
14 [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/)  
15 ~~— *Mistaken Identity Prevention Registry*. This section, which is modeled. This Article,~~  
16 ~~which is inspired~~ in part on a Minnesota provision, is designed to proactively help individuals  
17 who are the victim of identity theft or believe that they may be, while also improving the  
18 accuracy of the criminal record system more broadly. It allows for these individuals to  
19 voluntarily provide information about themselves, including biometric identifying information,  
20 to a restricted registry which would be used to verify whether a particular person truly is the  
21 subject of a reportable event. ~~The act expands this provision, including the provision of a~~  
22 ~~verification letter, to include all individuals who may seek to be proactive about limiting~~  
23 ~~damaging errors in their own criminal record. The documentation envisioned~~ There are also  
24 ~~analogies to~~ will help a person without a particular criminal record from suffering adverse  
25 consequences of being confused with the person who actually has that record. ~~At the same time,~~  
26 ~~we sought to balance these considerations with the burdens imposed on law enforcement during~~  
27 ~~the identity verification process. It would be up to the individual state to determine requirements~~  
28 ~~and procedures, but Drafting Committee members have suggested consulting with law~~  
29 ~~enforcement and looking to NLETS as a potential partner. See <http://www.nlets.org>. Additional~~  
30 ~~refinement of this concept may follow from further exploration of~~ the Voluntary Appeals File  
31 (“VAF”) program associated with the FBI’s National Instant Criminal Background Check  
32 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)  
33 [us/cjis/nics/appeals/nics\\_vaf\\_brochure\\_eng.pdf](https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf).

#### 34 ~~SECTION 8. SECURITY REQUIREMENTS FOR CONTRIBUTING JUSTICE~~ 35 ~~AGENCIES AND CENTRAL REPOSITORY.~~

36 ~~(a) A contributing justice agency that collects, stores, or disseminates criminal history~~  
37 ~~record information and the central repository shall, in compliance with regulations adopted by~~  
38

1 ~~the [responsible agency/individual], ensure the confidentiality and security of the information by:~~

2 ~~—————(1) establishing procedures to reasonably protect locations where information is~~  
3 ~~maintained from theft, fire, sabotage, flood, wind, or other natural or man-made disasters;~~

4 ~~—————(2) ensuring that only authorized personnel have access to the information;~~

5 ~~—————(3) selecting, supervising, and training personnel authorized to have access to the~~  
6 ~~information;~~

7 ~~—————(4) ensuring that, if computerized data processing is employed, the equipment~~  
8 ~~maintaining the information meets computer security standards promulgated by the [responsible~~  
9 ~~agency]~~

10 The act provides for the creation of a paper or electronic document for all individuals who may  
11 seek to be proactive about limiting damaging errors in their own criminal record. The act

12 envisions that this paper or electronic document will help a person without a particular criminal

13 record from suffering adverse consequences of being confused with the person who actually has

14 that record. At the same time, we sought to balance these considerations with the burdens

15 imposed on law enforcement during the identity verification process. It would be up to the

16 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> /individual]; and

19 ~~—————(5) maintaining an index of all data breaches, for use by the [responsible~~  
20 ~~agency/individual] under Section 10.~~

21 ~~—————SECTION 9.~~  
22

1 ARTICLE 5

2 **SUBJECT'S RIGHT TO CORRECT CRIMINAL HISTORY RECORD INFORMATION**

3 SECTION 501. RIGHT OF CORRECTION.

4 ~~—(a) ACCESS AND REVIEW. A subject or the subject's designee, after positive~~  
5 ~~verification of identity and authorization, if appropriate, may access, lawyer or guardian~~  
6 ~~may access and review, challenge, seek correction of, and appeal the accuracy, including~~  
7 ~~completeness, of the subject's criminal history record information maintained by a~~  
8 ~~repository or the central repository. Positive identification may include biometric~~  
9 ~~identifying information pursuant to implementing regulations under this [act].~~

10 ~~(b) A subject~~ The repository ~~or the subject's designee, after properly submitting a request, may~~  
11 ~~access and review a copy of the subject's criminal history record information. Access shall be~~  
12 ~~permitted~~ central repository shall permit access ~~not later than [three-business] days after the~~  
13 ~~submission of a proper request— and, if appropriate, positive verification of identity and~~  
14 authorization.

15 ~~—(c) SECTION 502. CHALLENGE OF ACCURACY. A subject or the subject's~~  
16 ~~designee~~ lawyer or guardian ~~may challenge the accuracy and seek correction of the subject's~~  
17 ~~criminal history record information by sending the repository or central repository maintaining~~  
18 ~~the information a challenge specifying the part of the criminal history record information that is~~  
19 ~~alleged to not be inaccurate, including incomplete, accurate criminal history record information~~  
20 ~~and providing the correct information.~~

21 ~~(d) A repository or central repository has~~ SECTION 503. ACTION ON CHALLENGE.

22 (a) Not later than [40-business] days from ~~after~~ the date of receipt of a challenge under  
23 ~~subsection (c) to this [article] the accuracy of information to~~ repository or central repository shall



1 review and act ~~upon~~ the challenge.

2 ~~(e)~~ (b) If the repository or central repository does not act within ~~40 business days, the time~~  
3 ~~provided in subsection (a),~~ the challenge ~~will be~~ is deemed valid. ~~— for non-criminal justice~~  
4 ~~purposes and the repository or central repository shall, on request of the subject or the subject’s~~  
5 ~~lawyer or guardian:~~

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

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

11 **SECTION 504. ADMINISTRATIVE REVIEW OF CHALLENGE.** If the repository

12 or central repository denies ~~the~~ challenge, ~~under this [article],~~ the subject or the subject’s

13 ~~designee~~ lawyer or guardian may seek ~~a~~ de novo review before [an administrative law judge].

14 Before the [administrative law judge], the repository or central repository has the burden of

15 proving the accuracy of the challenged information by a preponderance of the evidence. The

16 [administrative law judge’s] decision on the challenge ~~shall~~ must state all information that formed

17 the basis for the decision, including the jurisdiction and docket number of any relevant court

18 decision.

19 ~~(g)~~ **SECTION 505. CORRECTION OF RECORDS.** If the repository or central

20 repository or the [administrative law judge] determines a challenge under ~~subsection (e)~~ this

21 [article] is valid, ~~or a challenge is deemed valid by operation of subsection (e),~~ the repository or

22 central repository shall, not later than [three ~~business~~] days after the challenge is determined ~~or~~

23 ~~deemed~~ valid;:

1 (1) correct its own records;  
2 (2) notify all persons that submitted or received ~~the~~ inaccurate criminal history record  
3 information, ~~as reflected in the dissemination logs, for criminal justice purposes~~ of the  
4 inaccuracy and the required correction;

5 (3) ~~notify the Federal Bureau of Investigation and the United States Department of~~  
6 ~~Justice, if applicable, of the~~ 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 (4B) provide ~~five~~one corrected ~~copies, upon request, copy~~ of the accurate criminal  
11 history record information to the ~~subject or person making~~ the ~~subject's designee~~request at no  
12 cost to the subject or designee; and.

13 ~~(h)~~ **SECTION 506. JUDICIAL REVIEW.** If the [administrative law judge]  
14 determines a challenge under ~~subsection (c) is valid, or a challenge is deemed valid by operation~~  
15 ~~of subsection (e), the repository or central repository shall, no sooner than five but not later than~~  
16 ~~ten business days after the challenge is determined or deemed valid, provide~~ this [article] is not  
17 valid, the subject or the subject's ~~designee~~ the names and addresses of all persons to lawyer or  
18 guardian may, not later than [40] days after notification of the determination, bring an action de  
19 novo in the [appropriate trial court]. Before the [appropriate trial court], which the inaccurate  
20 criminal history record information was disseminated within the previous five years, and the  
21 dates of dissemination.

22 ~~—————(1) However, a law enforcement agency receiving notification under section 9(g)~~  
23 ~~shall, not later than three business days after the repository or central repository notified it about~~

1 ~~the valid challenge, notify the repository or central repository if the disclosure in this subsection~~  
2 ~~would compromise an ongoing criminal investigation by that law enforcement agency.~~

3 ~~—————(2) The notification by a law enforcement agency provided for in section 9(h)(1)~~  
4 ~~automatically defers the notification to~~ must receive new evidence if offered, the subject or the  
5 subject's ~~designee concerning that law enforcement agency for 40 business days.~~

6 ~~—————(3) The notice and 40-business day deferral procedure set forth in sections 9(h)(1)~~  
7 ~~and 9(h)(2) may be repeated as needed if the law enforcement agency again notifies the~~  
8 ~~repository or central repository, no sooner than three business days, before the expiration of the~~  
9 ~~deferral, that the disclosure in this subsection would compromise an ongoing criminal~~  
10 ~~investigation by that law enforcement agency.~~

11 ~~—————(4) Not later than three business days after the expiration of the 40-business day~~  
12 ~~deferral, and any renewals, the repository or central repository shall comply with section 9(h).~~

13 ~~—————(i) If the [administrative law judge] determines a challenge under subsection (c) is not~~  
14 ~~valid, the subject or designee may, not later than 40 business days after notification of the~~  
15 ~~decision, appeal the decision to the [appropriate court]. Before the [appropriate court], the~~  
16 ~~subject~~ lawyer or guardian has the burden of proving validity of the challenge by a preponderance  
17 of the evidence.

## 18 **Discussion ~~Notes~~Note**

19 *Access, review, challenge, correction and appeal.* This ~~section~~article provides  
20 individuals ~~with~~ rights to access and challenge the criminal history record information about  
21 them for the explicit purpose of ensuring that all of the criminal history record information  
22 managed by the state, regardless of its source, is correct and up-to-date. ~~Our review indicates~~ The  
23 Drafting Committee concluded that most, if not all, jurisdictions already have procedures in  
24 place to address matters of this nature. The first review would be resolved internally. In  
25 response to an adverse ruling, the individual may demand a *de novo* appeal before a separate  
26 entity. Although ~~we use~~ the act uses brackets to account for the potential variation in state  
27 practice, ~~we propose~~ the Drafting Committee supports the view that this *de novo* appeal be  
28 assigned to an administrative law judge. Upon losing this round, the individual may ~~appeal to,~~

1 ~~we propose, to an appropriate~~ bringing a complaint *de novo* in a trial court, which and will  
2 review ~~bear the denial for abuse~~ burden of discretion ~~proof by preponderance of the evidence.~~

3 **ARTICLE 6**

4 **SYSTEMS SECURITY AND AUDITS**

5 **SECTION 601. SECURITY REQUIREMENTS FOR CONTRIBUTING JUSTICE**

6 **AGENCIES AND CENTRAL REPOSITORY.**

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

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

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

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

16 (4) ensuring that, if computerized data processing is employed, the equipment  
17 maintaining the information meets computer security standards promulgated by the [responsible  
18 agency

19 ~~— *Administrative review.* In the current draft, we are prescriptive in how a challenge and~~  
20 ~~appeal should be heard. Should we instead defer to the procedures already in place under the~~  
21 ~~Administrative Procedures Act (APA)? An argument in support of the APA approach might be~~  
22 ~~ease of adoption. However, the current approach ensures standardization and retains a focus on~~  
23 ~~putting procedures in place designed specifically to increase the accuracy—at the individual and~~  
24 ~~systematic levels—of the criminal history record information.~~

25 or individual]; and

26 (5) maintaining an index of all data breaches, which shall be made available, upon  
27 request, to the [senior elected or appointed official responsible for governmental oversight, audit,  
28 or integrity] and the [responsible agency or individual or that individual's designee.]  
29

1           **SECTION ~~10602~~. MANDATORY REPRESENTATIVE ~~ANNUAL~~ AUDIT.**

2           (a) The [senior elected or appointed official responsible for governmental oversight,  
3 audit, or integrity] or that individual's designee shall ensure that ~~annual audits~~ an audit of the  
4 central repository and of a representative sample of all repositories ~~are~~ is conducted ~~at least every~~  
5 [two] years. The audits may be done in conjunction with other audits ~~required by law~~.

6           (b) An ~~annual~~ audit under ~~subsection (a)~~ this section must assess the integrity of each  
7 computerized system and database and each physical location storing criminal history record  
8 information to ensure this [act] is implemented.

9           (c) As part of an ~~annual audits~~ audit under ~~subsection (a)~~ this section the [senior elected or  
10 appointed official responsible for governmental oversight, audit, or integrity] or that individual's  
11 designee shall ensure that the ~~audits~~ audit:

12                   (1) ~~collect~~ collects data from a representative sample of all criminal history record  
13 information stored at the central repository and the audited repositories to assess, at a minimum,  
14 consistency, efficiency, and security;

15                   (2) ~~determined~~ determines the number of missing reportable events and amount and  
16 nature of missing biometric identifying information in the samples, in part by examining public  
17 records of the courts of [this state];

18                   (3) ~~assess~~ assesses any data ~~breaches~~ breach and ~~responses~~ response to any ~~such~~  
19 ~~breaches~~ data breach in the central repository and the audited repositories;

20                   (4) ~~are~~ is representative of the overall status of the system of criminal history  
21 record information management and that selection of repositories to be audited is random and in  
22 accordance with best practices; and

23                   (5) ~~review~~ reviews the plans, policies, and procedures of at least five percent of all

1 municipal police departments and ten percent of all [judicial districts] to ensure this [act] is  
2 implemented.

3 (d) The [senior elected or appointed official responsible for governmental oversight,  
4 audit, or integrity] or that individual’s designee ~~shall~~must be given access to the government  
5 records, reports, listings, and information required to conduct an ~~annual~~-audit under this section.  
6 All officers and employees of the state or a political subdivision of the state with relevant  
7 information shall cooperate with the [senior elected or appointed official responsible for  
8 governmental oversight, audit, or integrity] or designee and provide information requested for an  
9 ~~annual~~-audit.

10 (e) The [senior elected or appointed official responsible for governmental oversight,  
11 audit, or integrity] or designee shall prepare and make widely available a public report  
12 containing the results of the ~~annual~~-audits under ~~subsection (a)~~this section and a list of any  
13 deficiencies and recommendations for correction of deficiencies.

#### 14 Discussion Notes

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

24  
25 *Senior elected or appointed official responsible for governmental oversight, audit, or*  
26 *integrity.* ~~We propose~~The act envisions that the senior elected or appointed official responsible  
27 for governmental oversight, audit, or integrity is an individual outside of the day-to-day criminal  
28 history record system be responsible for the audits. While the “responsible agency ~~or~~  
29 individual” concept introduced ~~in Section 1, Discussion Notes,~~supra can be filled in different  
30 ways and need not be the same at all points in this act, ~~we think~~the Drafting Committee believes  
31 that the auditing role in this ~~section~~article deserves different language. Depending on existing  
32 state structures, potential appropriate individuals to fill this role might be the Attorney General,

1 the Auditor General, the Ombudsperson, or the Inspector General. Of course, adopting states are  
2 free to designate others as they see fit.

3  
4 **ARTICLE 7**

5 **ENFORCEMENT AND IMPLEMENTATION**

6 **SECTION ~~11701~~. SANCTIONS AND REMEDIES.**

7 (a) An individual ~~whose contributing justice agency that~~ violates this [act]: may, in  
8 addition to other remedies provided by law:

9 (1) be denied access to specified criminal history record information for a time  
10 determined by the [responsible agency ~~/ or individual~~] ~~determines is appropriate~~;

11 (2) be subject to a civil penalty or other remedy ~~as set forth in~~ under subsection  
12 (c); and

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

17 (b) The [responsible agency ~~/ or individual~~], central repository, or a subject may bring an  
18 action concerning an item of criminal history record information to compel compliance with this  
19 [act] or enjoin the central repository, a repository, a contributing justice agency, or another  
20 person from violating this [act]. The court may award costs of litigation and reasonable  
21 attorneys' fees to ~~subjects a subject~~ who ~~prevail~~ prevails in such an action.

22 (c) In addition to other available remedies, an individual injured by an intentional or  
23 reckless violation of this [act] or implementing regulations may bring an action for actual  
24 compensatory damages. If the court determines by a preponderance of the evidence that the  
25 individual was injured by an intentional or reckless violation of this [act] or implementing

1 regulations, the court ~~may~~shall award the greater of actual compensatory damages ~~of~~or not less  
2 than \$500 for each violation, in addition to the costs of litigation, and reasonable attorneys' fees.

3 ~~[(d) An officer or employee of the central repository, a repository, or a contributing~~  
4 ~~justice agency is guilty of a misdemeanor if the officer or employee:~~

5 ~~(1) knowingly makes a false entry in or false alteration of any criminal history~~  
6 ~~record information;~~

7 ~~(2) makes, disseminates, presents, or uses criminal history record information~~  
8 ~~knowing it to be false with the intent that it be taken as genuine; or~~

9 ~~(3) purposely and unlawfully destroys, conceals, removes, or otherwise impairs~~  
10 ~~the verity or availability of criminal history record information.]~~

#### 11 ~~Discussion Notes~~

12 ~~*Individual sanctions.* Section 11 provides for an array administrative, civil, and criminal~~  
13 ~~sanctions against individuals who violate the act. It also allows both subjects and the relevant~~  
14 ~~government official, again in brackets, to seek injunctive relief. The section affords a subject~~  
15 ~~who is injured by a violation of the act a civil damages remedy with a modest minimum (\$500~~  
16 ~~per violation) and a fee shifting provision on the theory that the true extent of actual damages~~  
17 ~~may be difficult to prove. The sanctions set out in this section are modeled after some existing~~  
18 ~~provisions, and are limited in scope. All of this, of course, is also designed to serve as a clear~~  
19 ~~and enforceable incentive to minimize inaccuracies.~~

20  
21 ~~*Criminal sanctions.* The limited criminal sanctions available under Section 11(d) are~~  
22 ~~largely based on Model Penal Code §241.8 entitled "Tampering with Public Records or~~  
23 ~~Information." In an effort to avoid duplication, States that already have a statute criminalizing~~  
24 ~~this behavior may choose not to embrace Section 11(d).~~

#### 25 26 **SECTION ~~12702~~. DUTIES AND AUTHORITY OF ~~[RESPONSIBLE~~** 27 **~~AGENCY/INDIVIDUAL].~~**

28 (a) The [responsible agency/or individual] or that individual's designee] shall adopt  
29 regulations necessary to implement this [act]. At a minimum, the regulations ~~shall~~must include  
30 ~~provisions~~a provision that:



1 (1) ~~govern~~governs the security, ~~completeness,~~ accuracy, dissemination and review  
2 of, and individual access to, criminal history record information;

3 (2) ~~govern~~governs the conduct of an audit under Section ~~10;602; [and]~~

4 (3) ~~ensure~~ensures that electronic data, including biometric identifying  
5 information, are stored in a manner that reflects best practices for personally identifiable  
6 information~~;~~; and

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

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

14 ~~\_\_\_\_\_~~ (c) The [responsible agency or individual or that individual's designee] may investigate  
15 ~~all matters~~any matter relating to the administration and enforcement of this [act].

16 (ed) The [responsible agency~~/ or~~ individual or that individual's designee] may bring a  
17 civil action for a violation of this [act].

18 (d)~~(e)~~ The [responsible agency~~/ or~~ individual or that individual's designee] may ~~bring a~~  
19 ~~criminal charge for a violation of this [act].~~ ~~[The [responsible agency/individual or that~~  
20 ~~individual's designee] shall~~ refer a suspected criminal violation, ~~including any relevant criminal~~  
21 ~~history record information,~~ discovered while or because of discharging a duty or authority under  
22 this [act] to the appropriate prosecutorial ~~authority~~authorities for further review and action~~;~~]

23 ***Legislative Note:*** This ~~section provides two alternatives depending on the~~ [act] does not limit  
24 the prosecutorial authority held by the responsible agency/individual.

1 **Discussion Notes**

2 ~~—— *Duties and authorities* power of *the responsible agency/individual*. This administrative~~  
3 ~~section provides the responsible agency/individual, in brackets, with various authorities and~~  
4 ~~duties, including adopting regulations and conducting investigations. As discussed above, this~~  
5 ~~role can be filled by any agency or individual, as long as there is sufficient autonomy from the~~  
6 ~~central repository and the other enumerated parties in the act to satisfy checks and balances~~  
7 ~~concerns. If the responsible agency/individual has prosecutorial powers, these authorities and~~  
8 ~~duties may be discharged by one agency or individual. If not, the responsible agency/individual~~  
9 ~~shall refer cases of suspected criminal violations to the appropriate prosecutor any individual or~~  
10 ~~entity to enforce existing law.~~

11 **Discussion Notes**

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

20 *Fees.* This section does not address the cost, if any, the state may charge subjects to  
21 obtain criminal history record information about themselves. One justification for that choice is  
22 the fact that some states may have existing records laws that govern this situation. There was  
23 support on the Drafting Committee for the idea that the government should provide this  
24 information at no cost to subjects. If, however, the state does charge a fee, there was support on  
25 the Drafting Committee for language requiring the cost to be reasonable and consistent with  
26 regulations adopted by the [responsible agency or individual] that include a no-cost option for  
27 indigent subjects.

28  
29 *Criminal sanctions.* The Drafting Committee chose not to include a criminal sanction, in  
30 part because it believed that existing criminal statutes cover behavior that would warrant a  
31 response by the criminal justice system.  
32

1 **ARTICLE 8**

2 **MISCELLANEOUS PROVISIONS**

3 **SECTION 13801. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
4 applying and construing this uniform act, consideration ~~shall~~must be given to the need to  
5 promote uniformity of the law with respect to its subject matter among [states] that enact it.

6 **SECTION 14. REPEALS; CONFORMING AMENDMENTS.**

7 **SECTION 802. SEVERABILITY.** If any provision of this [act] or its application to any  
8 person or record or circumstance is held invalid, the invalidity does not affect other provisions or  
9 applications of this [act] which can be given effect without the invalid provision or application,  
10 and to this end the provisions of this [act] are severable.

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

12 (a) . . . .

13 (b) . . . .

14 (c) . . . .

15 **SECTION 15804. EFFECTIVE DATE.** This [act] takes effect . . . .