

DRAFT
FOR DISCUSSION

UNIFORM CRIMINAL RECORDS ACCURACY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

~~February 16-17~~ April 23, 2018 Drafting Committee ~~Meeting~~ Conference Call

Copyright © 2018
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

February 8, 2018

DRAFTING COMMITTEE ON UNIFORM CRIMINAL RECORDS ACCURACY ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

ROBERT J. TENNESSEN, 2522 Thomas Ave. S., Minneapolis, MN 55405, *Chair*

W. MICHAEL DUNN, 62 Ridge Rd. Concord, NH 03301

MARK F. GLASER, 54 State St., 6th Floor, Albany, NY 12207

ERIC HOUGLAND, Texas Legislative Council, P.O. Box 12128, Austin, TX 78711-2128

JAMES C. KENNEDY, Massachusetts House of Representatives, State House, Room 139,
Boston, MA 02133

H. LANE KNEEDLER, Office of the Attorney General of Virginia, 202 N. 9th St., Richmond,
VA 23219

THEODORE C. KRAMER, 42 Park Pl., Brattleboro, VT 05301

JOHN J. MCAVOY, 3110 Brandywine St. NW, Washington, DC 20008

LOUISE M. NADEAU, Connecticut General Assembly, Legislative Office Bldg., Room 5500,
Hartford, CT 06106-1591

ANNE H. REIGLE, Court of Common Pleas, Kent County Courthouse, 38 The Green, Dover,
DE 19901-3602

JACOB T. RODENBIKER, 2037 Rose Creek Blvd S., Fargo, ND 58104-6878

MICHAEL S. SCHWOYER, Pennsylvania House of Representatives, Room 423, Main Capitol
Building, Harrisburg, PA 17120

BRANDON C. SHAFFER, 1154 Twin Peaks Cir., Longmont, CO 80503

SAMUEL A. THUMMA, Arizona Court of Appeals, State Courts Bldg., 1501 W. Washington
St., Phoenix, AZ 85007

RUSSELL G. WALKER, P.O. Box 2422, Jamestown, NC 27282

STEVEN L. CHANENSON, Villanova University Charles Widger School of Law, 299 N.
Spring Mill Rd., Villanova, PA 19085, *Reporter*

JORDAN M. HYATT, Drexel University, Department of Criminology & Justice Studies, 3141
Chestnut St., Philadelphia, PA 19104, *Associate Reporter*

EX OFFICIO

ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box
353020, Seattle, WA 98195-3020, *President*

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

STEVE SALTZBURG, George Washington University Law School, 2000 H St. NW,
Washington, DC 20052-0026, *ABA Advisor*

MICHAEL AISENBERG, 7515 Colshire Dr., MS T320, McLean, VA 22102-7538, *ABA Section
Advisor*

STEPHANIE DOMITROVICH, Erie County Courthouse, 140 W. 6th St., Room 223, Erie, PA
16501-1030, *ABA Section Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

UNIFORM CRIMINAL RECORDS ACCURACY ACT

TABLE OF CONTENTS

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. 1
SECTION 102. DEFINITIONS. 1
SECTION 103. APPLICABILITY. 6
SECTION 104. PUBLIC RECORD. 6
SECTION 105. DISSEMINATION LOG. 6

[ARTICLE] 2

CONTRIBUTING JUSTICE AGENCY

SECTION 201. COLLECTION AND SUBMISSION OF INFORMATION TO CENTRAL
REPOSITORY. 7
SECTION 202. COLLECTION AND SUBMISSION OF BIOMETRIC INFORMATION. 8
SECTION 203. CORRECTION OF INACCURATE INFORMATION BY CONTRIBUTING
JUSTICE AGENCY. 10
SECTION 204. DISSEMINATION OF CRIMINAL-HISTORY-RECORD INFORMATION.
..... 11
SECTION 205. DISSEMINATION LOG OF CONTRIBUTING JUSTICE AGENCY. 11

[ARTICLE] 3

CENTRAL REPOSITORY

SECTION 301. DUTY OF CENTRAL REPOSITORY. 121214
SECTION 302. DISSEMINATION OF INFORMATION TO PERSON OTHER THAN
SUBJECT. 131312
SECTION 303. DISSEMINATION OF INFORMATION TO SUBJECT. 13
SECTION 304. DISSEMINATION LOG OF CENTRAL REPOSITORY. 161615
SECTION 305. CORRECTION OF INACCURATE INFORMATION. 171715
SECTION 306. ADOPTION OF RULES. 181716
SECTION 307. DISSEMINATION OF INFORMATION FOR STATISTICAL OR
RESEARCH PURPOSE. 181816
SECTION 308. PUBLIC INFORMATION. 191817
SECTION 309. TRAINING. 201917

[ARTICLE] 4

MISTAKEN-IDENTITY-PREVENTION REGISTRY

SECTION 401. CREATION AND MAINTENANCE OF REGISTRY..... 222119
SECTION 402. REQUIREMENTS FOR REGISTRY. 232219
SECTION 403. CERTIFICATION. 232220
SECTION 404. DISSEMINATION OF REGISTRY INFORMATION..... 232320
SECTION 405. VERIFICATION OF IDENTITY..... 242321
SECTION 406. LIMITATION ON USE OF REGISTRY INFORMATION. 242321
SECTION 407. REMOVAL OF INFORMATION FROM REGISTRY..... 252422

[ARTICLE] 5

CORRECTION OF CRIMINAL-HISTORY-RECORD INFORMATION

SECTION 501. ACCESS AND REVIEW. 262523
SECTION 502. REQUEST TO CORRECT..... 262523
SECTION 503. REVIEW OF REQUEST..... 262623
SECTION 504. CORRECTION OF RECORDS 272724

[ARTICLE] 6

SYSTEMS SECURITY AND AUDITS

SECTION 601. SECURITY REQUIREMENTS..... 282826
SECTION 602. AUDIT. 292926

[ARTICLE] 7

ENFORCEMENT AND IMPLEMENTATION

SECTION 701. SANCTIONS AND REMEDIES..... 323229
SECTION 702. DUTIES AND AUTHORITY OF [RESPONSIBLE AGENCY OR
INDIVIDUAL]. 343331

[ARTICLE] 8

MISCELLANEOUS PROVISIONS

SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 353532
[SECTION 802. SEVERABILITY.] 353532
SECTION 803. REPEALS; CONFORMING AMENDMENTS. 363533
SECTION 804. EFFECTIVE DATE..... 363633

1 agency for the purpose of identification- as permitted by law other than this [act].

2 (4) “Central repository” means the single, coordinating entity of this state with the duty to
3 collect, ~~store~~, maintain, store and disseminate criminal-history-record information.

4 (5) “Contributing justice agency” means a court, political subdivision or agent of a
5 political subdivision, or governing entity of this state which is authorized to engage in
6 administration of criminal justice. The term does not include the central repository.

7 (6) “Criminal-history record information” means information collected, stored,
8 maintained, ~~stored~~, or disseminated by a contributing justice agency, ~~a repository~~, or the central
9 repository, consisting of an identifiable description of a subject, including biometric information,
10 and notation of a reportable event. The term does not include ~~noncriminal~~ non-criminal history-
11 record information.

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

14 (8) “~~Noncriminal~~ Non-criminal history-record information” means information
15 collected:

16 (A) as a result of an inquiry about an activity, habit, practice, possession,
17 association, or financial status of an individual; and

18 (B) to anticipate, prevent, monitor, investigate, or prosecute criminal activity.

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

21 (10) “Reportable event” means any of the following relating to a felony or misdemeanor
22 criminal offense, other than a [noncriminal offense,] [summary offense,] [petty offense,] traffic
23 violation, or offense under [insert citation to juvenile law of this state]:

- 1 (A) arrest resulting in booking into a detention facility or collection of biometric
2 information;
- 3 (B) disposition after an arrest without initiation of a criminal proceeding;
- 4 (C) initiation of a criminal proceeding;
- 5 (D) disposition of a criminal proceeding, including diversion, dismissal, indefinite
6 postponement, acquittal, guilty plea, conviction, sentencing, and modification, reversal, and
7 revocation of the disposition;
- 8 (E) commitment to or release from a place of detention or custodial supervision;
- 9 (F) commencement or conclusion of noncustodial supervision;
- 10 (G) completion of a sentence;
- 11 (H) expungement, sealing, or setting aside of criminal-history-record
12 information;
- 13 (I) grant of clemency, including pardon or commutation, or restoration of rights;
- 14 and
- 15 (J) finding of mental incompetence by a court at any stage of a criminal
16 proceeding.

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

19 ~~_____ (12) _____~~

20 _____ (11) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
21 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
22 the United States. The term includes a federally recognized Indian tribe.

23 ~~(13)~~12 “Subject” means the individual about whom criminal-history-record information

1 is collected, stored, maintained, or disseminated in this state.

2 **Legislative Note:** Reportable events relate to offenses that are typically categorized as
3 felonies and misdemeanors. Some jurisdictions have other categories of offenses that merit
4 inclusion, such as “gross misdemeanors” This is a decision best left to the adopting state.
5

6 The phrase “responsible agency or individual” is used in the comment to this section
7 and in Sections 205, 301, 601, 701, and 702 to mean “the appropriate state agency or individual
8 charged with responsibilities under this act. ~~The responsible agency or individual need not be~~
9 ~~the same agency or individual each time the phrase is used.~~” In some states, the “responsible
10 agency or individual” may be the Attorney General or the Office of the Attorney General. In
11 other states, it will be a different actor or entity. A state should designate the appropriate agency
12 or individual in light of its own constitutional structure and political landscape.
13

14 Comment

15
16 ~~———— Defined terms, not substance. The style rules of the Uniform Law Commission call for~~
17 ~~consolidation of definitions for terms that recur throughout an act into a single section early in~~
18 ~~the act. A definition for a term that appears in only one section should be located in that section.~~
19 ~~Provisions that state a definition must be definitional only, with the substance pertaining to the~~
20 ~~term addressed separately.~~
21

22 *Administration of criminal justice.* The definition of “administration of criminal justice”
23 is largely based upon the language found in 28 C.F.R. §20.3.
24

25 *Biometric information.* The definition of “biometric information” ~~is limited to~~ focuses on
26 fingerprints, which are the gold standard for ensuring that a particular subject is linked to the
27 correct and complete arrest and disposition information. The use of the term “biometric
28 information” emphasizes the importance of using something beyond an exact or approximate
29 name match to ensure the accuracy of criminal-history record information during the record
30 location, linking and retrieval processes. ~~Using the term “biometric information” also allows a~~
31 ~~legislature to retain this term if, at some point in the future, it decides that technology has~~
32 ~~evolved to the point where an equally reliable biometric identification technique is appropriate to~~
33 ~~include.~~ Biometric information is available from all subjects because the criminal-history-
34 record information maintained pursuant to this act relates exclusively to individuals. This is
35 consistent with current practice. Furthermore, the definition of “biometric information” is
36 designed to allow the act to simultaneously remain consistent with other law about identification
37 procedures and to adapt as technology evolves without requiring a revision to the act itself.
38

39 *Central repository.* The definition of “central repository” leaves to the adopting state the
40 decision whether this is a police function, often through the state police, or an independent
41 function. Given the central repository’s coordinating role, the definition does require the central
42 repository to be operationally independent from contributing justice agencies or other
43 repositories, although it can exist within the structure of an agency, such as the state police, that
44 also contains a separate repository.
45

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

12
13 Courts are included in a “contributing justice agency” because their participation is
14 crucial to the success of the effort to promote the accuracy of criminal records. An adopting
15 state concerned about including courts because of separation of powers concerns may want to
16 add language either exempting courts or allowing courts themselves to opt-out. Statutory
17 language authorizing a judicial opt-out could take this form: “The [state Supreme Court], or a
18 judicial entity authorized to act on its behalf, may remove the courts of this state from this sub-
19 section under its rulemaking authority.” The court should be included as a contributing justice
20 agency to the extent constitutionally permissible. Including courts will materially enhance the
21 accuracy of criminal-history-record information.

22
23 *Noncriminal-history-record information.* This definition clarifies that information may
24 be held by a contributing justice agency that is not deemed to be criminal-history-record
25 information.

26
27 *Reportable event.* The definition of a “reportable event” is designed to capture all of the
28 significant moments in the life of a criminal case that future actors in the criminal justice system
29 would want to know about that defendant and that case. Though the nomenclature may vary by
30 jurisdiction, these are almost universal in their presence and importance.

31
32 *Reportable Event – Disposition.* The examples of disposition are designed to be inclusive
33 yet manageable. If more detail is desired, adopting states could include the current definition
34 found at 28 CFR § 20.3(i), which provides:

35 Disposition means information disclosing that criminal proceedings have been concluded
36 and the nature of the termination, including information disclosing that the police have
37 elected not to refer a matter to a prosecutor or that a prosecutor has elected not to
38 commence criminal proceedings; or disclosing that proceedings have been indefinitely
39 postponed and the reason for such postponement. Dispositions shall include, but shall not
40 be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental
41 incompetence, case continued without finding, charge dismissed, charge dismissed due to
42 insanity, charge dismissed due to mental incompetency, charge still pending due to
43 insanity, charge still pending due to mental incompetency, guilty plea, nolle prosequi, no
44 paper, nolo contendere plea, convicted, youthful offender determination, deceased,
45 deferred disposition, dismissed-civil action, found insane, found mentally incompetent,
46 pardoned, probation before conviction, sentence commuted, adjudication withheld,

1 mistrrial-defendant discharged, executive clemency, placed on probation, paroled, or
2 released from correction supervision.

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

4
5 **SECTION 103. APPLICABILITY.** This [act] applies to the central repository, each
6 ~~repository and~~ contributing justice agency, and each subject in this state.

7 **SECTION 104. PUBLIC RECORD.** In this [act], a court docket, court file, and
8 information contained in a docket or file, are public records unless otherwise provided by law
9 other than this [act] or ordered by a court.

10 *Legislative Note: This section is designed to ensure that this act is not interpreted as*
11 *limiting access to court records. It provides that information in court dockets and files not under*
12 *seal, remain public records to the extent provided by existing law. An adopting state should*
13 *examine its public records act to determine whether conforming revisions are required.*

14
15 **SECTION 105. DISSEMINATION LOG.** ~~A dissemination log under Section 205 or~~
16 ~~304 must include each request for and dissemination of criminal history record information. The~~
17 ~~log must be separate from noncriminal history record information and criminal history record~~
18 ~~information, and must include the:~~

19 ~~(1) information requested;~~

20 (a) A dissemination log under Section 205 or 304 must include each request not made
21 under public record access laws of this [state] for and dissemination of criminal
22 history record information.

23 (b) A dissemination log must be separate from non-criminal history record information
24 and criminal history record information, and must include the:

25 (1) subject about whom the criminal history record information is requested;

26 (2) criminal history record information disseminated;

27 (3) person making the request and its associated address;

28 (4) individual effectuating the dissemination;

1 (5) date of the request and of the dissemination; and

2 (6) ~~purpose for which~~whether the information was ~~requested or~~ disseminated. for a
3 purpose other than the administration of criminal justice.

4 (c) A dissemination log will be available to the public only as provided by law other than
5 in this [act].

6 (d) An entry in the dissemination log should be maintained as long as the associated
7 criminal history record information is maintained.

8
9 ***Legislative Note:** A dissemination log should be maintained as long as the associated*
10 *criminal-~~history-~~record information is maintained. In a jurisdiction in which records retention*
11 *provisions address this issue, the language specifying duration of record maintenance should be*
12 *adjusted appropriately.*

13 14 **Comment**

15
16 *Dissemination logs.* ~~The drafters anticipate that the~~These logs include a record of the
17 substance and timing of information requested and disseminated pursuant to this act. These logs
18 do not include information obtained under public record access provisions, in part because some
19 of that information is not functionally trackable. For example, some information may be
20 obtainable anonymously through the Internet or through computer terminals provided by the
21 Court for this purpose. The public will have access to dissemination logs in a fashion consistent
22 with existing public records laws in the jurisdiction. This includes exclusions necessary to
23 insulate the investigative actions of justice agencies from unintentional disclosure through these
24 processes. A dissemination log should be maintained as long as the associated criminal history
25 record criminal-history-record information is maintained. In a jurisdiction in which existing
26 records retention provisions already speak to this issue the language specifying duration of
27 record maintenance should be adjusted appropriately.

28 29 **[ARTICLE] 2**

30 **CONTRIBUTING JUSTICE AGENCY**

31 **SECTION 201. COLLECTION AND SUBMISSION OF INFORMATION TO**
32 **CENTRAL REPOSITORY.** A contributing justice agency that has custody of or control,
33 authority, or jurisdiction over an individual for a reportable event shall collect, maintain, and
34 store ~~in its repository~~ criminal-~~history-~~record information on the

1 event. Not later than [five] days after the agency collects the information, the agency shall
2 submit the information to the central repository.

3 **SECTION 202. COLLECTION AND SUBMISSION OF BIOMETRIC**
4 **INFORMATION.**

5 (a) A contributing justice agency that has custody of or control, authority, or jurisdiction
6 over an individual for a reportable event shall determine whether biometric information about the
7 individual has been collected and submitted to the central repository for the event. If the
8 contributing justice agency is a court, the contributing justice agency representing this state
9 before the court shall make the determination and report the results of its determination to the
10 court.

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

17 **Comment**

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

1 *Counties Have Same Equipment*, available at
2 http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html (July
3 23, 2014).
4

5 *Accuracy Improvement.* Nothing in the act is designed to expand the ability of the
6 government to collect information to which contributing justice agencies are not otherwise
7 entitled to collect. The goal of the act is to ensure that the information that jurisdictions do
8 collect is done in a regular and reliable way that improves the accuracy of the criminal-history-
9 record system.
10

11 *Collection of Biometric Information.* Section 202 requires individuals to permit the
12 collection of their biometric information if it is determined at any point after the occurrence of a
13 reportable event that biometric information for that individual is missing. Not only does this
14 section put the obligation on individuals to provide biometric information, it makes that
15 obligation enforceable by court order. The drafters believe that this approach may avoid potential
16 separation-of-powers issues that could have arisen in some jurisdictions if the act directed courts
17 to obtain this information directly. This section is designed to include, *inter alia*, when an
18 individual, who has not been arrested, is charged by complaint, information, or indictment and
19 appears in court pursuant to summons. The drafters encourage judges in these situations to make
20 providing biometric information a condition of any pretrial release.
21

22 *Duty of other contributing justice agencies.* If the arresting agency fails to obtain
23 fingerprints, the act provides a backstop by requiring other, typically chronologically
24 downstream, actors in the contributing justice system to fingerprint the subject. The drafters
25 believe that this “belt-and-suspenders approach” is warranted given the wide variation of
26 fingerprint compliance rates between and within states. For example, the drafters learned that in
27 one large state, there are tens of thousands – if not hundreds of thousands – of essentially
28 orphaned files in the central repository because disposition information cannot be definitively
29 linked by fingerprint to a subject. Furthermore, in that state, the state prison receiving center felt
30 the need to install a Livescan machine (a common biometric data collection station) because of
31 the number of sentenced offenders arriving without fingerprints in the system. -This section
32 neither mandates nor prohibits the repeated collection of biometric information during the life of
33 a criminal case. Rather, the act sets a floor of at least one collection of biometric information and
34 leaves adopting states free to do more if they so choose. This goal of this approach it to ensure
35 that, in any given case, the necessary case information and biometric data will be available and
36 linked, thereby limiting the possibility that unrelated records will be linked or records relating to
37 the same individual or event will be appropriately connected.
38

39 *Duty to report reportable events.* The act requires contributing justice agencies to submit
40 information on reportable events – such as arrests, charges, convictions, sentences,
41 commitments, etc. – with which they were involved to the central repository. If followed, this
42 mandate should go a long way towards solving the problem of missing dispositions. The act
43 takes a “belt-and-suspenders approach” by putting this responsibility broadly on multiple actors,
44 even if that means some duplicative reporting to the central repository. Given the large and
45 growing use of electronic records, this should not be burdensome on the contributing justice
46 agencies and may help to reduce inaccuracies.

1
2 Accuracy remains the overriding goal of the act. Of course, procedures relating to the
3 mechanics of how criminal-history-record information will be corrected and in what form are
4 left to the state and its central repository.

5
6 Procedures. The central repository, pursuant to Section 306, will adopt rules providing
7 for the procedures used and the form of the required correction, including whether certified
8 copies may be provided entirely electronically.
9

10 **SECTION 204. DISSEMINATION OF CRIMINAL-HISTORY-RECORD**
11 **INFORMATION.**

12 (a) A contributing justice agency may disseminate criminal-history-record information
13 only as ~~provided in~~required or permitted by this [act] or by law other than this [act].

14 (b) A contributing justice agency may disseminate criminal-history-record information
15 to another contributing justice agency on request of the other agency in connection with the
16 duties of the requesting agency.

17 **SECTION 205. DISSEMINATION LOG OF CONTRIBUTING JUSTICE**
18 **AGENCY.** A contributing justice agency shall create, maintain, and store a dissemination log,
19 in the manner and form directed by the [responsible agency or individual]. Not later than [14]
20 days after the agency disseminates criminal-history-record information, the agency shall enter
21 the required information in the dissemination log. ~~The~~

22 Legislative Note: The phrase “responsible agency ~~shall maintain an entry or individual~~”
23 is used in the log [as long as comment to this section and in Sections 205, 301, 601, 701, and 702
24 to mean “the appropriate state agency or individual charged with responsibilities under this
25 act.” In some states, the “responsible agency or individual” may be the Attorney General or the
26 Office of the Attorney General. In other states, it ~~maintains the associated information~~, will be a
27 different actor or entity. A state should designate the appropriate agency or individual in light of
28 its own constitutional structure and political landscape.
29

30 **Comment**

31 *Authority to disseminate and duty to log.* The act allows contributing justice agencies to
32 disseminate criminal-history-record information to other contributing justice agencies ~~and to the~~

1 ~~subject of the information upon request~~, and requires those agencies to keep track of those
2 disseminations. The central repository, as part of its duties, will set reasonable standards and
3 procedures for this process, ensuring a degree of uniformity in the requesting and dissemination
4 processes.

5
6 [ARTICLE] 3

7 CENTRAL REPOSITORY

8 SECTION 301. DUTY OF CENTRAL REPOSITORY.

9 (a) The central repository shall collect, ~~store~~, maintain, store and disseminate criminal-
10 history-record information reported to it under this [act].

11 (b) The central repository shall collect, ~~store~~, maintain, store and disseminate accurate
12 criminal-history-record information in compliance with rules adopted by the [responsible
13 agency or individual].

14 (c) The central repository shall adopt ~~rules-procedures~~ to resolve conflicts and discover
15 missing data for accurate criminal-history-record information.

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

18 Legislative Note: The phrase “responsible agency or individual” is used in the comment to this
19 section and in Sections 205, 301, 601, 701, and 702 to mean “the appropriate state agency or
20 individual charged with responsibilities under this act.” In some states, the “responsible agency
21 or individual” may be the Attorney General or the Office of the Attorney General. In other
22 states, it will be a different actor or entity. A state should designate the appropriate agency or
23 individual in light of its own constitutional structure and political landscape.
24

25 Comment

26 Role of the central repository. The central repository is the hub into and out of which criminal
27 history record information will flow. It serves this role, as it does in many jurisdictions, for both
28 intra-state and inter-state purposes, as well as for communication with the myriad federal
29 agencies and systems involved in the management of criminal history record information. The

1 accuracy, logging, and correction provisions are similar to the ones provided for contributing
2 justice agencies. The central repository is also the primary contact for other states and the
3 federal system, allowing it to serve as a clearing house for the management of the universe of
4 criminal history record information that may be fed into the databases held within that
5 jurisdiction.

6 **SECTION 302. DISSEMINATION OF INFORMATION TO SUBJECT.**

7 (a) Not later than [14] days after a subject submits a request to the central repository for
8 the subject's criminal history record information, the central repository shall:

9 _____ (1) disseminate the individual's criminal history record information to the subject;
10 or

11 _____ (2) if a good-faith search identifies no criminal history record information about
12 the subject, notify the subject of that fact.

13 (b) Criminal history record information disseminated under this section must include a
14 conspicuous notification that it is provided solely for review by the subject and may not be
15 reliable or current for another use.

16 **Comment**

17 *Verification of identify and authorization.* The central repository may require verification
18 of identity of the subject, which may include biometric information, pursuant to implementing
19 regulations under this act.

20 *Use by the Subject.* This section is intended to provide the subject with a copy of their up-
21 to-date criminal history record information to facilitate the review-and-challenge process. It was
22 not designed to allow either the subject or a third-party, including potential employers and
23 landlords, from avoiding the records request and processing procedures outlined *infra*.

1 Therefore, the version produced by the central repository under this section are marked in a
2 manner that precludes the wide usage of the criminal history record information. The central
3 repository bears the responsibility for determining what this notice must include.

4
5 **SECTION 303. DISSEMINATION OF INFORMATION TO PERSON ~~OTHER~~**
6 **THAN ~~AUTHORIZED BY~~ SUBJECT.**

7 (a) — ~~(a) Before~~The subject may authorize another person to access the ~~central~~
8 ~~repository disseminates~~subject's criminal- history- record information for a purpose
9 other than administration of criminal justice.

10 (b) Before the central repository disseminates criminal history record information for a
11 purpose other than administration of criminal justice pursuant to a request not made
12 under [public record access laws of this {state}] to a person other than the subject, the
13 central repository shall determine whether the information contains

14 (1) a disposition after an arrest without ~~the filing~~initiation of a ~~formal~~ criminal
15 ~~charge~~proceeding; or

16 (2) a disposition of a ~~formal~~ criminal ~~charge~~proceeding, including diversion,
17 ~~dismissal, indefinite postponement, acquittal, guilty plea, conviction,~~
18 ~~sentencing, and modification, reversal, and revocation of the disposition,~~ for
19 every arrest or ~~charge-~~initiation of a criminal proceeding.

20 (c) If the information does not contain a disposition, the central repository shall make a
21 good-faith effort to determine the disposition and, if the central repository determines
22 the disposition, include that disposition in:

23 (1) the relevant records maintained by the central repository; and

1 (2) the report or summary to be disseminated.

2 (bd) After making the good-faith effort under subsection (ac) and before the central
3 repository disseminates the information, it shall remove from the report or summary to be
4 disseminated the notation of an arrest, ~~charge, indictment or other information relating to the~~ or
5 initiation of criminal proceedings if:

6 (1) [18] months have elapsed ~~after~~ since the later of the date of arrest or initiation
7 of criminal proceedings;

8 ~~—————~~ (2) no ~~conviction~~ disposition has ~~occurred~~;

9 ~~(3) no conviction can be~~ been identified; ~~and~~

10 ~~(3) no warrant is outstanding; and~~

11 (4) no proceeding is pending that may result in a conviction.

12 (ee) Not later than [five] days after the central repository disseminates information under
13 subsection (ad), it shall send the same information to the subject, based on the contact
14 information provided by the person requesting the information.

15 ~~SECTION 303. DISSEMINATION OF INFORMATION TO SUBJECT.~~

16 ~~————— (a) Not later than [14] days after an individual submits a request to the central repository~~
17 ~~for the individual's criminal history record information, the central repository shall:~~

18 ~~————— (1) disseminate the individual's criminal history record information to the~~
19 ~~individual; or~~

20 ~~————— (2) if a reasonably diligent search identifies no criminal history record~~
21 ~~information about the individual, notify the individual of that fact.~~

22 ~~————— (b) Criminal history record information disseminated under this section must include a~~
23 ~~conspicuous notification that it is provided solely for review by the individual and may not be~~

1 ~~reliable or current for another use.~~

2 *Legislative note. The specific terminology for the legislation regarding public access*
3 *laws, those rules that that facilities the ability of average citizens to review public records, may*
4 *vary between jurisdictions. A state should determinate the appropriate statutes in light of its*
5 *own regulatory language and landscape.*
6

7 Comment

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

24 **SECTION 304. DISSEMINATION LOG OF CENTRAL REPOSITORY.** The
25 central repository shall create, maintain, and store a dissemination log. The central repository

1 shall enter a dissemination in the log not later than [14] days after information is disseminated.

2 ~~The central repository shall maintain an entry in the log [as long as it maintains the associated~~
3 ~~information].~~

4 SECTION 305. CORRECTION OF INACCURATE INFORMATION. Not later
5 than [14] days after the central repository discovers that it possesses inaccurate criminal

6 ~~SECTION 305. CORRECTION OF INACCURATE INFORMATION. Not later~~
7 ~~than [14] days after the central repository discovers that it possesses inaccurate criminal history-~~
8 record information, the central repository shall:

9 (1) correct its own records;

10 ~~(1) correct its own records;~~

11 (2) notify all persons that submitted to or received from the central repository inaccurate
12 information for a purpose of administration of criminal justice within [one] year before the date
13 of correction of the inaccuracy and the required correction; and

14 (3) on request of the subject;

15 ~~(3) on request of the subject;~~

16 (A) disseminate a notice about the inaccuracy and the required correction to any
17 person identified by the subject that received the inaccurate information ~~for~~pursuant to a request
18 not made under [public record access laws of this {state}] for a purpose other than administration
19 of criminal justice within ~~five years~~[one] year before the ~~discovery~~date of correction; and

20 (B) provide to the subject at no cost one ~~official~~certified, corrected copy of the
21 accurate information.

22 *Legislative note. The specific terminology for the legislation regarding public access*
23 *laws, those rules that that facilities the ability of average citizens to review public records, may*
24 *vary between jurisdictions. A state should determinate the appropriate statutes in light of its*
25 *own regulatory language and landscape.*

1
2 **Comment.**

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

9
10 Procedures. Accuracy remains the overriding goal of the act. Of course, procedures
11 relating to the mechanics of how criminal history record information will be corrected and in
12 what form are left to the state and its central repository. The central repository, pursuant to
13 Section 306, will adopt rules providing for the procedures used, including whether certified
14 copies may be provided entirely electronically.

15 **SECTION 306. ADOPTION OF RULES.** The central repository shall adopt rules:

16 (1) for the manner and form in which a contributing justice agency shall collect, maintain,
17 store, and disseminate criminal-history-record information to the central repository, including
18 standards for biometric information, and ensure that all information for the same subject is linked
19 appropriately;

20 (2) for reporting, exchanging, and seeking correction of criminal-history-record
21 information under this [act], including forms; and

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

23 **SECTION 307. DISSEMINATION OF INFORMATION FOR STATISTICAL OR**
24 **RESEARCH PURPOSE.** TheConsistent with other laws of this [state] or the United States, the

1 central repository may:

2 (1) disseminate, subject to paragraph (2), criminal-history-record information, including
3 personally identifiable information, for a statistical or research purpose;

4 ~~——(2) disseminate personally identifiable information it deems necessary to accomplish the~~
5 ~~statistical or research purpose;~~ and

6 ~~(3)~~

7 ~~_____ (2) limit the use and subsequent dissemination and use of information disseminated under~~
8 this section pursuant to rules-procedures adopted by the central repository, ~~consistent with other~~
9 ~~laws of this state or the United States.~~

10 **Comment**

11 *Statistical and Research Disseminations.* Research, whether done by governmental
12 agencies or independent academics, can provide vital insight into how the criminal justice
13 system, including the criminal history record system operates. This section is designed to allow
14 for meaningful research in a way that protects personally identifiable information.

15
16 **SECTION 308. PUBLIC INFORMATION.** The central repository shall inform the
17 public about the existence and accessibility of criminal-history-record information collected,
18 stored, maintained, and disseminated by repositoriescontributing justice agencies and the central
19 repository. The central repository shall inform the public, at least annually, concerning the:

20 (1) extent and general nature of criminal-history record information collected,
21 stored, maintained, and disseminated in this state;

22 (2)

23 ~~(2)~~ number of corrections to criminal-history-record information made by repositories
24 ~~and~~ the central repository;

25 (3) results of audits under Section 602 and the status of any correction of deficiencies;

26 and

1 (4) requirements and forms for a subject to access, review, and seek correction, including
2 the right to appeal adverse determinations, of criminal-history-record information in
3 ~~repositories and~~ the central repository.

4 Comment

5 Outreach to the public and contributing justice agencies. This section assigns the central
6 repository educative and supportive roles. It will try to raise public awareness about the
7 importance of criminal history record information and how individuals can access their records
8 to check for accuracy. The drafters envision a system of web-based postings and webinars
9 though the central repository has the flexibility to conduct this outreach in the manner
10 determined to be most effective in that jurisdiction. This same system could be used to update
11 the public on the audit results and subsequent remediation. Existing central repository websites
12 could satisfy these requirements.

13 **SECTION 309. TRAINING.**

14 (a) The central repository shall provide regular training to contributing justice agencies
15 concerning submitting information on a reportable event and the importance of the information
16 to subjects, the public, and the criminal-justice system.

17 (b) The central repository shall identify contributing justice agencies ~~and repositories~~ that
18 do not meet the requirements of this [act] and provide remedial training.

19 Comment

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

1 ~~Verification of identify and authorization.~~ Verification of identity may include biometric
2 information pursuant to implementing regulations under this act.

3
4 ~~Role in employment and related checks.~~ The central repository's primary function
5 is to act as the hub for criminal history record information used for contributing justice agency
6 purposes. There is, of course, a growing use of this information for purposes of government-
7 mandated and voluntary employment, licensing, etc. Accuracy concerns are heightened in this
8 context in part because there is no related adversarial proceeding before a neutral magistrate.
9 Inspired in part by efforts in California that many consider successful, this section requires the
10 central repository to make a good faith effort to ensure that disposition information is connected
11 to arrests and charges. See, Cal. Code Regs. tit. 11, § 720 (2017). Senator Grassley and others
12 introduced the Sentencing Reform and Corrections Act of 2015 ("SRCA") on October 1, 2015.
13 Although Congress did not pass the SRCA, it is worth noting that SRCA's Section 213, which
14 was entitled "Ensuring Accuracy of Federal Criminal Records," provided that certain arrests
15 without disposition information that were more than two years old could not be disseminated. Cf.
16 Idaho Code Ann. § 67-3008(2)(iv) ("A record of an arrest that does not contain a disposition after
17 twelve (12) months from the date of arrest may only be disseminated by the department to
18 criminal justice agencies, to the subject of the record, or to a person requesting the criminal
19 history information with a signed release from the subject of the record.")

20
21 ~~Duty to correct.~~ The act requires central repository (and in an earlier provision
22 contributing justice agencies) that learns of inaccurate criminal history record information—
23 regardless of how it learns of it—to fix it in its own records and to pass along the corrected
24 information to whomever it has provided the inaccurate information. That latter process is
25 facilitated by the maintenance of dissemination logs. Thoroughly tracking the information will

1 ~~allow for more effective correction, as well as providing essential process data for the audit,~~
2 ~~discussed *infra*.~~

3
4 ~~Accuracy remains the overriding goal of the act. Of course, procedures relating to the~~
5 ~~mechanics of how criminal history record information will be corrected and in what form are left~~
6 ~~to the state and its central repository.~~

7 8 Comment

9 ~~Training. The central repository has~~ *Outreach to the public and contributing justice*
10 ~~agencies. This section also assigns the central repository educative and supportive roles. It will~~
11 ~~try to raise public awareness about the importance of criminal history record information and~~
12 ~~how individuals can access their records to check for accuracy. It will also have the~~
13 responsibility to train contributing justice agencies and focus on those agencies that are not
14 reporting as required because those agencies present significant accuracy risks to the entire
15 system. The act envisions a system of web-based postings, webinars and guidelines, though the
16 central repository ~~has the flexibility~~ *is free* to ~~conduct~~ *design* this ~~outreach~~ *training* in the manner
17 ~~determined to it believes will be the most~~ effective in that jurisdiction. ~~This same system could be~~
18 ~~used to update the public on the audit results and subsequent remediation. Existing central~~
19 ~~repository websites could satisfy these requirements.~~

20 21 [ARTICLE] 4

22 MISTAKEN-IDENTITY-PREVENTION REGISTRY

23 SECTION 401. CREATION AND MAINTENANCE OF REGISTRY. The central
24 repository shall create and maintain a mistaken-identity-prevention registry:

25 (1) designed to prevent:

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

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

29 and

30 (2) consisting of information voluntarily provided by:

31 (A) a victim of mistaken identity; or

32 (B) an individual whose name or other identifying characteristic is similar to that

1 of another individual who is the subject of criminal-history-record information.

2 **SECTION 402. REQUIREMENTS FOR REGISTRY.**

3 (a) The central repository shall adopt procedures for entry of an individual in the
4 mistaken-identity-prevention registry. The procedures must require:

- 5 (1) submission by the individual of a request to be entered in the registry; and
- 6 (2) collection of biometric information from the individual.

7 (b) The central repository shall enter in the mistaken-identity-prevention registry
8 information concerning an individual who satisfies the requirements under subsection (a). If the
9 central repository denies entry of information concerning an individual improperly excluded
10 from entry in the registry, the individual may seek relief under [the state administrative
11 procedure act] as a contested case.

12 **SECTION 403. CERTIFICATION.** Not later than [14] days after entering information

13 concerning an individual in the mistaken-identity-prevention registry, the central repository
14 shall provide the individual a certification that the individual is not the individual with a similar
15 name or identifying characteristic who is the subject of criminal-history-record information.
16 The certification is prima facie evidence of the facts certified.

17 **SECTION 404. DISSEMINATION OF REGISTRY INFORMATION.**

18 (a) The central repository may not use or disseminate information from the mistaken-
19 identity-prevention registry except as provided in this [article].

20 (b) The central repository shall disseminate information from the mistaken-identity-
21 prevention registry to a contributing justice agency if there is reason to believe that identifying
22 information on a reportable event may be inaccurate or associated with the wrong individual.

23 (c) The central repository may disseminate information from the mistaken-identity-

1 prevention registry to a national mistaken-identity-prevention registry if the national registry is
2 created and maintained by a federal law enforcement agency with a purpose and protections
3 similar to the registry created in this [article].

4 ***Legislative Note:** This section is designed to ensure that this information from the*
5 *Mistaken-Identity-Prevention Registry is used exclusively for its intended purpose. An adopting*
6 *state should examine its public records act to determine whether conforming revisions are*
7 *required.*

8
9 **SECTION 405. VERIFICATION OF IDENTITY.** If a contributing justice agency
10 seeks to establish the identity of an individual and the individual presents a certification issued
11 under Section 403, the agency shall accept the certification of the individual's identity unless the
12 agency has a reasonable basis to doubt the individual's identity or the authenticity of the
13 certification, in which case the agency shall contact the central repository to verify its
14 authenticity using the procedures adopted by the central repository.

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

16 (a) ~~The central repository and a~~ contributing justice agency may access or use
17 information from the mistaken-identity-prevention registry only to:

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

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

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

24 (1) the information and any information acquired as a result of the improper
25 access or use is not admissible in any criminal or civil action; and

26 (2) the central repository shall notify the individual whose information was

1 accessed or used improperly not later than [five] days after it discovers the access or use.

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

3 (a) The central repository shall adopt procedures regarding a request to remove
4 information from the mistaken-identity-prevention registry.

5 (b) Not later than [14] days after receiving a request from an individual for removal of
6 information the individual voluntarily submitted under Section 402(a), the central repository
7 shall remove the information from the mistaken-identity-prevention registry.

8 ~~Comment~~

9 Comment

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

28
29 This article provides for the creation of certification for relevant individuals who choose
30 to be proactive about limiting damaging errors in their own criminal record. This article
31 envisions that this certification will help an individual without a particular criminal record from
32 suffering adverse consequences of being confused with the individual who actually has that
33 record. At the same time, the drafters seek to balance these considerations with the burdens
34 imposed on law enforcement during the identity verification process. It is up to the individual
35 state to determine requirements and procedures, but the drafters encourage states to consult with
36 law enforcement and look to NLETS as a potential partner. *See* <http://www.nlets.org>.

1 [ARTICLE] 5

2 CORRECTION OF CRIMINAL-~~HISTORY-~~RECORD INFORMATION

3 SECTION 501. ACCESS AND REVIEW. A subject may access and review the
4 subject's criminal-~~history-~~record information stored by ~~a repository or~~ the central repository.
5 The ~~repository or~~ central repository shall permit access not later than [five] days after receipt of
6 a proper request from the subject ~~and verification of the requester's identity and authority.~~

7 Comment

8 Subject may be represented by counsel. The subject may be represented by counsel or an
9 attorney-in-fact for the purpose of this Article.

10 SECTION 502. REQUEST TO CORRECT. ~~Not more than once each calendar year,~~
11 ~~a~~A subject may seek correction of criminal-~~history-~~record information by sending-~~the~~
12 ~~repository maintaining the information or~~ the central repository a request specifying the item of
13 information alleged to be inaccurate and providing correct information.

14 Comment

15 Concerns about abusive filings. The act does not limit the number requests for correction
16 that a subject may make in any given year because current practice does not indicate that
17 frivolous requests are a significant problem. A subject who is abusing the system will, of course,
18 be subject to other legal process.

19 SECTION 503. REVIEW OF REQUEST.

20 (a) Not later than [40] days after receipt of a request under this [article], ~~a repository or~~
21 the central repository shall review and approve or deny the request. The director of the ~~repository~~
22 ~~or~~ central repository may extend the time to review the request for [21] days if the director
23 certifies that there is good cause for an extension and notifies the subject. The extension may not

1 be renewed.

2 (b) If the ~~repository or~~ central repository does not act within the time provided in
3 subsection (a), the request is deemed denied.

4 (c) [The state administrative procedure act] governs administrative and judicial review of
5 action by ~~a repository or~~ the central repository on a request under this [article]. Notwithstanding
6 the provisions of [the state administrative procedure act], if the request is denied as provided in
7 subsection (b), the government has the burden of proof in the immediately subsequent review.

8 **Comment**

9 Forms. The central repository will provide clear, plainly worded instructions to subjects
10 who express an interest seeking a correction to their criminal history record information. Those
11 instructions include information about seeking further review as set forth in this section. The
12 [responsible agency or individual] has the authority, pursuant to Section 702, to adopt
13 appropriate rules in this regard.

14 **SECTION 504. CORRECTION OF RECORDS.** If ~~a repository or~~ the central
15 repository approves a request under this [article], the repository or the central repository, not
16 later than [five] days after the decision becomes final and not subject to appeal, shall:

17 (1) correct its own records;

18 (2) notify the ~~requestor~~subject and ~~recipient for each entry in dissemination log in~~
19 ~~which~~all persons that received from the central repository inaccurate information ~~was~~
20 ~~disseminated~~ for a purpose of administration of criminal justice ~~purpose~~within [one] year before
21 the date of approval of the request of the inaccuracy and the required correction;

22 (3) notify the contributing justice agency that provided the inaccurate information of the
23 inaccuracy and the required correction; and

1 (4) on request of the subject:

2 (A) disseminate a notice about the inaccuracy and the required correction to any
3 person identified by the subject that received the inaccurate information pursuant to a request not
4 made under public record access laws of this [state] for a purpose other than administration of
5 criminal justice within five years after[one] year before the receiptdate of approval of the
6 request; and

7 (B) provide to the subject at no cost one officialcertified, corrected copy of the
8 accurate criminal history record information.

9 **Comment**

10 *Access, review, challenge, correction and appeal.* This article provides subjects rights to
11 access and challenge the criminal history record information about them for the explicit
12 purpose of ensuring that all of the criminal history record information managed by the state,
13 regardless of its source, is correct and up-to-date. While section 503(c) largely defers to the
14 state's administrative procedure act, the draft requires that the government will have the burden
15 of proving the accuracy of the challenged information by a preponderance of the evidence in an
16 administrative review following an automatic denial triggered by governmental
17 unresponsiveness.

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

22
23 **[ARTICLE] 6**

24 **SYSTEMS SECURITY AND AUDITS**

25 **SECTION 601. SECURITY REQUIREMENTS.** A contributing justice agency, ~~a~~
26 ~~repository~~, and the central repository, in compliance with rules adopted by the [responsible
27 agency or individual], shall ensure the confidentiality and security of criminal history record
28 information it collects, maintains, stores, and disseminates. The agency, ~~repository~~, and central
29 repository shall:

30 (1) adopt rules requiring establish guidance for the protection of information that is stored

- 1 or maintained from loss or damage;
- 2 (2) ensure that only an authorized person has access to the information;
- 3 (3) select, supervise, and train individuals authorized to have access to the information;
- 4 (4) if computerized data processing is used, ensure that the equipment maintaining the
- 5 information meets ~~computer~~the technical guidance for the security ~~standards~~of systems adopted
- 6 by the [responsible agency or individual]; and
- 7 (5) maintain an index of each data breach and make the index available on request to the
- 8 [senior elected or appointed official responsible for governmental oversight, audit, or integrity]
- 9 and the [responsible agency or individual].

10 ***Legislative NoteNotes:*** *The senior elected or appointed official responsible for*

11 *governmental oversight, audit, or integrity should be an individual outside of the day-to-day*

12 *operation of the criminal-history-record-information system who is qualified to conduct these*

13 *audits. Depending on the existing state structure, potential appropriate individuals to fill this*

14 *role might be the Attorney General, the Auditor General, the Ombudsperson, the Inspector*

15 *General, or other officer.*

16

17 *The phrase “responsible agency or individual” is used in the comment to this section and*

18 *in Sections 205, 301, 601, 701, and 702 to mean “the appropriate state agency or individual*

19 *charged with responsibilities under this act.” In some states, the “responsible agency or*

20 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*

21 *will be a different actor or entity. A state should designate the appropriate agency or individual*

22 *in light of its own constitutional structure and political landscape.*

23

24

25 **Comment**

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

27 *be in place given the sensitive nature of criminal history record information. These provisions of*

28 *the act should be more than satisfied by compliance with current federal regulations.*

29

30

31 **SECTION 602. AUDIT.**

32 (a) The [senior elected or appointed official responsible for governmental oversight,

33 audit, or integrity] shall cause an audit to be conducted at least once every [three] years of the

1 central repository ~~and a representative sample of all repositories.~~

2 (b) If the [senior elected or appointed official responsible for governmental oversight,
3 audit, or integrity] certifies that an audit required by an entity of the United States satisfies the
4 requirements of this section, no additional audit is required.

5 (c) An audit under this section must ~~assess:~~

6 (1) Assess the operational practices of the central repository for consistency,
7 efficiency, and security;

8 (2) Assess the integrity of each computerized system and database and each
9 physical location where criminal ~~history~~ record information is stored ~~;~~

10 ~~—— (d) An audit under this section of the central repository must assess:~~

11 ~~(1) the operational practices of the central repository for consistency, efficiency,~~
12 ~~and security; and~~

13 ~~(2) (3) Assess~~ any data breach in the central repository and response to the breach ~~;~~

14 ~~—— (e) Audits of repositories under this section must:~~

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

18 ~~—— (2) review the plans, policies, and procedures of~~ (4) Review a representative
19 sample ~~comprising at least [five] percent of all [police and sheriff's] departments and [10]~~
20 ~~percent of all [judicial districts] for compliance with this [act].~~

21 (f) An audit under this section of a repository must:

22 ~~—— (1) collect data from a representative sample of all criminal history of criminal~~
23 history record information stored at in the central repository ~~to assess consistency, efficiency, and~~

1 security;

2 _____(2) determine the number of missing reportable events and amount
3 and nature of missing biometric information in the ~~samples~~sample, in part by examining
4 public records of the courts of this state; ~~and.~~

5 _____(3) ~~assess any data breach in the repository and response to the breach.~~

6 _____
7 (g) The central repository ~~or repository~~and each contributing justice agency shall give the
8 [senior elected or appointed official responsible for governmental oversight, audit, or integrity]
9 access to the records, reports, listings, and information required to conduct an audit under this
10 section. An officer, employee, or contractor of this state or a political subdivision of this state
11 with relevant information shall cooperate with the [senior elected or appointed official
12 responsible for governmental oversight, audit, or integrity] and provide information requested for
13 an audit.

14 (h) The [senior elected or appointed official responsible for governmental oversight,
15 audit, or integrity] shall prepare and make available a public report containing the results of
16 audits under this section and a list of any deficiencies and recommendations for correction of
17 deficiencies.

18 _____*Legislative Note: In Section 602(d)(2), the bracketed provision about police and sheriff's*
19 *is designed to capture the universe of law enforcement agencies that collect, store, maintain and*
20 *disseminate criminal history record information while the bracketed provision about judicial*
21 *districts is designed to capture the universe of courts.*

22
23 **Comment**

24 _____~~Data Security.~~ ~~In an effort ensure accuracy, the act requires that basic security~~
25 ~~measures be in place given the sensitive nature of criminal history record information. These~~
26 ~~provisions of the act should be more than satisfied by compliance with current federal~~
27 ~~regulations.~~

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

9
10 **[ARTICLE] 7**

11 **ENFORCEMENT AND IMPLEMENTATION**

12 **SECTION 701. SANCTIONS AND REMEDIES.**

13 (a) ~~An individual or contributing justice agency that violates this [act],~~ The
14 [responsible agency or individual], central repository, or subject may, in addition to other
15 remedies as provided by this [act] ~~or~~ and by law other than this [act], ~~may be:~~
16 ~~—————(1) denied access, for a time determined by the [responsible agency or individual],~~
17 ~~to specified criminal history record information, specified repositories, or the central repository;~~
18 ~~—————(2) subject to a civil penalty or other remedy under subsection (c); and~~
19 ~~—————(3) consistent with law of this state other than this [act], if the violator is a~~
20 ~~government employee, be administratively disciplined.~~
21 ~~—————(b) The [responsible agency or individual], central repository, or subject, may, in addition~~
22 ~~to other available remedies,~~ commence an action to compel compliance with this [act] or enjoin a
23 violation of this [act]. The court may award reasonable attorney’s fees and court costs to a
24 subject who prevails in the action.

25 ~~(b)~~ (b) A subject injured by an intentional or reckless violation of this [act] or rules
26 adopted under this [act] may, in addition to other ~~available remedies,~~ remedies as provided by this
27 [act] and by law other than this [act], commence an action for actual damages. If the court
28 determines by a preponderance of the evidence that the subject was injured by an intentional or

1 reckless violation, the court shall award the greater of actual damages, or ~~not less than~~ \$[500] per
2 violation up to a maximum of \$[2,000] per action, in addition to the costs of litigation and
3 reasonable attorney’s fees.]

4 **Legislative note:** *Note:* The phrase “responsible agency or individual” is used in the
5 comment to this section and other places in the act Sections 205, 301, 601, 701, and 702 to mean
6 “the appropriate state agency or individual charged with responsibilities under this act when
7 regulations should be adopted by an entity or individual outside of the day-to-day operation of
8 the criminal history system.” In some states, the “responsible agency or individual” may be the
9 Attorney General or the Office of the Attorney General. In other states, it will be a different actor
10 or entity. ~~The responsible~~ A state should designate the appropriate agency or individual ~~need not~~
11 ~~be the same agency or individual each time it is used. A state should fill this position~~
12 ~~appropriately~~ in light of its own constitutional structure and political landscape. ~~In a~~

13
14 **Comment**

15 Existing administrative sanctions. An adopting state likely already has an array of
16 sanctions and administrative remedies for government officials who misuse their position. As
17 such, the act does not provide for such mechanisms. Additionally, there are federal regulations
18 that ~~uses~~ can limit access to the Interstate Identification Index for users or entities that do not
19 follow proper procedures.

20
21 Existing criminal sanctions. The act does not include a criminal sanction, in part because
22 existing criminal statutes likely cover behavior that warrants a response by the ~~Attorney General~~
23 ~~position as the chief law enforcement officer and “minister of criminal justice,”~~ system. While
24 anyone can report a suspected criminal violation to the appropriate prosecutorial authorities, the
25 responsible agency or individual and the senior elected or appointed official responsible for
26 governmental oversight, audit, or integrity should be particularly attentive to such circumstances.
27 Of course, the act does not limit the prosecutorial power of any individual or entity to enforce
28 existing law.

29
30 Individual sanctions. ~~Attorney General~~ This section allows for injunctivefor injunctive
31 relief and monetary damages when the act is violated. Concerning monetary damages, this
32 section affords a subject who is injured by a violation of the act a remedy with a modest
33 minimum (\$500 per violation up to \$2,000 for related violations) and a fee-shifting provision on
34 the theory that the true extent of actual damages may be difficult to prove. Cf. 18 U.S.C. §
35 2724(b). These sanctions are modeled after some existing provisions, and are limited in scope.
36 All of this, of course, is also designed to serve as a clear and enforceable incentive to minimize
37 inaccuracies. ~~best suited to fulfill these duties.~~

1 **SECTION 702. DUTIES AND AUTHORITY OF [RESPONSIBLE AGENCY OR**
2 **INDIVIDUAL].**

3 (a) The [responsible agency or individual] shall adopt rules necessary to implement this
4 [act]. The rules must include a provision that:

5 (1) governs the ~~security~~, accuracy, dissemination, and review of, and individual
6 access to, criminal-~~history-~~record information;

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

9 ~~(3)~~ (3) provides for the establishment of technical procedures for the
10 security of systems described in subsections (a)(1)-(a)(2); and

11 (4) sets a reasonable maximum fee for the cost of disseminating criminal-~~history-~~record
12 information and provides a subject free access to the subject’s information at least once each
13 calendar year.

14 (b) The [responsible agency or individual] may designate any governmental agency, other
15 than the central repository or a court, as a contributing justice agency.

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

18 ***Legislative note:*** **Note:** *The phrase “responsible agency or individual” is used in the*
19 *comment to this section and other places in the act Sections 205, 301, 601, 701, and 702 to mean*
20 *“the appropriate state agency or individual charged with responsibilities under this act ~~when~~*
21 *regulations should be adopted by an entity.” In some states, the “responsible agency or*
22 *individual ~~outside~~” may be the Attorney General or the Office of the ~~day to day operation of the~~*
23 *criminal history system. In some states, the “responsible agency or individual” may be the*
24 *Attorney General or the Office of the Attorney General. In other states, it will be a different actor*
25 *or entity. The responsible agency or individual need not be the same agency or individual each*
26 *time it is used. Attorney General. In other states, it will be a different actor or entity.* A state
27 *should fill this position appropriately designate the appropriate agency or individual in light of*
28 *its own constitutional structure and political landscape. ~~In a state that uses the Attorney General~~*
29 *position as the chief law enforcement officer and “minister of justice,” the Attorney General is*

1 ~~best suited to fulfill these duties.~~

3 ~~Comment~~

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

12
13 ~~Criminal sanctions.~~ The drafters do not propose a criminal sanction, in part because they
14 believe that existing criminal statutes cover behavior that warrants a response by the criminal
15 justice system. While anyone can report a suspected criminal violation to the appropriate
16 prosecutorial authorities, the drafters anticipate that the responsible agency or individual and the
17 senior elected or appointed official responsible for governmental oversight, audit, or integrity
18 will be particularly attentive to such circumstances. Of course, the act does not limit the
19 prosecutorial power of any individual or entity to enforce existing law.

22 ~~Comment~~

27 [ARTICLE] 8

28 MISCELLANEOUS PROVISIONS

29 SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

32 [SECTION 802. SEVERABILITY. If any provision of this [act] or its application to
33 any person or circumstance is held invalid, the invalidity does not affect other provisions or
34 applications of this [act] which can be given effect without the invalid provision or application,

1 and to this end the provisions of this [act] are severable.]

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

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

5 (a)

6 (b)

7 (c)

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