

DRAFT
FOR DISCUSSION

UNIFORM CRIMINAL RECORDS ACCURACY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ON UNIFORM STATE LAWS

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February 8, 2018

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UNIFORM CRIMINAL RECORDS ACCURACY ACT

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1 administration of criminal justice. The term does not include the central repository.

2 (6) "Criminal-history record information" means information collected, maintained,
3 stored, or disseminated by a contributing justice agency, a repository, or the central repository,
4 consisting of an identifiable description of a subject, including biometric information, and
5 notation of a reportable event. The term does not include noncriminal-history-record
6 information.

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

9 (8) "Noncriminal-history-record information" means information collected:

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

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

13 (9) "Person" means an individual, estate, business or nonprofit entity, public corporation,
14 government or governmental subdivision, agency, or instrumentality, or other legal entity.

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

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

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

21 (C) initiation of a criminal proceeding;

22 (D) disposition of a criminal proceeding, including diversion, dismissal, indefinite
23 postponement, acquittal, guilty plea, conviction, sentencing, and modification, reversal, and

1 revocation of the disposition;
2 (E) commitment to or release from a place of detention or custodial supervision;
3 (F) commencement or conclusion of noncustodial supervision;
4 (G) completion of a sentence;
5 (H) expungement, sealing, or setting aside of criminal-history-record information;
6 (I) grant of clemency, including pardon or commutation, or restoration of rights;
7 and
8 (J) finding of mental incompetence by a court at any stage of a criminal
9 proceeding.

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

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

15 (13) “Subject” means the individual about whom criminal-history-record information is
16 collected, stored, maintained, or disseminated in this state.

17 **Legislative Note:** *Reportable events relate to offenses that are typically categorized as*
18 *felonies and misdemeanors. Some jurisdictions have other categories of offenses that merit*
19 *inclusion, such as “gross misdemeanors” This is a decision best left to the adopting state.*
20

21 *The phrase “responsible agency or individual” is used in this section and in Sections*
22 *205, 301, 601, 701, and 702 to mean the appropriate state agency or individual charged with*
23 *responsibilities under this act. The responsible agency or individual need not be the same agency*
24 *or individual each time the phrase is used. In some states, the “responsible agency or*
25 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
26 *will be a different actor or entity. A state should designate the appropriate agency or individual*
27 *in light of its own constitutional structure and political landscape.*
28

1 **Comment**

2
3 *Defined terms, not substance.* The style rules of the Uniform Law Commission call for
4 consolidation of definitions for terms that recur throughout an act into a single section early in
5 the act. A definition for a term that appears in only one section should be located in that section.
6 Provisions that state a definition must be definitional only, with the substance pertaining to the
7 term addressed separately.
8

9 *Administration of criminal justice.* The definition of “administration of criminal justice”
10 is largely based upon the language found in 28 C.F.R. §20.3.
11

12 *Biometric information.* The definition of “biometric information” is limited to
13 fingerprints, which are the gold standard for ensuring that a particular subject is linked to the
14 correct and complete arrest and disposition information. The use of the term “biometric
15 information” emphasizes the importance of using something beyond an exact or approximate
16 name match to ensure the accuracy of criminal-history record information during the record
17 location, linking and retrieval processes. Using the term “biometric information” also allows a
18 legislature to retain this term if, at some point in the future, it decides that technology has
19 evolved to the point where an equally reliable biometric identification technique is appropriate to
20 include. Biometric information is available from all subjects because the criminal-history-record
21 information maintained pursuant to this act relates exclusively to individuals. This is consistent
22 with current practice.
23

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

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

43 Courts are included in a “contributing justice agency” because their participation is
44 crucial to the success of the effort to promote the accuracy of criminal records. An adopting
45 state concerned about including courts because of separation of powers concerns may want to
46 add language either exempting courts or allowing courts themselves to opt-out. Statutory

1 language authorizing a judicial opt-out could take this form: “The [state Supreme Court], or a
2 judicial entity authorized to act on its behalf, may remove the courts of this state from this sub-
3 section under its rulemaking authority.” The court should be included as a contributing justice
4 agency to the extent constitutionally permissible. Including courts will materially enhance the
5 accuracy of criminal-history-record information.
6

7 *Noncriminal-history-record information.* This definition clarifies that information may
8 be held by a contributing justice agency that is not deemed to be criminal-history-record
9 information.
10

11 *Reportable event.* The definition of a “reportable event” is designed to capture all of the
12 significant moments in the life of a criminal case that future actors in the criminal justice system
13 would want to know about that defendant and that case. Though the nomenclature may vary by
14 jurisdiction, these are almost universal in their presence and importance.
15

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

19 Disposition means information disclosing that criminal proceedings have been concluded
20 and the nature of the termination, including information disclosing that the police have
21 elected not to refer a matter to a prosecutor or that a prosecutor has elected not to
22 commence criminal proceedings; or disclosing that proceedings have been indefinitely
23 postponed and the reason for such postponement. Dispositions shall include, but shall not
24 be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental
25 incompetence, case continued without finding, charge dismissed, charge dismissed due to
26 insanity, charge dismissed due to mental incompetency, charge still pending due to
27 insanity, charge still pending due to mental incompetency, guilty plea, nolle prosequi, no
28 paper, nolo contendere plea, convicted, youthful offender determination, deceased,
29 deferred disposition, dismissed-civil action, found insane, found mentally incompetent,
30 pardoned, probation before conviction, sentence commuted, adjudication withheld,
31 mistrial-defendant discharged, executive clemency, placed on probation, paroled, or
32 released from correction supervision.

33 <http://www.gpo.gov/fdsys/pkg/CFR-2002-title28-vol1/pdf/CFR-2002-title28-vol1-sec20-3.pdf>.
34

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

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

40 *Legislative Note: This section is designed to ensure that this act is not interpreted as*
41 *limiting access to court records. It provides that information in court dockets and files not under*

1 *seal, remain public records to the extent provided by existing law. An adopting state should*
2 *examine its public records act to determine whether conforming revisions are required.*

3
4 **SECTION 105. DISSEMINATION LOG.** A dissemination log under Section 205 or
5 304 must include each request for and dissemination of criminal-history-record information. The
6 log must be separate from noncriminal-history-record information and criminal-history-record
7 information, and must include the:

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

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

18
19 **Comment**

20
21 *Dissemination logs.* The drafters anticipate that the public will have access to
22 dissemination logs in a fashion consistent with existing public records laws in the jurisdiction. A
23 dissemination log should be maintained as long as the associated criminal history record
24 criminal-history-record information is maintained. In a jurisdiction in which existing records
25 retention provisions already speak to this issue the language specifying duration of record
26 maintenance should be adjusted appropriately.

27
28 **[ARTICLE] 2**

29 **CONTRIBUTING JUSTICE AGENCY**

30 **SECTION 201. COLLECTION AND SUBMISSION OF INFORMATION TO**
31 **CENTRAL REPOSITORY.** A contributing justice agency that has custody of or control,
32 authority, or jurisdiction over an individual for a reportable event shall collect, maintain, and

1 store in its repository criminal-history-record information on the
2 event. Not later than [five] days after the agency collects the information, the agency shall
3 submit the information to the central repository.

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

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

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

18 **Comment**

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

1 be unrelated to funding for equipment, and instead turns on the enforcement of mandatory
2 collection procedures. *See, e.g.,* Jeffrey Benzing, *Fingerprint Hearing: Best and Worst Pa.*
3 *Counties Have Same Equipment*, available at
4 http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html (July
5 23, 2014).

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

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

23
24 *Duty of other contributing justice agencies.* If the arresting agency fails to obtain
25 fingerprints, the act provides a backstop by requiring other, typically chronologically
26 downstream, actors in the contributing justice system to fingerprint the subject. The drafters
27 believe that this “belt-and-suspenders approach” is warranted given the wide variation of
28 fingerprint compliance rates between and within states. For example, the drafters learned that in
29 one large state, there are tens of thousands – if not hundreds of thousands – of essentially
30 orphaned files in the central repository because disposition information cannot be definitively
31 linked by fingerprint to a subject. Furthermore, in that state, the state prison receiving center felt
32 the need to install a Livescan machine (a common biometric data collection station) because of
33 the number of sentenced offenders arriving without fingerprints in the system.

34
35 *Duty to report reportable events.* The act requires contributing justice agencies to submit
36 information on reportable events – such as arrests, charges, convictions, sentences,
37 commitments, etc. – with which they were involved to the central repository. If followed, this
38 mandate should go a long way towards solving the problem of missing dispositions. The act
39 takes a “belt-and-suspenders approach” by putting this responsibility broadly on multiple actors,
40 even if that means some duplicative reporting to the central repository. Given the large and
41 growing use of electronic records, this should not be burdensome on the contributing justice
42 agencies and may help to reduce inaccuracies.

1 criminal-history-record information in compliance with rules adopted by the [responsible agency
2 or individual].

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

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

7 **SECTION 302. DISSEMINATION OF INFORMATION TO PERSON OTHER**
8 **THAN SUBJECT.**

9 (a) Before the central repository disseminates criminal-history-record information for a
10 purpose other than administration of criminal justice to a person other than the subject, the
11 central repository shall determine whether the information contains a disposition after an arrest
12 without the filing of a formal criminal charge or a disposition of a formal criminal charge for
13 every arrest or charge. If the information does not contain a disposition, the central repository
14 shall make a good-faith effort to determine the disposition and, if the central repository
15 determines the disposition, include that disposition in:

- 16 (1) the relevant records maintained by the central repository; and
17 (2) the report or summary to be disseminated.

18 (b) After making the good-faith effort under subsection (a) and before the central
19 repository disseminates the information, it shall remove from the report or summary to be
20 disseminated the notation of an arrest, charge, indictment or other information relating to the
21 initiation of criminal proceedings if:

- 22 (1) [18] months have elapsed after the date of arrest;
23 (2) no conviction has occurred;

1 (3) no conviction can be identified; and

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

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

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

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

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

11 (2) if a reasonably diligent search identifies no criminal-history-record
12 information about the individual, notify the individual 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 individual and may not be
15 reliable or current for another use.

16 **SECTION 304. DISSEMINATION LOG OF CENTRAL REPOSITORY.** The
17 central repository shall create, maintain, and store a dissemination log. The central repository
18 shall enter a dissemination in the log not later than [14] days after information is disseminated.
19 The central repository shall maintain an entry in the log [as long as it maintains the associated
20 information].

21 **SECTION 305. CORRECTION OF INACCURATE INFORMATION.** Not later
22 than [14] days after the central repository discovers that it possesses inaccurate criminal-history-
23 record information, the central repository shall:

- 1 (1) correct its own records;
- 2 (2) notify all persons that submitted or received the inaccurate information for a purpose
3 of administration of criminal justice of the inaccuracy and the required correction; and
- 4 (3) on request of the subject:
- 5 (A) disseminate a notice about the inaccuracy and the required correction to any
6 person identified by the subject that received the inaccurate information for purpose other than
7 administration of criminal justice within five years before the discovery; and
- 8 (B) provide to the subject at no cost one official, corrected copy of the accurate
9 information.

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

- 11 (1) for the manner and form in which a contributing justice agency shall collect, maintain,
12 store, and disseminate criminal-history-record information to the central repository, including
13 standards for biometric information, and ensure that all information for the same subject is linked
14 appropriately;
- 15 (2) for reporting, exchanging, and seeking correction of criminal-history-record
16 information under this [act], including forms; and
- 17 (3) necessary to carry out its powers and duties under this [act].

18 **SECTION 307. DISSEMINATION OF INFORMATION FOR STATISTICAL OR**
19 **RESEARCH PURPOSE.** The central repository may:

- 20 (1) disseminate criminal-history-record information for a statistical or research purpose;
- 21 (2) disseminate personally identifiable information it deems necessary to accomplish the
22 statistical or research purpose; and

1 (3) limit the use and subsequent dissemination and use of information disseminated under
2 this section pursuant to rules adopted by the central repository, consistent with other laws of this
3 state or the United States.

4 **Comment**

5 *Statistical and Research Disseminations.* Research, whether done by governmental
6 agencies or independent academics, can provide vital insight into how the criminal justice
7 system, including the criminal history record system operates. This section is designed to allow
8 for meaningful research in a way that protects personally identifiable information.
9

10 **SECTION 308. PUBLIC INFORMATION.** The central repository shall inform the
11 public about the existence and accessibility of criminal-history-record information collected,
12 stored, maintained, and disseminated by repositories and the central repository. The central
13 repository shall inform the public, at least annually, concerning the:

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

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

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

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

22 **SECTION 309. TRAINING.**

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

26 (b) The central repository shall identify contributing justice agencies and repositories that

1 do not meet the requirements of this [act] and provide remedial training.

2 **Comment**

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

10
11 *Verification of identify and authorization.* Verification of identity may include biometric
12 information pursuant to implementing regulations under this act.

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

30
31 *Duty to correct.* The act requires central repository (and in an earlier provision
32 contributing justice agencies) that learns of inaccurate criminal-history-record information –
33 regardless of how it learns of it – to fix it in its own records and to pass along the corrected
34 information to whomever it has provided the inaccurate information. That latter process is
35 facilitated by the maintenance of dissemination logs. Thoroughly tracking the information will
36 allow for more effective correction, as well as providing essential process data for the audit,
37 discussed *infra*.

38
39 Accuracy remains the overriding goal of the act. Of course, procedures relating to the
40 mechanics of how criminal-history-record information will be corrected and in what form are left
41 to the state and its central repository.

42
43 *Outreach to the public and contributing justice agencies.* This section also assigns the
44 central repository educative and supportive roles. It will try to raise public awareness about the

1 importance of criminal-history-record information and how individuals can access their records
2 to check for accuracy. It will also have the responsibility to train contributing justice agencies
3 and focus on those agencies that are not reporting as required because those agencies present
4 significant accuracy risks to the entire system. The act envisions a system of web-based
5 postings, webinars and guidelines, though the central repository has the flexibility to conduct this
6 outreach in the manner determined to be effective in that jurisdiction. This same system could be
7 used to update the public on the audit results and subsequent remediation. Existing central
8 repository websites could satisfy these requirements.

9
10 **[ARTICLE] 4**

11 **MISTAKEN-IDENTITY-PREVENTION REGISTRY**

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

14 (1) designed to prevent:

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

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

18 and

19 (2) consisting of information voluntarily provided by:

20 (A) a victim of mistaken identity; or

21 (B) an individual whose name or other identifying characteristic is similar to that
22 of another individual who is the subject of criminal-history-record information.

23 **SECTION 402. REQUIREMENTS FOR REGISTRY.**

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

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

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

28 (b) The central repository shall enter in the mistaken-identity-prevention registry

1 information concerning an individual who satisfies the requirements under subsection (a). If the
2 central repository denies entry of information concerning an individual improperly excluded
3 from entry in the registry, the individual may seek relief under [the state administrative
4 procedure act] as a contested case.

5 **SECTION 403. CERTIFICATION.** Not later than [14] days after entering information
6 concerning an individual in the mistaken-identity-prevention registry, the central repository shall
7 provide the individual a certification that the individual is not the individual with a similar name
8 or identifying characteristic who is the subject of criminal-history-record information. The
9 certification is prima facie evidence of the facts certified.

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

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

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

16 (c) The central repository may disseminate information from the mistaken-identity-
17 prevention registry to a national mistaken-identity-prevention registry if the national registry is
18 created and maintained by a federal law enforcement agency with a purpose and protections
19 similar to the registry created in this [article].

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

24 **SECTION 405. VERIFICATION OF IDENTITY.** If a contributing justice agency
25 seeks to establish the identity of an individual and the individual presents a certification issued
26

1 under Section 403, the agency shall accept the certification of the individual’s identity unless the
2 agency has a reasonable basis to doubt the individual’s identity or the authenticity of the
3 certification, in which case the agency shall contact the central repository to verify its
4 authenticity using the procedures adopted by the central repository.

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

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

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

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

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

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

16 (2) the central repository shall notify the individual whose information was
17 accessed or used improperly not later than [five] days after it discovers the access or use.

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

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

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

1 **Comment**

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

20
21 This article provides for the creation of certification for relevant individuals who choose
22 to be proactive about limiting damaging errors in their own criminal record. This article
23 envisions that this certification will help an individual without a particular criminal record from
24 suffering adverse consequences of being confused with the individual who actually has that
25 record. At the same time, the drafters seek to balance these considerations with the burdens
26 imposed on law enforcement during the identity verification process. It is up to the individual
27 state to determine requirements and procedures, but the drafters encourage states to consult with
28 law enforcement and look to NLETS as a potential partner. *See* <http://www.nlets.org>.

29
30 **[ARTICLE] 5**

31 **CORRECTION OF CRIMINAL-HISTORY-RECORD INFORMATION**

32 **SECTION 501. ACCESS AND REVIEW.** A subject may access and review the

33 subject’s criminal-history-record information stored by a repository or the central repository.

34 The repository or central repository shall permit access not later than [five] days after receipt of a
35 proper request from the subject and verification of the requester’s identity and authority.

36 **SECTION 502. REQUEST TO CORRECT.** Not more than once each calendar year,

37 a subject may seek correction of criminal-history-record information by sending the repository

1 maintaining the information or the central repository a request specifying the item of information
2 alleged to be inaccurate and providing correct information.

3 **SECTION 503. REVIEW OF REQUEST.**

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

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

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

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

18 (1) correct its own records;

19 (2) notify the requestor and recipient for each entry in dissemination log in which the
20 inaccurate information was disseminated for a criminal justice purpose of the inaccuracy and the
21 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 for a purpose other than
4 administration of criminal justice within five years after the receipt; and

5 (B) provide the subject at no cost one official, corrected copy of the accurate
6 criminal-history-record information.

7 **Comment**

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

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

20
21 **[ARTICLE] 6**

22 **SYSTEMS SECURITY AND AUDITS**

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

28 (1) adopt rules requiring protection of information that is stored or maintained from loss
29 or damage;

30 (2) ensure that only an authorized person has access to the information;

1 (3) select, supervise, and train individuals authorized to have access to the information;

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

5 (5) maintain an index of each data breach and make the index available on request to the
6 [senior elected or appointed official responsible for governmental oversight, audit, or integrity]
7 and the [responsible agency or individual].

8 *Legislative Note: The senior elected or appointed official responsible for governmental*
9 *oversight, audit, or integrity should be an individual outside of the day-to-day operation of the*
10 *criminal-history-record-information system who is qualified to conduct these audits. Depending*
11 *on the existing state structure, potential appropriate individuals to fill this role might be the*
12 *Attorney General, the Auditor General, the Ombudsperson, the Inspector General, or other*
13 *officer.*

14
15 **SECTION 602. AUDIT.**

16 (a) The [senior elected or appointed official responsible for governmental oversight,
17 audit, or integrity] shall cause an audit to be conducted at least once every [three] years of the
18 central repository and a representative sample of all repositories.

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

22 (c) An audit under this section must assess the integrity of each computerized system and
23 database and each physical location where criminal-history-record information is stored.

24 (d) An audit under this section of the central repository must assess:

25 (1) the operational practices of the central repository for consistency, efficiency,
26 and security; and

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

1 (e) Audits of repositories under this section must:

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

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

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

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

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

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

15 (g) The central repository or repository shall give the [senior elected or appointed official
16 responsible for governmental oversight, audit, or integrity] access to the records, reports, listings,
17 and information required to conduct an audit under this section. An officer, employee, or
18 contractor of this state or a political subdivision of this state with relevant information shall
19 cooperate with the [senior elected or appointed official responsible for governmental oversight,
20 audit, or integrity] and provide information requested for an audit.

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

1 deficiencies.

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

6
7

Comment

8 *Data Security.* In an effort ensure accuracy, the act requires that basic security measures
9 be in place given the sensitive nature of criminal-history-record information. These provisions of
10 the act should be more than satisfied by compliance with current federal regulations.

11

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

20

21

[ARTICLE] 7

22

ENFORCEMENT AND IMPLEMENTATION

23

SECTION 701. SANCTIONS AND REMEDIES.

24

(a) An individual or contributing justice agency that violates this [act], in addition to

25

other remedies provided by this [act] or by law other than this [act], may be:

26

(1) denied access, for a time determined by the [responsible agency or individual],

27

to specified criminal-history-record information, specified repositories, or the central repository;

28

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

29

(3) consistent with law of this state other than this [act], if the violator is a

30

government employee, be administratively disciplined.

31

(b) The [responsible agency or individual], central repository, or subject, may, in addition

32

to other available remedies, commence an action to compel compliance with this [act] or enjoin a

1 violation of this [act]. The court may award reasonable attorney’s fees and court costs to a
2 subject who prevails in the action.

3 (c) A subject injured by an intentional or reckless violation of this [act] or rules adopted
4 under this [act] may, in addition to other available remedies, commence an action for actual
5 damages. If the court determines by a preponderance of the evidence that the subject was injured
6 by an intentional or reckless violation, the court shall award the greater of actual damages, or not
7 less than \$[500] per violation up to a maximum of \$[2,000] per action, in addition to the costs of
8 litigation and reasonable attorney’s fees.

9 *Legislative note: The phrase “responsible agency or individual” is used in this and other*
10 *places in the act to mean the appropriate state agency or individual charged with responsibilities*
11 *under this act when regulations should be adopted by an entity or individual outside of the day-*
12 *to-day operation of the criminal history system. In some states, the “responsible agency or*
13 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
14 *will be a different actor or entity. The responsible agency or individual need not be the same*
15 *agency or individual each time it is used. A state should fill this position appropriately in light*
16 *of its own constitutional structure and political landscape. In a state that uses the Attorney*
17 *General position as the chief law enforcement officer and “minister of justice,” the Attorney*
18 *General is best suited to fulfill these duties.*

19
20 **SECTION 702. DUTIES AND AUTHORITY OF [RESPONSIBLE AGENCY OR**
21 **INDIVIDUAL].**

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

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

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

28 (3) sets a reasonable maximum fee for the cost of disseminating criminal-history-
29 record information and provides a subject free access to the subject’s information at least once

1 each calendar year.

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

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

6 **Legislative note:** *The phrase “responsible agency or individual” is used in this and other*
7 *places in the act to mean the appropriate state agency or individual charged with responsibilities*
8 *under this act when regulations should be adopted by an entity or individual outside of the day-*
9 *to-day operation of the criminal history system. In some states, the “responsible agency or*
10 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
11 *will be a different actor or entity. The responsible agency or individual need not be the same*
12 *agency or individual each time it is used. A state should fill this position appropriately in light*
13 *of its own constitutional structure and political landscape. In a state that uses the Attorney*
14 *General position as the chief law enforcement officer and “minister of justice,” the Attorney*
15 *General is best suited to fulfill these duties.*

16
17

Comment

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

26

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

34

1 [ARTICLE] 8

2 MISCELLANEOUS PROVISIONS

3 SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

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

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

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

12 SECTION 803. REPEALS; CONFORMING AMENDMENTS.

13 (a)

14 (b)

15 (c)

16 SECTION 804. EFFECTIVE DATE. This [act] takes effect