

UNIFORM CRIMINAL HISTORY RECORDS ACT

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ON UNIFORM STATE LAWS

and by it

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UNIFORM CRIMINAL HISTORY RECORDS ACT

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UNIFORM CRIMINAL HISTORY RECORDS ACT

PREFATORY NOTE

The Uniform Criminal History Records Act provides first for the collection in a single, statewide, centralized compilation of all criminal history records in the state, recording all arrests and charges under the criminal law of the state and the subsequent history of the processing of those charges through final disposition or completion of sentence, and second, provides rules to govern the dissemination of those records from the central repository, to aid the police, other law enforcement agencies, and the courts, and to meet the justifiable public needs for information about an individual's past convictions of crime or his current involvement as a defendant in criminal proceedings.

The Act is a needed response to technological developments in information management and retrieval that have made feasible a comprehensive statewide system of criminal history records. The potential contribution of such a system to efficient law enforcement has been widely recognized, often, however, through the establishment of hastily designed or makeshift arrangements. The Act provides for controls to regularize the process of compilation, to lay down clear lines of responsibility for reporting information to the central repository, to require prompt submission of reports, to verify the accuracy of the records, and to safeguard their physical security, since the utility of the system is directly dependent upon the correctness and completeness of the content of its records.

The principal purpose of centralized criminal history records is to serve the needs of criminal law enforcement agencies, and the files are thus made available upon authorized request to police departments, prosecutors, correctional authorities, parole boards, and probation departments, for example, as well as to courts, to aid in sentencing or conditioning pre-trial release, and to the governor, for pardoning or clemency.

Exchanges of information with other states or the federal government are regulated and in general fostered by the Act. Consistency and uniformity in state laws can facilitate such interstate cooperation and contribute importantly to effective law enforcement in the nation as a whole.

The private sector may also have a legitimate interest in certain kinds of information about an individual's involvement in criminal proceedings. The Act therefore facilitates, for example, the screening of applicants for private employment in sensitive positions, by allowing any person, including a prospective employer as well as the press, a government agency, or any private citizen, to obtain certain information from the central files concerning a named subject clearly identified in the request. Under policies holding that public disgrace is an appropriate component of punishment for crime, past convictions are disclosable to the public. Pending prosecutions and recent nonconviction dispositions are also available from the central records for a period of one year after the latest reportable event in the processing of the arrest or charge, as

matters of current events. Older nonconviction information is restricted to criminal law enforcement purposes.

The Act also undertakes to protect the interests of the individual subject by conferring a personal right to examine the subject's record as maintained, to demand correction of inaccurate information, and to be notified of disclosures of the records to members of the public. Civil and criminal sanctions are provided for specified violations of the protective provisions of the Act.

The purpose of the Act, as a whole, is to deal comprehensively with statewide criminal history record systems, addressing the salient issues, and providing clear guides that take due account of the interests of law enforcement, the individual, and the public at large.

UNIFORM CRIMINAL HISTORY RECORDS ACT

SECTION 1. DEFINITIONS.

Unless the context otherwise requires, as used in this [Act]:

(1) "Agency" means a political subdivision or combination of subdivisions, department, institution, board, commission, district, council, bureau, office, officer, official, governing authority, or other instrumentality of state or local government, of this State, or a corporation or other establishment owned, operated, or managed by or on behalf of this State or any political subdivision of this State, but the term does not include the [name of state legislature] or a court of this State.

(2) "Central repository" means the [office or department].

(3) "Criminal history record" means a record of reportable events maintained by the central repository, but the term does not include an intelligence or investigative record.

(4) "Criminal law enforcement agency" means an agency authorized by law, as one of its primary functions, to arrest, prosecute, incarcerate, parole, supervise, or rehabilitate criminal offenders, but the term does not include the [office of public defender].

(5) "Reportable event" means any of the following occurrences concerning an individual arrested for or charged with a criminal offense other than a petty offense or traffic violation excluded under Section 2(b)(4) or an offense adjudicated under the [juvenile court act]:

(i) an arrest;

(ii) a disposition after an arrest without the filing of a formal criminal charge;

(iii) the filing of a formal criminal charge;

(iv) the disposition of a formal criminal charge, including any sentence imposed, and a modification of the disposition or sentence;

(v) commitment after conviction to a place of detention;

(vi) release from punitive detention; or

(vii) completion of sentence.

(6) "Subject" means an individual who is the subject of a criminal history record.

COMMENT

Paragraph (1) defines "agency" broadly to include all branches of state and local government, along with any establishment, like a private prison, operated on behalf of the government. The term is used in this Act principally in the context of the "criminal law enforcement agency" as further defined in paragraph (4), and accordingly, the courts are excluded from the definition of "agency," and are expressly named in provisions of the Act that apply to the judicial branch. The state legislature is also excluded.

Paragraph (2) leaves the definition of "central repository" to be completed by designating the appropriate governmental agency vested with the function of statewide recordkeeping.

The term "criminal history record" in paragraph (3) takes much of its meaning from the enumeration of "reportable events" in paragraph (5) of this section, and thus refers to the summary notations and abbreviated entries which record the several steps in the processing of a criminal charge, from the arrest to the final release from any confinement. The information recorded will include dates, places, the nature of the charges, disposition, terms of sentence, and the place of confinement, as well as the agency or court where action was taken. The phrase "criminal history record information," often abbreviated to "CHRI," is a widely used term of art in this field.

This definition of criminal history records operates to exclude from the Act's coverage a variety of other kinds of information. Increasingly, states have begun to establish centralized files listing, for example, "wanted" persons and outstanding warrants, or recording the modus operandi of violent crimes, aliases or "street" names, stolen cars, or firearms registration. Such data banks are outside the Act. The files of the local police department are unaffected; only the records of the central repository, or derived from it, are covered.

The express exclusion of intelligence and investigative records is inserted in this definition to emphasize that such records, often referred to as "I & I," are not the subject of any duty of disclosure. Such files are maintained for purposes of general surveillance of criminal activity or of investigation of particular crimes. They may include incomplete information, hearsay, rumors, or tips of questionable reliability and are by tradition kept in strict confidence.

Paragraph (4) defines the criminal law enforcement agency, triggering a duty borne by such an agency to report events to the central repository and the right of the agency to receive from the repository any criminal history record information relevant to its functions. Included are state and local police departments, sheriffs, prosecutor's offices, the correctional authority that operates a penitentiary or jail, the parole board, etc. Government agencies that are only incidentally engaged in criminal law enforcement, such as a highway department with a few security officers as watchmen at the garage, are excluded by the requirement that criminal law enforcement must be one of the agency's primary functions. The office of the public defender is treated by its exception here like privately retained defense counsel, with no greater access to criminal records.

Paragraph (5) defines the general categories of "reportable events" that will be recorded to constitute the criminal history record. A more detailed specification of particular events, with the format, abbreviations, or codes to be used in reporting and recording, will be formulated by the state's central repository in regulations authorized by Section 2(b)(1) of the Act. Variations from state to state will be necessitated by differences in criminal procedure, in terminology, and in the organization and structure of criminal justice agencies and the judicial branches of the states. For an example of a more detailed listing, reflecting local practice, see Maryland Code, Art. 27, § 747.

Information about petty traffic violations or other petty offenses is of minimal utility in law enforcement, and its compilation in the central file of criminal histories would serve only to clutter the records. At the same time, its disclosure has only a limited impact on privacy interests. The definition therefore excludes such information from coverage under the Act, with authority conferred upon the central repository to specify which offenses fall within the "petty" category. See Section 2(b)(4). Juvenile records involve special considerations and a different set of values and policies and are left by this Act to other law.

SECTION 2. CENTRAL REPOSITORY.

(a) The central repository shall collect and maintain, as criminal history records, the information required to be reported to it by this [Act]. The central repository may, but need not, retain information received concerning offenses under the laws of another jurisdiction.

(b) The [central repository], by rule or regulation, shall:

(1) specify the method and details of reporting each reportable event;

(2) designate the criminal law enforcement agency or court in this State that is responsible for reporting a reportable event to the central repository;

(3) specify the nature and form of the information to be used in identifying the individual who is the subject of a reportable event;

(4) specify the petty offenses and petty traffic violations that are excluded from the definition of a reportable event;

(5) develop and promulgate procedures and formats for reporting and exchanging information under this [Act]; and

(6) establish a schedule of fees it may charge for disclosure under this [Act].

(c) The central repository shall specify and make public the items of information that it uses to retrieve criminal history records.

(d) The [central repository] may adopt any other rules or regulations necessary to carry out the purposes of this [Act].

COMMENT

Section 2(a) imposes the central repository's first and underlying duty to gather and store statewide criminal history information, as the predicate for its function to make this information available for law enforcement purposes under Section 5 and incidentally to the general public under Section 6.

Subsection (b) empowers the central repository to promulgate specifications, by rule or regulation, for the operation of the central recordkeeping system. Under paragraph (1), the repository will be called upon to formulate a list of "reportable events," with descriptive codes and supporting details, to amplify the definition of that term and to set the pattern for CHRI.

Paragraph (2) involves an aspect of the major problem typically encountered in the operation of central data systems: obtaining reports of dispositions from the field to the central repository. Once responsibility for making the report is clearly assigned, it can be hoped that reporting will become a routine part of that office's paperwork. The central repository will assign that responsibility by rule or regulation, designating the appropriate court (trial or appellate) or criminal law enforcement agency (police department, prosecutor, jailer, etc.) bearing the duty to

report for each category of listed reportable events. In some states the Act may require supplementation by a rule of court, to impose the duty upon employees of the judicial branch.

Paragraph (3) authorizes the central repository to specify the kind of identifying information to be supplied in communicating with the repository about the records of an individual. Different levels of identification will be appropriate for the different purposes of those communications: to open a file on a new offense and to connect it with earlier records, if any, of the person charged; to report a subsequent event in the processing of that charge; to provide information to the police about possible suspects or about persons sought or in custody; to make information available to the general public; or to allow the subject to examine that individual's own record. Depending upon the specific individual identifiers used in its record system, the central repository will determine, by adopting rules and promulgating official forms for reports, the detailed information about the individual that must be provided for entering data into the system. Accuracy in identification is vital to the integrity and utility of the records, and fingerprints, as the surest means, will ordinarily be included, when available, as a matter of sound police practice. Different considerations come into play when the central repository is called upon not to enter data into the record but to report out the information it contains. Here the repository is authorized to specify the identification necessary to trigger a search in response to a request. Publication of identifiers used for retrieval will be made under subsection (c).

Paragraph (4) authorizes the central repository to specify, by rule or regulation, two kinds of minor criminal offenses to be excluded from the definition of reportable events and thereby from the operation of the Act. If preferred, the exclusion could be stated in the text of the Act, rather than left to administrative rule, by a provision excluding, for example, offenses punishable by fine only, or by imprisonment for ten days or less, or misdemeanors of a designated class ("class D").

Paragraph (5) constitutes a general authorization for additional rules and regulations governing the form of communications of CHRI to or from the central repository. Under this authority, the central repository may promulgate official paper forms for reporting information or making requests, or may specify the computer language to be employed in interactive or computer-tape systems, along with codes, abbreviations, and symbols. An important factor in the exercise of this authority will be the development, in cooperation with other states and federal authorities, of compatible procedures to facilitate out-of-state exchanges.

Subsection (d) confers a supplemental regulatory power extending to such subjects as: the central repository's internal processing of requests for CHRI, including priorities; the verification of requests for correction of its records under Section 11; its own security procedures; and standards for out-of-state exchange of information.

SECTION 3. EVALUATIONS.

In order to ensure the timeliness and accuracy of information in criminal history records and to evaluate the procedures and facilities relating to the privacy, disclosure, and security of criminal history records, the [central repository] shall regularly audit the records and review the practices of the central repository and those of criminal law enforcement agencies. In order to ensure the timeliness and accuracy of the information, the central repository may examine the public records of the courts of this State required to report information to the central repository.

COMMENT

In the interests of the quality and security of central records, this section requires the central repository to conduct periodic operational audits of its own records and those of criminal law enforcement agencies from which information is derived or where information disseminated by the central repository is received and maintained. The second sentence confers a carefully circumscribed power to examine--rather than broadly to audit--court records, to verify the timeliness and accuracy of the central repository's own records that are predicated upon court reports of reportable events occurring in that court.

SECTION 4. REPORTING.

The court or criminal law enforcement agency responsible for reporting shall report a reportable event to the central repository promptly, but not later than:

- (1) 48 hours after an arrest; or
- (2) 30 days after any other reportable event.

COMMENT

This section, fixing the maximum time for reporting information to the central repository, requires early reports of actual arrests and allows other events to be handled, if preferable, in the routine of monthly reports. As the two-day period for arrest implies, the time specified is the time for dispatching the report, not for its receipt by the central repository.

SECTION 5. DISCLOSURE TO AGENCY OR COURT.

(a) The central repository shall disclose a criminal history record and the record of disclosures maintained under subsection (d) and Section 6(d):

(1) to a criminal law enforcement agency that requests the record for its functions as a criminal law enforcement agency or for use in hiring or retaining its employees;

(2) to a court of this State, upon request, to aid in a decision concerning sentence, probation, or release pending trial or appeal;

(3) to the Governor, upon request, to aid in a decision concerning an exercise of the power of pardon, reprieve, commutation or reduction of sentence, executive clemency, or interstate extradition or rendition;

(4) pursuant to any judicial, legislative, or administrative agency subpoena issued in this State; and

(5) as constitutionally required or as expressly required by any statute of this State or the United States.

(b) If the central repository discloses a criminal history record that contains information concerning offenses under the laws of a jurisdiction other than this State, the information that is disclosed must contain a warning that the information may be inaccurate or incomplete.

(c) If a criminal history record is disclosable under subsection (a) to an agency or court in this State:

(1) the central repository shall disclose the record for the requested purpose to a like agency or court in another state if that state has enacted the Uniform Criminal History Records Act containing equivalent limitations on disclosure; and

(2) the central repository may disclose the record for the requested purpose to a like agency or court in any other state or of the federal government.

(d) The central repository shall maintain a record of all disclosures made under this section during the preceding three years, noting the identity of the requester and the subject and the date of disclosure.

COMMENT

The main purpose of the central repository is to serve as the recordkeeper and clearinghouse for the criminal law enforcement agencies in the state. To perform that function, it bears a duty, imposed by subsection (a), to open its records to any such agency upon request, for any lawful purpose of the requesting agency. Those purposes include screening its own employees.

Paragraph (2) makes the defendant's criminal record available to the court for setting bail and to a court, or to the probation office as its agent, for the presentence investigation. A sentence review panel, if established by the state, would also be an eligible recipient.

Since the office of the governor does not fall within the definition of a criminal law enforcement agency, paragraph (3) specifically affords access for the governor's special role in the process.

Paragraph (4), directing compliance with a subpoena, is supplemented by Section 8(d), which directs the central repository promptly to send notice to the subject, to afford that individual, as the only person directly interested in preserving confidentiality, an opportunity to take protective action.

Paragraph (5) incorporates other laws of the state that may expressly require disclosure. Two limits are imposed. First, the command must be a law of the state; a city ordinance would be insufficient to require disclosure. Second, the requirement must be express; a licensing statute generally requiring evidence of "good moral character" or the like would not qualify as an explicit requirement of disclosure of unabridged CHRI. Disclosure is also, of course, required in obedience to preemptive federal law or the constitution.

Under subsection (b), if the central repository chooses in its discretion to retain out-of-state information in its record system, there will be no obligatory procedures for updating or correcting, and a disclaimer must accordingly accompany any disclosure.

Subsection (c) deals with disclosures from this State to courts and agencies of other jurisdictions. If another state has adopted this Act, its courts and agencies are entitled to information to the same extent as their counterparts in this State, under paragraph (1). Disclosure is permissive, not mandatory, to jurisdictions with different applicable laws, under paragraph (2).

Subsection (d), requiring maintenance of a log to record disclosures under this section, is intended to serve criminal law enforcement purposes only. The log is available to an authorized

recipient who may use it, for example, to identify other criminal law enforcement agencies that are inquiring about the subject and may possess additional investigatory information or to monitor patterns of inquiry indicating improper police activity. The log is not available, however, to the general public or to the subject, in light of the need to protect the confidentiality of ongoing investigations and of investigatory techniques. The subject will of course be on notice, through his participation in the proceedings, of disclosures to the court or to the governor for clemency under subsection (a), paragraphs (2) and (3) and will be sent mailed notice of a subpoena under paragraph (4) pursuant to the requirements of Section 8(d).

All the provisions of this section should be considered in conjunction with Section 6(a), entitling "any person" to obtain, upon suitable identification of the subject, a partial criminal history record showing all convictions and all recent or pending actions where any reportable event has occurred within a year. In its operation, therefore, this Section 5 will apply to specify the particular agencies and purposes for which full disclosure of all CHRI is required, including acquittals, arrests, and other proceedings not resulting in conviction, and not occurring within the past year.

SECTION 6. GENERAL DISCLOSURE.

(a) Upon request by any person under subsection (b) and subject to subsection (c), the central repository shall disclose information in a criminal history record that has not been sealed or expunged and concerns an offense under the laws of this State for which:

- (1) the subject has been convicted; or
- (2) a reportable event has occurred within one year preceding the request.

(b) A request for disclosure must contain the name of the requester and of the subject and:

- (1) the fingerprints of the subject;
- (2) the personal identification number assigned to the subject by the central repository; [or]
- (3) at least two other items of information that the central repository uses to retrieve criminal history records, as specified under Section 2(c) [; or]
- (4) a specific reportable event identified by date and either agency or court].

(c) If the identifying information supporting a request for disclosure matches the criminal history record of more than one individual, the central repository may not disclose any of the records.

(d) The central repository shall maintain a record of all disclosures made under this section during the preceding three years, noting the identity of the requester and the subject and the date of disclosure.

COMMENT

Disclosure under this section is available upon the request of "any person" in the traditional legal sense of that term including any natural person or legal entity, whether a member of the general public, a representative of the press, or an agency of government whether or not qualified as a recipient under Section 5. There is no requirement of any reason for the request, nor of any showing of a need to know. Persons in or out of the state are equally entitled to the records.

Paragraph (1) of subsection (a) adopts the basic policy that all convictions should be open to the public, and paragraph (2) makes other records similarly available temporarily, while proceedings are still pending, as evidenced by the occurrence of some reportable event within the past year, and after a final disposition other than a conviction for a period of one year. Compare Oregon Revised Stats. 181.560.

Subsection (b) specifies the identifying information that must be supplied in a request for disclosure to describe and locate the records of the individual inquired about. The subject's name is required in all cases. Additional supporting identifiers are necessary to assure that the record released pertains in fact to the person inquired about and not to another with the same name.

Various kinds of identifiers may be employed under the section. Fingerprints, as the most accurate identifier, are sufficient and can be used if supplied by the subject or otherwise available under paragraph (1). To avoid wholesale fingerprinting of job applicants, on one hand, and to avoid closing the records, *de facto*, by impracticably difficult requirements on the other hand, the Act authorizes identification by alternative means.

If a criminal history record for the individual exists in fact, a personal identifying number will have been assigned to the subject by the central repository and may be available to the requester from court records or otherwise. Alternatively, the requester may support the inquiry with not less than two items of information of the kind regularly used by the central repository in its recordkeeping system for retrieval of records, as specified in regulations promulgated under Section 2(b)(3). The authorized identifiers typically will include such items as Social Security number, drivers license number, date of birth, sex, physical characteristics (height, weight, hair

and eye color, ethnicity, and distinguishing marks or features), residence address, and occupation or employment.

As an additional alternative, bracketed paragraph (4) would allow identification through specifying a reportable event that involved the individual, as by a request for the records of the "John Smith who was acquitted of rape by the Jackson County Circuit Court on May 1, 1986." Brackets are added to permit deletion in a state whose record system is not programmed to retrieve records through such a search.

In connection with alternative means of identification, it should be noted that unless positive identification is provided by fingerprints or a personal identification number, a warning of uncertainty, under Section 8(c), must accompany any disclosure.

Under subsection (c), no disclosure will be made if the identifying information supporting the request matches more than one individual in the record system, making it impossible for the central repository to single out the record of the person actually inquired about. In that event, the requester may seek to supply additional identifiers and resubmit the request.

Subsection (d) requires a log of general disclosures under this section, open to agencies engaged in enforcement of the criminal law under Section 5, but not to the public at large under Section 10(a). The log will be made available to the subject on request under Section 7 to advise him of the disclosures that have been made that might affect his interests and to allow him to follow the record into the recipient's hands in order to correct any error in the record under Section 11. The record embodied in the log thus supplements the notice mailed to his last known address when the disclosure was made, under Section 8(e).

SECTION 7. DISCLOSURE TO SUBJECT.

Upon a request by a subject or the subject's attorney, accompanied by the fingerprints of the subject, the central repository shall disclose to the person designated by the requester the entire criminal history record of the subject and the record of disclosures maintained under Section 6(d).

COMMENT

This section gives the individual the right to obtain his own rap sheet, to find out whether the central repository maintains a record on him, and if so to check it for accuracy. Such a right is commonly conferred by criminal record statutes and by privacy acts. See, e.g., Uniform Information Practices Code, §3-105. The right extends to the full record maintained, not merely to the portions disclosable to the public. The request must be made by the subject personally or by his attorney; no other agent or representative is authorized. As a consequence, a waiver or

release in an application form for a job, credit, or a license would not suffice to give access to this full rap sheet. Positive identification by fingerprints is required. The individual is also given the right to know of disclosures that have been made to the public or to noncriminal government agencies under Section 6, by requesting disclosure of the log maintained under Section 6(d).

The subject has a choice between two different forms of rap sheets. He may make his request under this section, providing fingerprints, and obtaining *all* CHRI pertaining to him. Or he may instead make his request under Section 6, providing either fingerprints or some other less intrusive form of identification, and obtaining only the records disclosable to the general public, that is, convictions, and records of charges with a reportable event occurring within the past year. The latter course would be chosen, for example, where a prospective employer is interested only in past convictions and in pending or recent charges but needs the cooperation of the subject to supply the necessary identifying information for the request.

SECTION 8. PROCEDURES FOR REQUESTS.

(a) A requester may submit a request for disclosure under Section 6 or 7 directly to the central repository or indirectly through a [local police department or sheriff's office], which shall transmit the request to the central repository within three days.

(b) Promptly, but not later than [14] days after receiving a request for disclosure under Section 6 or 7, the central repository shall, as appropriate:

(1) transmit the available information, including an explanation of any code or abbreviation, to the person designated by the requester;

(2) inform the requester that there is no available information; or

(3) inform the requester of any deficiency in the request.

(c) If a request for disclosure under Section 6 is not accompanied by fingerprints or a personal identification number, the information that is disclosed must contain a warning that the record may not pertain to the individual named in the request.

(d) Within 24 hours after receipt of a subpoena under Section 5(a)(4), the central repository shall mail a copy of the subpoena to the subject at the subject's last known address.

(e) If information in a criminal history record is disclosed under Section 6 at the request of a person other than the subject, the central repository shall notify the subject by mailing, within three days, a notice of the disclosure to the subject's last known address by a form of mail deliverable to the addressee only. The notice must contain the identity of the requester, the date of disclosure, a statement of the right of the subject to disclosure of the record and to correct or amend any incomplete or inaccurate information, and a statement of the sanctions for a violation of this [Act].

(f) The central repository may charge a requester a reasonable fee for processing a request for disclosure under Section 6, 7, or 9 and for notifying the subject under subsection (e), and shall establish and make public a schedule of fees.

COMMENT

Subsection (a) serves the convenience of the requester by offering him the option to make the request to a local criminal law enforcement agency in his community or to the central repository directly. The brackets permit the enacting state to relieve the prosecutor's office of this function, for example, and to designate as the appropriate local conduit for the request the police headquarters or sheriff's office that routinely deals with the public. The designated local agency may transmit the request by on-line electronic data retrieval equipment, if available, or by mail.

Subsection (b) specifies the maximum time limits for the central repository's response to a request. The number of days is bracketed to allow a state to make adjustments in light of expected volume, available personnel, and the need to give priority to criminal law enforcement requests. The rap sheet provided must be accompanied by whatever explanation is needed to make its abbreviated or codified notations reasonably comprehensible to a member of the general public. To assure the authenticity of the record and guard against alteration or falsification, the requester--whether the subject or another--may direct that the record shall be transmitted directly by the central repository to another person designated in the request.

Subsection (c) requires a warning to accompany disclosures made on the basis of nonpositive identifying information under Section 6(b)(3) or (4) (other than fingerprints or the personal identification number) to alert the recipient to the possibility of misidentification and to counsel caution in the use of the record.

Subsections (d) and (e) require notice to alert the subject to the fact that his record is being disclosed, to afford him an opportunity to communicate with the requester and to take action to protect his interests. A provision concerning notice of a subpoena, similar to subsection (d), is included in the Uniform Information Practices Code, §3-101, pars. 7 and 8. Recognizing that in many cases the address of the subject last known to the central repository will no longer be valid, and seeking to avoid revealing to unauthorized persons who might come into possession of his mail that the subject in fact has a criminal history record, subsection (e) requires that the notice must be sent by some form of mail, registered or otherwise denominated, that permits delivery to the addressee only. For like reasons, a copy of the record disclosed should not be enclosed with the notice, and the subject will be remitted to Section 7 to discover the content of the disclosure.

Subsection (f) allows the repository to charge a fee for responding to a request for disclosure under Section 6, 7, or 9, and for mailing notice, to defray in whole or in part the cost of providing the service. The fee need not be limited to the costs of copying.

SECTION 9. LIMITED DISCLOSURE FOR RESEARCH OR STATISTICAL PURPOSES.

(a) The central repository may disclose criminal history record information in a form that identifies a subject for the purpose of developing, studying, or reporting aggregate or anonymous information not intended to be published in any way in which the identity of the subject is disclosed, if the central repository:

(1) determines that the purpose cannot reasonably be accomplished without use of the information in that form; and

(2) secures from the recipient of the records a written agreement that the recipient will establish safeguards to assure the integrity, confidentiality, and security of the records.

(b) A recipient of records under this section may not use the records for purposes other than those specified in the agreement or disclose information in a form that identifies a subject without the express written authorization of the subject.

COMMENT

This section permits, but does not require, the central repository to make criminal history records available to a requester who wishes to use the data for research or statistical analyses. The purposes for which disclosure is authorized are limited to studies and analyses of such matters as the incidence of crime, recidivism, demographic trends, or the administration of criminal justice, where the results will be released to the public in statistical, aggregate, and anonymous form without identifying any individual or disclosing information that can readily be associated with his identity. The Act would not in any event prohibit the release of records in anonymous form, with individual identifiers deleted. See Section 10(a). This special provision is thus required only for studies that can be conducted only if the researcher has access to identifiers, to allow matching and cross-analysis with other data on the individual, such as school records or family history.

SECTION 10. PROHIBITED DISCLOSURE.

(a) Except as authorized under this [Act], the central repository may not disclose (i) criminal history record information in a form that identifies or can readily be associated with the identity of the subject, or (ii) the record of disclosures maintained under Section 5(d) or 6(d).

(b) The central repository may not disclose whether criminal history record information exists if disclosure of existing information would be prohibited under subsection (a). If disclosure of existing information is prohibited or there is no information, the central repository shall answer: "No information is available because either no information exists or disclosure is prohibited."

(c) A criminal law enforcement agency receiving a criminal history record under Section 5(a)(1) or from a central repository of another jurisdiction may disclose the information in the record only for the limited purpose for which its receipt was authorized, but may disclose the information in compliance with a subpoena or to another criminal law enforcement agency for its functions as a criminal law enforcement agency.

COMMENT

Subsection (a) makes explicit what is implicit throughout the Act: that the disclosure of information in a criminal history record by the central repository is prohibited if neither required

nor permitted by the preceding sections, unless the information is disclosed in a form not individually identifiable. Since only an individual, that is, a natural person, falls within the definitions of criminal history record and reportable event in Section 1, the disclosure of records concerning criminal proceedings wholly against a corporation or other artificial legal person is not prohibited.

Confirming that a nondisclosable record in fact exists will often be equivalent to the disclosure of its content and equally harmful. Subsection (b) attempts to close that loophole.

Subsection (c) concerns secondary disclosure by a criminal law enforcement agency that has received criminal history record information for an authorized purpose from a central repository. To protect the policy of limited disclosure of the central repository's records, further disclosure by the recipient must be within the scope of the authorizing purpose, that is, in furtherance of criminal law enforcement. Even though the information is of the kind disclosable to the public under Section 6(a), the prohibition of secondary disclosure by the local agency without transmission of the request to the central repository will serve to assure that the record is still accurate and current, and that its information has not been superseded by later events or corrections. Lateral exchanges of information between criminal law enforcement agencies in the state are expressly permitted, however. No mandatory duty is imposed, since an inquiring agency has direct access to records throughout the state through the central repository. Cooperative exchanges may be useful, however, in emergency situations, or for recent reportable events not yet reported or centrally recorded.

SECTION 11. CORRECTION OF RECORDS.

(a) A subject may request in writing that the central repository correct or amend any incomplete or inaccurate information in the criminal history record.

(b) Promptly, but not later than [14] days after receiving the request, the central repository shall:

(1) make the requested correction or amendment and inform the subject of the action; or

(2) inform the subject, in writing, of its refusal to correct or amend the information, of the reason for the refusal, and of the subject's right to [administrative review under [the administrative procedure act] and to] maintain an action pursuant to Section 13.

COMMENT

As a corollary to the right to examine one's own record, conferred in Section 7, the subject is given the right by this section to point out errors or omissions in that record, and to request the central repository to make the needed correction. The time limit for the repository's response is bracketed to allow local variations. The time allowed should be sufficient to permit communication with and verification by the court or criminal law enforcement agency that originally reported the questioned information to the central repository.

SECTION 12. SECURITY.

A criminal law enforcement agency and the central repository shall ensure that:

- (1) direct access to criminal history records is available only to authorized officers or employees;
- (2) each officer or employee working with or having access to criminal history records is familiar with the requirements of this [Act]; and
- (3) criminal history records are physically secure.

COMMENT

To protect against unauthorized disclosure, and to protect records from tampering, alteration, or destruction, this section requires the central repository to take security measures to prevent access by unauthorized persons, to make authorized personnel aware of the Act, and to provide for the physical security of the records. If a local criminal law enforcement agency is holding criminal history records received from the central repository, it is subject to the same duties.

SECTION 13. SANCTIONS AND REMEDIES.

- (a) For a violation of Section 5, 6, 7, 8, or 11, the requester or subject may maintain an action to compel the central repository to disclose, correct, or amend information in a criminal history record. The court may examine the information at issue in camera.
- (b) For disclosure in violation of Section 9 or 10, the subject may maintain an action for appropriate relief against the central repository, criminal law enforcement agency, or the recipient of information under Section 9 and recover compensatory damages sustained as a result

of the violation [, but not less than \$1,000,] and reasonable attorney's fees. This subsection does not affect any other right or remedy under law.

(c) An officer or employee of the central repository, of a criminal law enforcement agency, or of a court, or a person who receives information under Section 9, is guilty of a [misdemeanor] if the officer, employee, or person intentionally:

(1) discloses information in a criminal history record in violation of this [Act] with knowledge that the disclosure is prohibited;

(2) reports an event as a reportable event or intentionally discloses information in a criminal history record, with knowledge that the report or information has been falsified; or

(3) fails to report a reportable event or intentionally fails to disclose, correct, or amend information in a criminal history record, for the purpose of causing harm to the subject and with knowledge that the report, disclosure, correction, or amendment is required.

(d) A person who, by conduct that would constitute the offense of [false pretenses or theft] if property were involved, gains access to a criminal history record the disclosure of which is prohibited to that person is guilty of a [misdemeanor].

COMMENT

The section specifies the sanctions and remedies that may be sought in judicial proceedings for violation of the several sections of the Act. In practice, the effectiveness of the Act is likely to depend more upon the establishment and acceptance of its requirements as a normal part of internal office routine than upon the threat of formal sanctions. In addition to the sanctions that may be imposed by a court, it should be clear that violation of the Act by a public employee will constitute sufficient cause, under the civil service system, for disciplinary action against the offending employee, including censure, suspension, or discharge. Subsection (d) will be unnecessary if the state's criminal code otherwise makes it an offense to gain unauthorized access to confidential records.

SECTION 14. APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among States enacting it.

SECTION 15. SHORT TITLE.

This [Act] may be cited as the Uniform Criminal History Records Act.

SECTION 16. SEVERABILITY.

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

SECTION 17. TIME OF TAKING EFFECT.

This [Act] takes effect _____.

SECTION 18. REPEAL.

The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)