

Robert J Tennesen
Attorney-At-Law
2522 Thomas Ave. S.
Minneapolis, MN 55405
612-669-9641
RJ.Tennesen@Gmail.com

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Mr. Eric J. Ellman
Senior Vice President
Public Policy Legal Affairs
Consumer Data Industry Association
1090 Vermont Avenue, N.W., Suite 200
Washington, D.C. 20005-4905

EEllman@cdiaonline.org

Re: Criminal Records Accuracy Draft Act
Your letter of July 11, 2016

Dear Eric,

Thank you for your interest in the work of the drafting committee and your July 11 letter to me. I was in transit and did not see it until the morning the act was read in the committee the whole. I am heartened that the CDIA's position has evolved from its initial opposition to creation of this committee charged with improving the accuracy of criminal history records to one of support for mission of the committee. With the active participation of more than 20 observers including CDIA, ABA advisors, reporters, and committee members I'm certain that final act will be at credit to all and benefit to the commonweal.

The committee's charge, as you know is to improve the **accuracy** of criminal history records maintained by criminal justice agencies and that **access** to criminal history records is **not** part of the charge. The committee is striving to keep the issues separate but delineating the two is not always simple.

The committee is cognizant of the existing state and federal laws authorizing the use of criminal history records for multiple non-criminal justice purposes, that these laws vary from state to state based upon the policy choices made by the states, and that this act should not seek to change the existing state laws regarding access and use. The committee seeks to avoid any interference with state laws governing public records or access to them and is not seeking to increase or decrease the authorized uses or limits state have placed on criminal history records. It seeks to ensure that the criminal history records that are available are accurate.

A purpose of the ULC is to preserve the states' role and responsibilities in our federal system of government by crafting acts that address specific issues susceptible of state resolution and not

defer to federal law because it may be more convenient to a user. This act supports states' responsibilities in our federal system.

I now turn to the four points raised in your July 11 letter.

1. The committee will address your concern regarding the use of criminal history records for residential screening. As an early draft there undoubtedly omissions that need to be corrected. I expect the committee will defer to existing state and federal law governing residential screening.
2. The issue you raise here is essentially similar to the first and is answered similarly.
3. Regarding the third point an essential element of the act to ensure accuracy requires the central repository of criminal history records to ascertain if a criminal history record contains an open arrest. If none exist nothing more is required and there is no delay.

You are correct that if a record shows an open arrest the central repository must check for any missing dispositions. The alternative is to distribute an erroneous criminal history record. The committee is aware that an open arrest is a common and frequent reason for rejecting an application for employment or housing

On balance taking the time to issue an accurate record is of greater benefit to an applicant than disseminating an inaccurate record containing an open arrest.

4. The committee has not completed its work on the act and specifically not on the remedies section. Your reference to the Fair Credit Reporting Act raises issues for discussion. Although this is not the place to discuss the FCRA here are a few observations.

Your suggestion that the committee follow the "dispute resolution procedures of the FCRA" is curious. The draft act addresses criminal history records created and maintained by governmental entities and provides the subjects of the records some rights and remedies. It does not govern the private sector while the FCRA primarily does.

The process a consumer must follow under the FCRA to seek correction of information contained in a consumer report for employment, housing and licensing is not expeditious, easy, or certain, although it seems to work well for credit and insurance purposes.

Your quote from FTC Chairman Tim Muris' remarks of October 4, 2001 before the Privacy 2001 conference in Cleveland, that the FCRA is "an intricate statute that strikes a fine-tuned balance between privacy and the use of consumer information" were made in the context of credit¹ and occurred 15 years ago, before the explosion of consumer reports for employment,

¹ <https://www.ftc.gov/public-statements/2001/10/protecting-consumers-privacy-2002-and-beyond> "The availability of credit is one of the lifelines of our economy. Above, I discussed the

housing and licensing purposes. When congress adopted the act in 1970 it focused on credit and insurance. Employment was not even mentioned in its findings. Investigating character was in relationship to credit and insurance.²

The efficacy of the FCRA remedies when applied to employment, housing, and licensing has yet to be demonstrated.

This draft act seeks to impose a duty on each criminal justice agency to maintain accurate records, not just have a “reasonable procedure” that may or may not result in an accurate record.

Sincerely,

Robert J. Tennessen
Chair
Criminal Records Accuracy
Drafting Committee

CC: ULC
Committee
Reporters
ABA Advisors

significant contribution the credit reporting industry has made to credit granting. It is a remarkable system.”

² 15 U.S.C. § 1681. Congressional findings and statement of purpose (a) Accuracy and fairness of credit reporting The Congress makes the following findings: (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system. ****