

TO: Drafting Committee
Criminal Records Accuracy Act
Uniform Law Commission

FROM: Robert J. Tennessen, Committee Chair
Steven L. Chanenson, Reporter
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DATE: April 15, 2018

RE: Criminal Records Accuracy Act

In advance of our conference call later this month, we are highlighting six questions we would like to address. As you know, we need to definitively resolve all outstanding matters because the draft must go to the Style Committee ASAP and then will just be polished before sending to the floor this summer.

1. Based on our discussions in Philadelphia, we revised the definition of “biometric information” in Section 102(3). Does the proposed language reflect the will of the Drafting Committee?
2. Should we put the definition of the “responsible agency or individual” in the blackletter portion of the act in Section 102? Presently, it is discussed in several Legislative Notes (*See* Sections 102, 205, 301, 601, 701 and 702).
3. During the Philadelphia meeting, the Drafting Committee decided to remove the concept of a “repository” from the act, although contributing justice agencies still store criminal history record information. *See* Section 201. This prompts us to ask two questions:
 - a. Does the Drafting Committee want the contributing justice agencies to allow subjects to access and seek corrections of the information kept by the contributing justice agencies? *See* Article 5. At present, the draft does *not* provide a subject with such access and ability to seek corrections from contributing justice agencies, although subjects may access what should be the same information from the central repository and any approved corrections will be sent by the central repository to the contributing justice agency if it falls within the time limits of Section 504.
 - b. Does the Drafting Committee want the contributing justice agencies to be subject to representative audits pursuant to Section 602? At present, the draft does *not* require that. In Section 309(b), the act does still require the central repository to “identify contributing justice agencies

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

4. During the Philadelphia meeting, the Drafting Committee discussed Section 406(a), which limits the use of information from the mistaken identity prevention registry to its intended purpose. Most, but not all, of our notes indicate that the Drafting Committee rejected a proposal to allow for broader use of that information. If someone believes that the Drafting Committee decided differently, please say so now.
5. Near the end of the Philadelphia meeting, Mr. Aisenberg submitted draft language (attached) on how to deal with the issue of data “breaches” against contributing data sources. Our notes do not indicate that the Drafting Committee addressed this proposal. What does the Drafting Committee want to do here?
6. The Style Committee has previously suggested several structural changes. We think that the Drafting Committee is willing to accept these, but we wanted to be sure before making the changes. Furthermore, we were concerned that making the changes now would have made reviewing the post-Philadelphia substantive changes harder to follow. If we are going to make the Style Committee’s suggested changes, we will need to do so immediately after our call. Here are the Style Committee’s recommendations for your consideration:
The provisions relating to duties of the central repository are found in two places — Article 3 (general provisions, including dissemination) and Article 4 (mistaken identity, which is operated by the central repository). To improve the organization of the central repository material, we thought that the two articles should be made into three. Thus Article 3 would be titled “Central Repository” and include general provisions (probably 301 and 306-309), Article 4 would deal with disseminations by the central repository (probably 302-305), and Article 5 would deal with the mistaken identity registry. That’s the general concept, which you can fine tune.

Also, we noticed that agencies, in various parts of the act, are authorized or required to adopt regulations on different matters, giving the act a somewhat scattered feel. We thought the structure and coherence of the act might be improved by collecting the provisions on rulemaking authority and consolidating them in one place in the act — as is done in Section 702.

And we thought that Article 5 on correction of information would better precede, rather than follow Article 4 on mistaken identity. Thus we would reverse the order of those two articles.