

UNIFORM CRIMINAL RECORDS ACCURACY ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITH COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM CRIMINAL RECORDS ACCURACY ACT

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UNIFORM CRIMINAL RECORDS ACCURACY ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Criminal Records Accuracy Act.

Comment

Principles. This [act] is premised on three principles:

- (1) Society at large has a vital interest in the accuracy of criminal-history-record information.
- (2) Subjects are entitled to have the information kept about them under this [act] be accurate criminal-history-record information.
- (3) The government has an obligation to ensure that the criminal-history-record information that it collects, stores, maintains, submits, and disseminates is accurate.

Previous act. The Uniform Law Commission adopted the Uniform Criminal History Records Act in 1986. See http://www.uniformlaws.org/shared/docs/criminal%20history%20records/uchra_final_86.pdf.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Accurate criminal-history-record information” means criminal-history-record information that correctly reflects all reportable events relating to a subject.

(2) “Administration of criminal justice” means detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of a subject. The term includes criminal-identification activities and collection, storage, maintenance, submission, and dissemination of criminal-history-record information.

(3) “Biometric information” means fingerprints and other unique biological or physical characteristics of an individual which a contributing justice agency is required or permitted by law other than this [act] to use for identification.

(4) “Central repository” means the [name of the single, coordinating entity of this state

with the duty to receive, store, maintain, and disseminate criminal-history-record information].

(5) “Contributing justice agency” means a court, political subdivision or agent of a political subdivision, governing entity of this state, or any governmental agency designated by the [responsible agency or individual], which is authorized to engage in the administration of criminal justice. The term does not include the central repository.

(6) “Criminal-history-record information” means information, consisting of a description of a subject and notation of a reportable event, collected, received, stored, maintained, submitted, or disseminated by a contributing justice agency or the central repository. The term includes biometric information. The term does not include noncriminal-history-record information.

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

(8) “Noncriminal-history-record information” means information collected:

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

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

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

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

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

(B) disposition after an arrest described in subparagraph (A) without initiation of a criminal proceeding;

(C) initiation of a criminal proceeding;

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

(E) commitment to or release from a place of detention or custodial supervision;

(F) commencement or conclusion of noncustodial supervision;

(G) completion of a sentence;

[(H) expungement, sealing, or setting aside of criminal-history-record information;]

(I) grant of clemency, including pardon or commutation, or restoration of rights;

(J) finding of [legal incapacity] by a court at any stage of a criminal proceeding.

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

(12) “Subject” means an individual about whom criminal-history-record information is collected, stored, maintained, submitted, or disseminated as required or permitted by this [act] or law other than this [act].

Legislative Note: In paragraph (4), the act’s definition of “central repository” leaves to the enacting state the decision whether this is a police function, often through the state police, or an independent function.

Paragraph 10(H) is bracketed because a state may use different terminology with different consequences to address the situation.

In paragraph (5), a state should designate as the responsible agency or individual the appropriate agency or individual in light of its own constitutional structure and administrative functions. In some states this may be the Attorney General. In other states this may be a different officer or entity. A state may designate a different agency or individual for different functions under this act.

In paragraph (10), a reportable event relates to an offense that is typically categorized as a felony or a misdemeanor. Some states have other categories of offenses that merit inclusion, such as a “gross misdemeanor.” This decision is left to the enacting state.

Comment

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

Biometric information. The definition of “biometric information” focuses on – but is not limited to – fingerprints, which are the current gold standard for ensuring that a particular subject is linked to the correct and complete arrest and disposition information. The definition of “biometric information” is designed to allow the act to simultaneously remain consistent with other law about identification procedures and to adapt as technology evolves without requiring a revision to the act itself. The use of the term “biometric information” emphasizes the importance of using something beyond an exact or approximate name match to ensure the accuracy of criminal-history-record information during the record location, linking and retrieval processes. Biometric information is available from all subjects because the criminal-history-record information maintained pursuant to this act relates exclusively to individuals. This is consistent with current practice.

Central repository. *Central repositories already exist in every state.* The act’s definition of “central repository” leaves to the enacting state the decision whether this is a police function, often through the state police, or an independent function. This affords an enacting state flexibility and is consistent with the current variety of practices. *See, e.g.,* BECKI R. GOGGINS & DENNIS A. DEBACCO, *SEARCH, THE NATIONAL CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2016: A CRIMINAL JUSTICE INFORMATION POLICY REPORT* viii (2018) (“Although usually housed in the Department of Public Safety, the central repository is maintained in some states by the State Police, Attorney General, or other state agency.”). Given the central repository’s coordinating role, the definition does require the central repository to be operationally independent from contributing justice agencies or other repositories, although it can exist within the structure of an agency, such as the state police, that also contains a separate repository.

Contributing justice agency. The definition of “contributing justice agency” is intentionally broad. The goal is to widely distribute the duty to provide information on “reportable events” – such as arrests, charges, and dispositions of all types – to the central repository. This also allows for the collection and inclusion of reportable event and biometric information throughout the process of adjudication and punishment, thereby allowing for multiple opportunities to collect data and resolve issues. The term includes an organized state or

municipal police department, sheriff's department, local detention facility or department, county, regional or state correctional facility or department, probation agency, office of Attorney General, district or prosecuting attorney, court with criminal jurisdiction, parole board, pardon board, and any agency or sub-unit designated as a contributing justice agency by the responsible agency or individual.

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

Noncriminal-history-record information. This definition of noncriminal-history-record information in conjunction with the definition of criminal-history-record information clarifies that information may be held by a contributing justice agency that is not deemed to be criminal-history-record information. For example, many contributing justice agencies collect and use noncriminal-history-record information that may be colloquially referred to as investigative or intelligence information. Such investigative or intelligence information is not criminal-history-record information and thus not subject to those provisions of the act.

Reportable event. The definition of a "reportable event" is designed to capture the significant moments in the life of a criminal case that future actors in the criminal justice system would want to know about that defendant and that case. Though the nomenclature may vary by state, these are almost universal in their presence and importance. The definition of reportable event facilitates the accurate collection of information without expanding the scope of the events captured inappropriately or beyond common practice. For example, if the police make an arrest but release the individual without booking that individual into a detention facility or collecting biometric information, no reportable event has taken place.

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

Disposition means information disclosing that criminal proceedings have been concluded and the nature of the termination, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings; or disclosing that proceedings have been indefinitely postponed and the reason for such postponement. Dispositions shall include, but shall not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetency, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased,

deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled, or released from correction supervision.

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

SECTION 103. PUBLIC RECORDS. Except as otherwise provided by law other than this [act] or court rule or order the court docket, court file, and information contained in a docket or file, are public records.

SECTION 104. DISSEMINATION LOG.

(a) A dissemination log required by Section 205 or 304 must include each criminal-history-record information request and dissemination to a person identifiable by the contributing justice agency or central repository.

(b) A dissemination log required by Section 205 or 304 must be separate from noncriminal-history record information and criminal-history-record information. The log must include at least:

- (1) the name of the subject about whom criminal-history-record information is requested;
- (2) the name of the person making the request and its associated address;
- (3) the name of the individual making the dissemination;
- (4) the date of the request;
- (5) the date of the dissemination; and
- (6) a statement whether the information was disseminated for a purpose other than the administration of criminal justice.

(c) A dissemination log required by Section 205 or 304 is available to the public only as provided by law other than this [act].

(d) An entry in a dissemination log required by Section 205 or 304 must be maintained as long as the associated criminal-history-record information is maintained.

Legislative Note: *Subsection (d) requires an entry in a dissemination log to be maintained as long as the associated criminal-history-record information is maintained. In a state in which other law addresses record retention issues, the language specifying duration of record maintenance should be revised appropriately.*

Comment

Dissemination logs. This provision is modeled on and inspired by existing practice. Dissemination logs under the act include a record of the nature and timing of information requested and disseminated pursuant to this act. These logs do not include information obtained under provisions of legislation regarding public records access laws, those statutes that govern the ability of citizens to review public records, in part because some of that information is not functionally trackable. For example, some information may be obtainable anonymously through the Internet or through computer terminals provided by the court for this purpose. The public will have access to dissemination logs in a fashion consistent with existing legislation regarding public records access laws in the state. This includes exclusions necessary to insulate the investigative actions of justice agencies from undesired disclosure through these processes.

[SECTION 105. ESTABLISHMENT OF PROCEDURES. The rulemaking requirements of [insert citation to the state’s administrative procedure act] do not apply to establishment of procedures under this [act].]

Legislative Note: *A state should enact this section unless its Administrative Procedure Act already exempts establishment of procedures of this type.*

[ARTICLE] 2

CONTRIBUTING JUSTICE AGENCY

SECTION 201. COLLECTION AND SUBMISSION OF INFORMATION TO CENTRAL REPOSITORY. A contributing justice agency that has custody of, or control, authority, or jurisdiction over, an individual for a reportable event shall collect, store, and maintain criminal-history-record information on the event. Not later than [five] days after the agency collects the information, the agency shall submit the information to the central repository in compliance with procedures established by the central repository.

SECTION 202. COLLECTION AND SUBMISSION OF BIOMETRIC INFORMATION.

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

(b) If a contributing justice agency determines under subsection (a) that biometric information has not been collected and submitted to the central repository, the agency, using any procedure available to it under law other than this [act], shall collect the missing biometric information. Not later than [five] days after collection, the agency shall submit the information to the central repository in compliance with procedures established by the central repository.

Comment

Mandatory duty to collect biometric information. Widely distributing a mandatory duty to collect biometric information is vital to the effectiveness of the act. Biometric information, in the form of fingerprints, is currently the gold standard for positive identification for law enforcement purposes. If this information is not used to link an arrest to a charge to a disposition, significant inaccuracies may and do result. In most cases, close matches using name and date of birth are the alternative. This is a clear and common source of inaccuracies – both in the failure to link related reportable events and in the misidentification of the subject. The act puts the primary responsibility for this task on the arresting contributing justice agency, which will typically be a police department. The lack of collection on the “front line” of processing is a significant impediment to the accuracy of criminal records. In some states, this appears to be unrelated to funding for equipment, and instead turns on the enforcement of mandatory collection procedures. See, e.g., Jeffrey Benzing, *Fingerprint Hearing: Best and Worst Pa. Counties Have Same Equipment*, available at http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html (July 23, 2014).

Accuracy Improvement. Nothing in the act is designed to expand the ability of the government to collect information which contributing justice agencies are not otherwise entitled

to collect. The goal of the act is to ensure that the information that states do collect is done in a regular and reliable way that improves the accuracy of the criminal-history-record system.

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

Duty of other contributing justice agencies. If the arresting agency fails to obtain fingerprints, the act provides a backstop by requiring other, typically chronologically downstream, actors in the contributing justice system to fingerprint the subject acting on its authority or pursuant to a court order. The drafters believe that this “belt-and-suspenders approach” is warranted given the wide variation of fingerprint compliance rates between and within states. For example, the drafters learned that in one large state, there are tens of thousands – if not hundreds of thousands – of essentially orphaned files in the central repository because disposition information cannot be definitively linked by fingerprint to a subject. Furthermore, in that state, the state prison receiving center felt the need to install a Livescan machine (a common biometric data collection station) because of the number of sentenced offenders arriving without fingerprints in the system. This section neither mandates nor prohibits the repeated collection of biometric information during the life of a criminal case. Rather, the act sets a floor of at least one collection of biometric information and leaves an enacting state free to do more if it so chooses. The goal of this approach is to ensure that, in any given case, the necessary case information and biometric data will be available and linked, thereby limiting the possibility that unrelated records will be linked and enhancing the probability that records relating to the same individual will be appropriately linked.

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

SECTION 203. ACCURACY AND CORRECTION OF INFORMATION.

(a) A contributing justice agency shall collect, store, maintain, submit, and disseminate

accurate criminal-history-record information in compliance with procedures established by the central repository.

(b) Not later than [14] days after a contributing justice agency discovers that it possesses inaccurate criminal-history-record information, the agency shall:

(1) correct its records;

(2) notify the central repository of the inaccuracy and correction; and

(3) if another contributing justice agency received the information under Section 204(b) within [one year] before the discovery, notify the agency of the inaccuracy and correction.

Comment

Duty to correct. The act requires a contributing justice agency that learns of inaccurate criminal-history-record information – regardless of how it learns of it – to fix it in its own records and to pass along the corrected information to the central repository. This will allow for more effective correction, as well as providing essential process data for the audit under Section 602.

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

Procedures. The central repository, pursuant to Section 306, will establish procedures concerning the form of the required correction, including whether certified copies may be provided entirely electronically.

SECTION 204. DISSEMINATION OF CRIMINAL-HISTORY-RECORD INFORMATION.

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

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

SECTION 205. DISSEMINATION LOG OF CONTRIBUTING JUSTICE

AGENCY. A contributing justice agency shall create, store, and maintain a dissemination log complying with Section 104. Not later than [14] days after the agency disseminates criminal-history-record information, the agency shall enter the information required by Section 104 in the dissemination log.

Comment

Authority to disseminate and duty to log. The act allows contributing justice agencies to disseminate criminal-history-record information to other contributing justice agencies and requires those agencies to keep track of those disseminations. The central repository, as part of its duties, will set reasonable standards and procedures for this process, ensuring a degree of uniformity in the requesting and dissemination processes.

[ARTICLE] 3

CENTRAL REPOSITORY

SECTION 301. DUTY OF CENTRAL REPOSITORY.

(a) The central repository shall receive, store, maintain, and disseminate criminal-history-record information reported to the central repository under this [act].

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

(c) The central repository shall receive, store, maintain, and disseminate accurate criminal-history-record information in compliance with procedures established by the [responsible agency or individual] under Section 702.

(d) The central repository shall establish procedures to resolve data conflicts and discover missing data for accurate criminal-history-record information.

Comment

Role of the central repository. The central repository is the hub into and out of which criminal-history-record information will flow. It serves this role, as it does in many states, for

both intra-state and inter-state purposes, as well as for communication with the myriad federal agencies and systems involved in the management of criminal-history-record information. The accuracy, logging, and correction provisions are similar to the ones provided for contributing justice agencies. The central repository is also the primary contact for other states and the federal system, allowing it to serve as a clearing house for the management of the universe of criminal-history-record information that may be fed into the databases held within that state.

SECTION 302. DISSEMINATION OF INFORMATION TO SUBJECT.

(a) Not later than [14] days after the central repository receives a request from a subject for the subject's criminal-history-record information, the central repository shall search its records and:

(1) if the search discloses criminal-history-record information about the subject, disseminate the information to the subject; or

(2) if the search does not disclose criminal-history-record information about the subject, notify the subject of the fact.

(b) Criminal-history-record information disseminated under this section must include a conspicuous notice that it is provided for review by the subject and may not be relied on or considered current for use by another person.

Comment

Verification of identity and authorization. The central repository may require verification of identity of the subject, which may include biometric information, pursuant to implementing procedures under this act.

Use by the Subject. This section is intended to provide the subject with a copy of their up-to-date criminal-history-record information to facilitate the review-and-challenge process. It was not designed to allow either the subject or a third-party, including potential employers and landlords, from avoiding the records request and processing procedures outlined in Section 303. Therefore, the version produced by the central repository under this section is marked in a manner that deters the wide usage of the criminal-history-record information. The central repository bears the responsibility for determining what this notice must include.

SECTION 303. DISSEMINATION OF INFORMATION TO PERSON

AUTHORIZED BY SUBJECT.

(a) A subject may authorize another person to receive the subject's criminal-history-record information from the central repository.

(b) Before the central repository disseminates criminal-history-record information under subsection (a), the central repository shall determine whether the information contains:

- (1) a disposition after an arrest without initiation of a criminal proceeding; or
- (2) a disposition of a criminal proceeding, including diversion, dismissal, indefinite postponement, acquittal, guilty plea, conviction, and sentencing, and modification, reversal, and revocation of the disposition, for every arrest or initiation of a criminal proceeding.

(c) If the central repository determines under subsection (b) that the information does not contain a disposition, the central repository shall attempt to determine the disposition and, if the central repository determines the disposition, include that disposition in:

- (1) the relevant records maintained by the central repository; and
- (2) the information to be disseminated.

(d) After complying with subsection (c), and before the central repository disseminates information under this section, the central repository shall remove from the information to be disseminated any notation of an arrest or initiation of criminal proceedings if:

- (1) [18] months have elapsed since the later of the date of the arrest or initiation of criminal proceedings
- (2) a disposition has not been identified with respect to the arrest;
- (3) a warrant is not outstanding with respect to the arrest; and
- (4) a proceeding is not pending with respect to the arrest which may result in a

conviction.

(e) Subsection (d) does not apply if law other than this [act] requires that the person receive all criminal-history-record information about the subject.

(f) Not later than [five] days after the central repository disseminates information under this section, the central repository shall send the same information to the subject, based on the contact information provided by the person requesting the information.

Comment

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

SECTION 304. DISSEMINATION LOG OF CENTRAL REPOSITORY. The central repository shall create, store, and maintain a dissemination log complying with Section 104. Not later than [14] days after the central repository disseminates criminal-history-record information, the central repository shall enter the information required by Section 104 in the dissemination log.

SECTION 305. CORRECTION OF INACCURATE INFORMATION. Not later than [14] days after the central repository determines that it possesses inaccurate criminal-history-record information, the central repository shall follow the procedures in Section 403(1)

through (4).

Comment

Duty to correct. The act requires a central repository that learns of inaccurate criminal-history-record information – regardless of how it learns of it – to fix it in its own records and to pass along the corrected information to whomever it has provided the inaccurate information within stated limits. That latter process is facilitated by the maintenance of dissemination logs. Thoroughly tracking the information will allow for more effective correction, as well as providing essential process data for the audit under Section 602.

Procedures. Accuracy remains the overriding goal of the act. Of course, procedures relating to the mechanics of how criminal-history-record information will be corrected and in what form are left to the state and its central repository. The central repository, pursuant to Section 306, will establish procedures to be used, including whether certified copies may be provided entirely electronically.

SECTION 306. ESTABLISHMENT OF PROCEDURES. The central repository shall establish procedures:

- (1) necessary to carry out its powers and duties under this [act];
- (2) for the manner and form in which a contributing justice agency collects, stores, maintains, submits, and disseminates criminal-history-record information, including biometric information;
- (3) to ensure that all criminal-history-record information for the same subject is linked; and
- (4) for reporting, exchanging, and seeking correction of criminal-history-record information under this [act], including forms.

Comment

Establishment of procedures. A central repository must be able to draft and implement a wide range of procedures to ensure effective and efficient processes for data collection and the resolution of errors. Therefore, the procedures established under this act are not intended to be subject to the requirements of the Administrative Procedures Act or other analogous state law.

SECTION 307. DISSEMINATION OF INFORMATION FOR STATISTICAL OR RESEARCH PURPOSES. Consistent with law of this state other than this [act] and the United States, the central repository may:

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

(2) limit the use and subsequent dissemination of information disseminated under this section and the procedures established by the central repository.

Comment

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

SECTION 308. PUBLIC INFORMATION.

(a) The central repository shall inform the public of the existence and accessibility of criminal-history-record information collected, stored, maintained, and disseminated by contributing justice agencies and the central repository.

(b) The central repository shall inform the public, at least annually, concerning the:

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

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

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

(4) requirements and forms for a subject to access, review, and seek correction of criminal-history-record information received, stored, or maintained by the central repository,

including the right to appeal an adverse determination.

Comment

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

SECTION 309. TRAINING.

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

(b) The central repository periodically shall identify, and provide remedial training to, any contributing justice agency that does not meet the requirements of this [act].

Comment

Training. The central repository has the responsibility to train contributing justice agencies and focus on those agencies that are not reporting as required because those agencies present significant accuracy risks to the entire system. The central repository is free to design this training in the manner it believes will be the most effective in that state.

[ARTICLE] 4

CORRECTION OF CRIMINAL-HISTORY-RECORD INFORMATION

SECTION 401. REQUEST TO CORRECT. A subject may seek correction of criminal-history-record information by sending the contributing justice agency storing the information or the central repository a request for correction, specifying the information alleged to be inaccurate and providing the allegedly correct information. A contributing justice agency that receives the request shall inform the subject that only the central repository can act on the

subject's request and that the contributing justice agency will forward the request to the central repository. Not later than [five] days after receiving the request, the contributing justice agency shall forward to the central repository the request and any criminal-history-record information relating to the subject.

Comment

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

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

SECTION 402. REVIEW OF REQUEST.

(a) Not later than [40] days after receipt of a request under Section 401, the central repository shall review and approve or deny the request. The director of the central repository may extend the time to review and act on the request for up to [21] days if the director certifies that there is good cause for an extension and notifies the subject. The extension may not be renewed unless the subject agrees.

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

(c) [Cite to the state administrative procedure act] governs review of action or nonaction by the central repository concerning a request under Section 401. Notwithstanding [cite to the state administrative procedure act], if the request is deemed denied under subsection (b), the central repository has the burden of proof in a subsequent review.

Comment

Forms. The central repository will provide clear, plainly worded instructions to subjects who express an interest in seeking a correction to their criminal-history-record information.

Those instructions include information about seeking further review as set forth in this section. The [responsible agency or individual] has the authority, pursuant to Section 702, to establish appropriate procedures in this regard.

Access, review, challenge, correction and appeal. This article provides subjects rights to challenge the criminal-history-record information about them for the explicit purpose of ensuring that all of the criminal-history-record information managed by the state, regardless of its source, is correct and up-to-date. While section 402(c) largely defers to the state's administrative procedure act, the draft requires that the government will have the burden of proving the accuracy of the challenged information by a preponderance of the evidence in an administrative review following an automatic denial triggered by governmental unresponsiveness.

SECTION 403. CORRECTION OF RECORD. If the central repository approves a request under Section 401, not later than [14] days after the decision under Section 402 becomes final and not subject to appeal, the central repository shall:

- (1) correct its records;
- (2) disseminate notice of the inaccuracy and correction to the subject and each person to whom the central repository disseminated inaccurate information for a purpose of administration of criminal justice within [one year] before the date of approval of the correction;
- (3) notify the contributing justice agency that provided the inaccurate information of the inaccuracy and correction; and
- (4) on request of the subject:
 - (A) disseminate notice of the inaccuracy and correction to each person the subject identifies as having received the inaccurate information under Section 303; and
 - (B) provide the subject at no cost one certified copy of the accurate information.

Comment

Procedures. Accuracy remains the overriding goal of the act. Of course, procedures relating to the mechanics of how criminal-history-record information will be corrected and in what form are left to the state and its central repository. The central repository, pursuant to Section 306, will establish procedures to be used, including whether certified copies may be provided entirely electronically.

[ARTICLE] 5

MISTAKEN-IDENTITY-PREVENTION REGISTRY

SECTION 501. CREATION AND MAINTENANCE OF REGISTRY. The central repository shall create and maintain a mistaken-identity-prevention registry:

(1) consisting of information voluntarily provided by:

(A) a victim of mistaken identity; or

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

(2) designed to prevent:

(A) creation of inaccurate criminal-history-record information;

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

(C) mistaken arrest; and

(D) confusion of an individual with another individual when criminal-history-record information is searched.

SECTION 502. REQUIREMENTS FOR REGISTRY.

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

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

(2) collection of biometric information from the individual.

(b) Using the procedures under subsection (a), the central repository shall determine whether the individual has a name or other identifying characteristic similar to that of another individual who is the subject of criminal-history-record information. If the central repository determines the individual does have such a name or characteristic, the central repository shall

enter the information concerning the individual in the mistaken-identity-protection registry. If the central repository determines the individual does not have such a name or characteristic, the individual may seek relief under [cite to the state administrative procedure act provision that governs a contested case].

SECTION 503. CERTIFICATION. Not later than [14] days after entering information concerning an individual in the mistaken-identity-prevention registry under Section 502, the central repository shall provide the individual a certification that the individual is not a specified individual with a similar name or identifying characteristic who is the subject of criminal-history-record information. The certification is prima facie evidence of the facts certified. A person may rely on the accuracy of the information in the certification.

SECTION 504. DISSEMINATION OF REGISTRY INFORMATION.

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

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

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

SECTION 505. VERIFICATION OF IDENTITY. If a contributing justice agency seeks to establish the identity of an individual and the individual presents a certification issued

under Section 503, the agency shall accept the certification of the individual's identity unless the agency has a reasonable basis to doubt the individual's identity or the authenticity of the certification, in which case the agency shall contact the central repository to verify the authenticity of the certification, using procedures established by the central repository.

SECTION 506. LIMITATION ON USE OF REGISTRY INFORMATION.

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

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

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

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

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

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

SECTION 507. REMOVAL OF INFORMATION FROM REGISTRY.

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

(b) Not later than [14] days after receiving a request complying with procedures established under subsection (a) from an individual for removal of information the individual voluntarily submitted under Section 502(a), the central repository shall remove the information

from the mistaken-identity-prevention registry.

Comment

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

The mistaken-identity-prevention registry provides for the creation of a certification for relevant individuals who choose to be proactive about limiting damaging errors in their own criminal record. This certification may help an individual without a particular criminal record from suffering adverse consequences of being confused with the individual who actually has that record. The drafters seek to balance these considerations with the burdens imposed on law enforcement during the identity verification process. It is up to the enacting state to determine requirements and procedures, but the drafters encourage states to consult with law enforcement and look to NLETS as a potential partner. *See* <http://www.nlets.org>.

[ARTICLE] 6

SYSTEMS SECURITY; AND AUDIT

SECTION 601. SECURITY REQUIREMENTS. To promote the confidentiality and security of criminal-history-record information collected, received, stored, maintained, submitted, and disseminated under this [act], the central repository shall establish procedures to:

- (1) protect information from loss or damage;
- (2) allow only an authorized person access to the information;

- (3) select, supervise, and train individuals authorized to access the information;
- (4) if computerized data processing is used, meet the technical guidance for the security of systems established by the [responsible agency or individual]; and
- (5) maintain an index of each data breach.

Legislative Note: In paragraph (4), a state should designate as the responsible agency or individual the appropriate agency or individual in light of its own constitutional structure and administrative functions. In some states this may be the Attorney General. In other states this may be a different officer or entity. A state may designate a different agency or individual for different functions under this act.

Comment

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

SECTION 602. AUDIT.

(a) The [title of senior elected or appointed official responsible for governmental oversight, audit, or integrity] shall cause an audit to be conducted annually of a sample of contributing justice agencies and at least once every [three] years of the central repository.

(b) If the [title of senior elected or appointed official responsible for governmental oversight, audit, or integrity] certifies that an audit required by an entity of the United States satisfies the requirements of this section, an additional audit is not required of the central repository or contributing justice agency subject to the audit.

(c) An audit under this section must:

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

- (2) assess the integrity of each computerized system and database and each physical location where criminal-history-record information is stored;

(3) assess any data breach in the central repository and response to the breach; and

(4) review a representative sample of criminal-history-record information stored by a contributing justice agency or the central repository and determine the number of missing reportable events and amount and nature of missing biometric information in the sample, in part by examining public records of the courts of this state.

(d) A contributing justice agency and the central repository shall give the [title of senior elected or appointed official responsible for governmental oversight, audit, or integrity] access to the records, reports, listings, and information required to conduct an audit under this section. An officer, employee, or contractor of this state or a political subdivision of this state with relevant information shall cooperate with the [title of senior elected or appointed official responsible for governmental oversight, audit, or integrity] and provide information requested for an audit.

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

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

Comment

Mandatory audits. This section provides for mandatory audits. *Cf.* ALASKA STAT. § 12.62.150(c) (“Every two years the department shall undertake an audit, and every four years shall obtain an independent audit, of the department's criminal justice information system that serves as the central repository and of a sample of other state and local criminal justice information systems, to verify adherence to the requirements of this chapter and other applicable laws.”). Audits are essential to understanding how the criminal-history-record information structure is actually working and to prevent the automatic replication of systematic errors. If policy makers do not understand the nature and prevalence of the inaccuracies, they cannot

address them effectively. The public distribution of the results of the audit alone may serve to increase system-wide compliance.

[ARTICLE] 7

ENFORCEMENT AND IMPLEMENTATION

SECTION 701. REMEDIES.

[(a)] The [responsible agency or individual], the central repository, or a subject, in addition to other remedies provided by this [act] and law other than this [act], may commence an action to compel compliance with or enjoin a violation of this [act]. The court may award to a subject who prevails in the action reasonable fees and expenses of attorneys and court costs.

[(b)] A subject has a cause of action for an intentional or reckless violation of this [act] or procedures established under this [act]. This subsection does not affect other remedies as provided by this [act] or law other than this [act]. If the court finds by a preponderance of the evidence that the subject was injured by an intentional or reckless violation, the court shall award:

(1) the greater of:

(A) actual damages; or

(B) \$[500] for each violation up to \$[2,000] in the action; and

(2) reasonable fees and expenses of attorneys and court costs.]

Legislative Note: In subsection (a), a state should designate as the responsible agency or individual the appropriate agency or individual in light of its own constitutional structure and administrative functions. In some states this may be the Attorney General. In other states this may be a different officer or entity. A state may designate a different agency or individual for different functions under this act.

An enacting state adopting subsection (b) should examine its sovereign immunity laws to determine whether a conforming revision is required.

Comment

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

Existing criminal sanctions. The act does not include a criminal sanction, in part because existing criminal statutes likely cover behavior that warrants a response by the criminal justice system. While anyone can report a suspected criminal violation to the appropriate prosecutorial authorities, the responsible agency or individual and the senior elected or appointed official responsible for governmental oversight, audit, or integrity should be particularly attentive to such circumstances. Of course, the act does not limit the prosecutorial power of any individual or entity to enforce existing law.

Remedies. This section allows for injunctive relief and monetary damages when the act is violated. Concerning monetary damages, this section affords a subject who is injured by a violation of the act a remedy with a modest minimum (\$500 per violation up to a maximum of \$2,000) and a provision that enables the subject to obtain reasonable fees and expenses of attorneys plus court costs on the theory that the true extent of actual damages may be difficult to prove. This language is modeled on some existing provisions, and is limited in scope. *Cf.* 18 U.S.C. § 2724(b). All of this, of course, is also designed to serve as a clear and enforceable incentive to minimize inaccuracies.

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

(a) The [responsible agency or individual] shall establish procedures to implement this [act]. The procedures must include provisions that:

(1) govern the accuracy, dissemination, and review of, and individual access to, criminal-history-record information;

(2) electronic data, including biometric information, must be stored in a manner that complies with the procedures established under Section 601;

(3) establish technical guidance for the security of systems described in paragraphs (1) and (2); and

(4) set a reasonable maximum fee for the cost of disseminating criminal-history-

record information and provide a subject free access to the subject's information at least once each calendar year.

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

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

***Legislative Note:** A state should designate as the responsible agency or individual the appropriate agency or individual in light of its own constitutional structure and administrative functions. In some states this may be the Attorney General. In other states this may be a different officer or entity. A state may designate a different agency or individual for different functions under this act.*

[ARTICLE] 8

MISCELLANEOUS PROVISIONS

SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 802. TRANSITIONAL PROVISION. Sections 203, 305, 401, 402, and 403 apply to criminal-history-record information that is in existence before, on, or after [the effective date of this [act]] regardless of the date the information was created or when the reportable event occurred.

[SECTION 803. 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.]

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

SECTION 804. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

Legislative Note: *An enacting state should examine its statutes regarding public records access laws to determine whether conforming revisions are required to ensure that this act does not limit access to public records. The specific terminology for such statutes varies among states. An enacting state should refer to its public records access laws however denominated. In particular, the state should review its statutes in light of the provisions of this act relating to:*

Court dockets and files. See Section 103.

Dissemination logs. See Section 104.

Dissemination of information. See Section 303.

Dissemination from mistaken-identity-prevention registry. Section 504.

An enacting state should also review its laws regarding the correction of criminal-history-record information to determine whether conforming revisions are required. See, e.g., Sections 203 and 401.

SECTION 805. EFFECTIVE DATE. This [act] takes effect