

D R A F T  
FOR DISCUSSION ONLY

# CRIMINAL RECORDS ACCURACY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAW

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March 18-19, 2016 Drafting Committee Meeting

*With Discussion Notes*

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February 29, 2016

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1 **CRIMINAL RECORDS ACCURACY ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Criminal Records  
3 Accuracy Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Administration of criminal justice” means: detection, apprehension, detention,  
6 pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or  
7 rehabilitation of an accused person or criminal offender. The term includes criminal  
8 identification activities and the collection, storage, and dissemination of criminal history record  
9 information.

10 (2) “Audit” means the process of reviewing compliance with state and federal law related  
11 to the accuracy, security, security measures, and privacy of criminal history record information.

12 (3) “Biometric identifying information” means unique attributes of an individual,  
13 including fingerprints, used for identification.

14 (4) “Central repository” means the single, centralized entity for collection, compilation,  
15 storage, maintenance, and dissemination of criminal history record information operated by the  
16 [office, department, or State Police].

17 (5) “Contributing justice agency” means a political subdivision or agent of a political  
18 subdivision or governing entity of this state authorized to engage in the administration of  
19 criminal justice. The term includes an organized state or municipal police department, sheriff’s  
20 department, local detention facility or department, county, regional or state correctional facility  
21 or department, probation agency, [district or prosecuting] attorney, court with criminal  
22 jurisdiction, parole board, pardon board, juvenile detention facility, and any agency or subunit  
23 designated by the [senior elected or appointed executive branch official responsible for criminal

1 justice policy] as a contributing justice agency. The term does not include the central repository.

2 (6) “Criminal history record information” means information collected by a contributing  
3 justice agency or the central repository consisting of identifiable descriptions of a subject,  
4 including biometric identifying information, and notations of reportable events. The term does  
5 not include intelligence information or investigative information.

6 (7) “Dissemination” means oral, written, or electronic transmission or other disclosure of  
7 criminal history record information to a person other than the central repository or the  
8 contributing justice agency that maintains the information.

9 (8) “Dissemination log” means a listing of every request for, and dissemination of,  
10 criminal history record information or intelligence information, indicating the information  
11 requested, information disseminated, the person making the request and their associated address,  
12 the person effectuating the dissemination, the date of the request and of the dissemination, and  
13 the purpose for which the information was requested or disseminated. The dissemination log is  
14 separate and distinct from the criminal history record information, intelligence information, or  
15 investigative information itself.

16 (9) “Intelligence information” means information about the habits, practices,  
17 characteristics, possessions, associations, or financial status of a person collected to anticipate,  
18 prevent, monitor, investigate, or prosecute criminal activity.

19 (10) “Investigative information” means information collected as a result of an inquiry,  
20 formal or informal, into a criminal incident or an allegation of criminal wrongdoing.

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

1           (12) “Reportable event” means any of the following occurrences concerning a person  
2 suspected of, arrested for, or charged with a criminal offense, including a felony or misdemeanor  
3 but excluding a [noncriminal or summary] petty offense, traffic violation, or offense adjudicated  
4 under the [Juvenile Court Act]:

5                   (A) an arrest;

6                   (B) a disposition after an arrest without the initiation of a formal criminal  
7 proceedings;

8                   (C) the initiation of a formal criminal proceeding;

9                   (D) the disposition of a formal criminal proceeding, including a diversion,  
10 dismissal, indefinite postponement, acquittal, guilty plea, conviction, sentence imposed, and  
11 modification, reversal, or revocation of the disposition;

12                   (E) commitment after conviction to or release from a place of detention or  
13 custodial supervision;

14                   (F) commencement or conclusion of noncustodial supervision by a contributing  
15 justice agency;

16                   (G) completion of sentence;

17                   (H) an expungement or sealing of criminal history record information;

18                   (I) a grant of clemency; and

19                   (J) a finding of mental incompetence by a court of this state at any stage of a  
20 criminal judicial proceeding.

21           (13) “Repository” means an entity operated by a contributing justice agency which  
22 collects, compiles, maintains, or disseminates criminal history record information.

23           (14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the

1 United States Virgin Islands, or any other territory or insular possession subject to the  
2 jurisdiction of the United States. The term includes a federally recognized Indian tribe.

3 (15) “Subject” means the individual to whom the substance of criminal history record  
4 information refers.

### 5 **Discussion Notes**

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

12  
13 *Administration of criminal justice.* The definition of “administration of criminal justice”  
14 tracks the language found in C.F.R. §20.3.

15  
16 *Biometric identifying information.* The definition of “biometric identifying information”  
17 is designed to allow the act to adapt automatically as technology evolves. Right now,  
18 fingerprints are the gold standard for ensuring that a particular person is linked to arrest and  
19 disposition information. That may change and the definition should be able to accommodate  
20 such changes. In this case, we consider DNA information to fall inside the scope of biometric  
21 identifiers, though this is not made explicit in the text.

22  
23 *Central repository.* The definition of “central repository” leaves to the adopting state  
24 whether this is a police function, often through the state police, or an independent function.  
25 Given the central repository’s coordinating role, the definition does require the central repository  
26 to be independent from contributing justice agencies or other repositories.

27  
28 *Contributing justice agency.* The definition of “contributing justice agency” is  
29 intentionally broad. The goal is to widely distribute the duty to provide information on  
30 “reportable events” – such as arrests, charges, and dispositions of all types – to the central  
31 repository. This also allows for the collection and inclusion of reportable event and  
32 identification data throughout the process of adjudication and punishment, thereby allowing for  
33 multiple instances to collect data and resolve issues.

34  
35 *Reportable event.* The definition of a “reportable event” is designed to capture all of the  
36 significant moments in the life of a criminal case that future actors in the criminal justice system  
37 would want to know about that defendant and that case. Though the nomenclature may vary by  
38 jurisdiction, these are almost universal in their presence and importance.

39  
40 One question for on which we would appreciate guidance is if we should be more  
41 specific with regard to the nature of lower level offenses. For example, should all misdemeanors  
42 be considered, or only particularly serious ones?

1 Another question is if it is desirable to impose a duty on the Contributing Justice Agency  
2 to report (as a reportable event in itself) to the Central Repository that 18 months has lapsed and  
3 no prosecutorial action has been taken? If so, this may eliminate a delay in obtaining the  
4 information when time is critical such as obtaining housing or a job.

5  
6 **SECTION 3. APPLICABILITY.** This [act] applies to persons within this state and to  
7 each contributing justice agency within [this state] that collects, maintains, modifies,  
8 disseminates, or receives criminal history record information

9 **SECTION 4. SCOPE.**

10 (a) Except as otherwise provided in sections 5, 7 and 8, this [act] does not apply to:

11 (1) a document or record prepared by, maintained by, or filed in a court of this  
12 state; or

13 (2) an announcement of clemency made by the [Governor] or the [Governor's]  
14 designee.

15 (b) For purposes of this [act] a court docket, court file, and information contained in a  
16 docket or file, is not a public record unless otherwise ordered by a court of competent  
17 jurisdiction.

18 **Discussion Notes**

19 *Public records.* This section is designed to ensure that information in court dockets and  
20 files not under seal remain public records. Through the exemptions in paragraph (a), however, it  
21 does so while still requiring that courts submit information about reportable events to the central  
22 repository. We have some concerns about separation of powers, but believe that existing  
23 legislation in certain jurisdictions requires judicial participation.

24  
25 **SECTION 5. DUTIES AND AUTHORITY OF CONTRIBUTING JUSTICE**  
26 **AGENCY FOR CRIMINAL HISTORY RECORD INFORMATION.**

27 (a) A contributing justice agency may disseminate criminal history record information  
28 only as provided in this [act].

29 (b) The following provisions govern the collection of fingerprints and other biometric

1 identifying information:

2 (1) A contributing justice agency shall collect biometric identifying information in  
3 the manner and form directed by the central repository, from an individual arrested by the agency  
4 for a felony or misdemeanor [, or summary offense that becomes a misdemeanor on a second  
5 arrest after conviction of the summary offense,] and forward the information to the central  
6 repository, in the manner and form directed by the central repository, not later than 48 hours after  
7 the arrest.

8 (2) If a defendant charged by complaint, information, or indictment with a felony  
9 or misdemeanor [or summary offense that becomes a misdemeanor on a second arrest after  
10 conviction of the summary offense] is not arrested and instead appears in court pursuant to  
11 summons, the court shall order the defendant to report to the [local municipal police department]  
12 or [designated contributing justice agency] not later than seven business days after the order and  
13 permit the police to collect biometric identifying information in the manner and form directed  
14 by the central repository. The [department] or [agency] shall forward the information to the  
15 central repository, in the manner and form directed by the central repository, not later than 48  
16 hours after collection.

17 (3) During an investigation, adjudication or correctional process, the head of each  
18 contributing justice agency responsible for the arrest, prosecution, adjudication, sentencing,  
19 supervision, or custody of a person for a felony or misdemeanor [, or summary offense that  
20 becomes a misdemeanor on a second arrest after conviction of the summary offense,] shall  
21 determine whether biometric identifying information in the manner and form directed by the  
22 central repository, has previously been collected for that person in the manner and form directed  
23 by the central repository and forwarded to the central repository in the manner and form directed

1 by the central repository.

2 (4) If the head of a contributing justice agency responsible for the arrest,  
3 prosecution, adjudication, sentencing, supervision, or custody of a person for a felony or  
4 misdemeanor [, or summary offense which becomes a misdemeanor on a second arrest after  
5 conviction of that summary offense,] determines, pursuant to paragraph 3 above, that biometric  
6 identifying information has not been collected or forwarded to the central repository, the agency  
7 shall collect biometric identifying information as prescribed by the central repository not later  
8 than 72 hours after making that determination and forward the information to the central  
9 repository not later than 48 hours after collection.

10 (c) A contributing justice agency shall collect, in the manner and form directed by the  
11 central repository, information on reportable events with which the contributing justice agency is  
12 involved. The agency shall submit the information, in the manner and form directed by the  
13 central repository, to the central repository not later than 72 hours after the reportable event.

14 (d) A contributing justice agency shall maintain complete and accurate criminal history  
15 record information and report the information as required by this [act] or law of this state other  
16 than this [act]. A repository shall establish effective procedures, in compliance with regulations  
17 adopted by the [senior elected or appointed executive branch official responsible for criminal  
18 justice policy], to create and store complete and accurate criminal history record information.

19 (e) Regardless of the manner of discovery or the identity of the person who discovered it,  
20 not later than 15 days after that reported inaccurate criminal history record information, the  
21 agency shall:

22 (1) correct its own records; and

23 (2) disseminate a notice about the inaccuracy and the required correction to the

1 central repository and all other persons that received the inaccurate information as reflected in  
2 its dissemination logs.

3 (f) A contributing justice agency may disseminate criminal history record information to  
4 another contributing justice agency on request in connection with the requesting agency's duties.  
5 A contributing justice agency shall create and maintain a dissemination log listing disseminations  
6 of criminal history record information to another contributing justice agency.

7 (g) A contributing justice agency shall disseminate criminal history record information to  
8 the subject of the information on request of the subject or the subject's designee, at a reasonable  
9 cost consistent with regulations adopted by the [senior elected or appointed executive branch  
10 official responsible for criminal justice policy]. The regulations shall include a fee waiver for  
11 indigent subjects. If criminal history record information sought by the subject is maintained by  
12 an agency in a record that also contains investigative information, intelligence information, or  
13 other nonpublic information, the agency may remove that information and disseminate only the  
14 criminal history record information. If the agency identifies no criminal history record  
15 information, it shall indicate to the subject or the subject's designee that no relevant records were  
16 identified and the date of the search.

17 (h) A contributing justice agency shall create and maintain a dissemination log listing  
18 disseminations of criminal history record information to a subject. All disseminations shall be  
19 entered into the relevant dissemination log not later than 10 business days after criminal history  
20 record information is disseminated. The agency shall maintain entries in a dissemination log for  
21 at least one year.

## 22 Discussion Notes

23 *Mandatory duty to collect biometric identifying information.* We believe that Section  
24 5(b) is one of the most important requirements in the act. Biometric identifying information, in

1 the form of fingerprints, is the gold standard for positive identification for law enforcement  
2 purposes. If this information is not used to link an arrest to a charge to a disposition, significant  
3 inaccuracies may and do result. In most cases, close matches using name and date of birth are  
4 the alternative. This is a clear and common source of inaccuracies – both in the failure to link  
5 related reportable events and in the misidentification of the subject. Section 5(b) puts the  
6 primary responsibility for this task on the arresting contributing justice agency, which will  
7 typically be the police. In our preliminary explorations, the lack of collection at the “front line”  
8 of processing was a significant impediment. In some jurisdictions, this appears to be unrelated to  
9 funding for equipment, and instead turns on the enforcement of mandatory collection procedures.  
10 See, e.g., Jeffrey Benzing, *Fingerprint Hearing: Best and Worst Pa. Counties Have Same*  
11 *Equipment*, available at  
12 [http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint\\_hearing\\_best\\_and\\_w.html](http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html) (July  
13 23, 2014).

14  
15 *Duty of other contributing justice agencies.* If the arresting agency fails to obtain  
16 fingerprints, the act provides a backstop by requiring other, functionally downstream, actors in  
17 the contributing justice system to fingerprint the subject. We believe that this “belt-and-  
18 suspenders approach” is warranted given the wide variation of fingerprint compliance rates  
19 between and within states. For example, we were told that in one large state, there are tens, if  
20 not hundreds, of thousands of essentially orphaned files in the central repository because  
21 disposition information cannot be definitively linked by fingerprint to a person. Furthermore, in  
22 that state, the state prison receiving center felt the need to install a livescan machine (a common  
23 biometric data collection station) because of the number of sentenced offenders arriving without  
24 fingerprints in the system. At the same time, this jurisdiction has a nearly uniform collection  
25 provision for fingerprint information, highlighting the creation and reinforcement of need for  
26 multiple opportunities to obtain these key data.

27  
28 *Duty to report reportable events.* Section 5(c) requires contributing justice agencies to  
29 submit information on reportable events – such as arrests, charges, convictions, sentences,  
30 commitments, etc. – with which they were involved to the central repository. If followed, this  
31 mandate should go a long way towards solving the problem of missing dispositions. We again  
32 took a “belt-and-suspenders approach” by putting this responsibility broadly on multiple actors,  
33 even if that means some duplicative reporting to the central repository. Given the large and  
34 growing use of electronic records, this should not be burdensome on the contributing justice  
35 agencies and may help to reduce inaccuracies.

36  
37 *Duty to correct inaccuracies.* Section 5(f), which has a corollary for the central  
38 repository as well, requires the contributing justice agency that learns of an inaccuracy –  
39 regardless of how it learns of it – to fix it in its own records and to pass along the corrected  
40 information to whomever it has provided the inaccurate information. That latter process is  
41 facilitated by the maintenance of dissemination logs. Thoroughly tracking the information will  
42 allow for more effective correction, as well as providing essential process data for the audit,  
43 discussed in Section 11.

44  
45 *Authority to disseminate.* These provisions allow contributing justice agencies to  
46 disseminate criminal history record information to other contributing justice agencies and to the

1 subject of the information upon request. The central repository, as part of its duties, will set  
2 reasonable standards and procedures for this process, ensuring a degree of uniformity in the  
3 requesting and dissemination processes.  
4

5 These are some of the several provisions that call for implementing regulations. We  
6 value the idea of checks and balances and thus want these regulations to be controlled by an  
7 entity outside of the day-to-day operation of the criminal history system. The central repository  
8 is a perfectly appropriate entity to create operation rules, as in Section 5(b)(1) and Section 6(h),  
9 and we certainly are not impugning the integrity of the individuals within the criminal history  
10 system. This is simply a structural point. We have provided a generic description of a senior  
11 criminal justice policy person in order to accommodate the disparate state practices. Ideally, in  
12 the states that use the Attorney General position as the chief law enforcement officer and  
13 “minister of justice,” we believe that the Attorney General is best suited for fulfilling these  
14 duties.  
15

16 *Fees.* We include a provision to allow to fee waivers for indigent subjects. It remains a  
17 matter of discussion about how to address, if at all, setting amounts or other costs associated with  
18 the other information in this section.  
19

## 20 **SECTION 6. DUTIES AND AUTHORITY OF CENTRAL REPOSITORY.**

21 (a) The central repository shall collect and maintain the criminal history record  
22 information reported to it under this [act]. The central repository may only disseminate criminal  
23 history record information as provided in this [act].

24 (b) The central repository may request, access, store and disseminate records relating to  
25 an offense committed in another jurisdiction. The records may include federal summary criminal  
26 history information provided by the United States Department of Justice and other information  
27 that would qualify as criminal history record information if submitted by a contributing justice  
28 agency. For purposes of maintenance and dissemination, the central repository shall treat  
29 information from another jurisdiction as if it were from this state.

30 (c) The central repository shall facilitate the creation and maintenance of complete and  
31 accurate criminal history record information by:

32 (1) establishing practices and procedures necessary to as efficiently and  
33 automatically as possible resolve conflicts and discover missing data on the same incident or

1 subject; and

2 (2) expunging criminal history record information pursuant to law or court order.

3 (d) The central repository may not collect, maintain, or disseminate intelligence  
4 information or investigative information. The central repository may collect a name, word,  
5 number, phrase, or similar index key to serve as an index to investigative reports.

6 (e) The central repository shall:

7 (1) disclose criminal history record information to a contributing justice agency  
8 on request by the agency for information sought in connection with the agency's duties;

9 (2) disclose criminal history record information to the Governor to aid in a  
10 decision concerning exercise of the power of pardon, reprieve, commutation or reduction of  
11 sentence, executive clemency, or interstate extradition or rendition;

12 (3) disclose criminal history record information as constitutionally required or as  
13 expressly required by a statute of [this state] or the United States;

14 (4) disclose criminal history record information to a contributing justice agency of  
15 another state on request for the information by the agency in connection with the agency's  
16 duties; and

17 (5) disseminate criminal history record information to the Federal Bureau of  
18 Investigation and United States Department of Justice as part of the state's participation in the  
19 Interstate Identification Index System, National Fingerprint File, National Identification Index,  
20 National Instant Criminal Background Check System Index, and related programs.

21 (f) When authorized by law of the state other than this [act] or the United States, the  
22 central repository shall disseminate criminal history record information, including federal  
23 summary criminal history information provided by the Federal Bureau of Investigation or the

1 United States Department of Justice, to a person for employment, licensing, or certification  
2 purposes, subject to the following rules:

3 (1) Before the central repository disseminates the information, the central  
4 repository shall determine whether the information contains a disposition after an arrest without  
5 the filing of a formal criminal charge or a disposition of a formal criminal charge for every arrest  
6 or charge. If disposition information is missing, the central repository shall make a good faith  
7 effort to determine the active status of the disposition of the arrest or charge, and if the central  
8 repository discovers the active status, add that information to:

- 9 (A) the relevant records maintained by the central repository; and
- 10 (B) the report or summary to be disseminated.

11 (2) Before the central repository disseminates the information, the central  
12 repository shall remove from the report or summary to be disseminated the notation of an arrest,  
13 charge, indictment or other information relating to the initiation of criminal proceedings where:

- 14 (A) eighteen months have elapsed after the date of arrest;
- 15 (B) no conviction has occurred; and
- 16 (C) no proceedings are pending that may result in a conviction.

17 (3) When the central repository disseminates the information, the central  
18 repository shall within 24 hours of dissemination send the same information to the subject by  
19 United States mail directed to the subject's last known address in the central repository's records  
20 and the subject's current address as obtained by, or provided to, the requesting employment or  
21 licensing agency.

22 (g) Regardless of the manner of discovery or the identity of the person who discovered it,  
23 not later than 15 days after becoming aware that criminal history record information is

1 inaccurate, the central repository shall:

2 (1) correct its own records;

3 (2) notify each contributing justice agency that submitted information about  
4 reportable events concerning the subject of the inaccuracy of the information and the required  
5 correction; and

6 (3) notify persons that received the inaccurate information, as reflected in the  
7 dissemination logs, including the Federal Bureau of Investigation and United States Department  
8 of Justice as part of the state's participation in the Interstate Identification Index System,  
9 National Fingerprint File, National Identification Index, National Instant Criminal Background  
10 Check System Index, and related federal programs.

11 (h) The central repository shall establish effective procedures, in compliance with  
12 regulations adopted by the [senior elected or appointed executive branch official responsible for  
13 criminal justice policy], to ensure the completeness and accuracy of criminal history record  
14 information. The central repository shall:

15 (1) specify the manner and form in which a contributing justice agency shall  
16 submit criminal history record information to the central repository concerning a reportable  
17 event, including standards for biometric identifying information, to ensure that multiple pieces of  
18 criminal history record information for the same subject are appropriately linked;

19 (2) adopt procedures, standards, and forms for reporting and exchanging  
20 information under this [act]; and

21 (3) adopt other regulations necessary to carry out its duties under this [act].

22 (i) The central repository shall disseminate criminal history record information for  
23 statistical or research purposes, if the identity of the subject of the information is not disclosed

1 directly or indirectly. Use of the information is subject to procedures established by the central  
2 repository designed to implement this subsection.

3 (j) The central repository shall inform the public about the existence, usage, and  
4 accessibility of the criminal history record information maintained by the central repository and  
5 other repositories. The central repository also shall provide public notice, updated at least every  
6 six months, concerning:

7 (1) items of information used to retrieve and link criminal history record  
8 information;

9 (2) results of the annual audit required by section 9 and the status of any  
10 remediation; and

11 (3) requirements and forms for access and review of criminal history record  
12 information by an individual.

13 (k) The central repository shall:

14 (1) provide regular training to contributing justice agencies on how to submit  
15 information about a reportable event and why the information is important to both the  
16 administration of criminal justice and society; and

17 (2) identify contributing criminal agencies and repositories that do not meet  
18 minimum standards under this [act] and provide them with remedial training.

19 **SECTION 7. REGISTRY TO PREVENT FRAUD VICTIMIZATION.**

20 (a) In this section, “registry” or “registry to prevent fraud victimization” means a  
21 database designed to prevent the inaccurate creation or modification of Criminal History Record  
22 information and consisting of identifying information voluntarily provided by victims of identity  
23 theft or fraud, individuals whose names or other identifying characteristics are similar to those of

1 others who have criminal history records, and individuals concerned about potential identity theft  
2 or fraud victimization.

3 (b) The central repository shall create and maintain a registry to prevent fraud  
4 victimization.

5 (c) The central repository shall establish reasonable requirements and procedures for an  
6 individual to be included in the registry. The requirements shall include collecting biometric  
7 identifying information from an individual seeking to be included in the registry and the  
8 submission of a notarized, written request.

9 (d) An individual voluntarily may provide information to be considered for inclusion in  
10 the registry. If the information meets the requirements established in subsection (b), the  
11 individual's name and information shall be entered in the registry. An individual denied  
12 inclusion in the registry may seek relief under the state [administrative procedures act] as a  
13 contested case.

14 (e) Not later than 14 days after entering an individual in the registry, the central  
15 repository shall issue a document to the individual establishing that the individual is a victim of  
16 identity theft or fraud or that the applicant is not an individual with a similar name or identifying  
17 characteristics who has a criminal record. The document may be used to establish, and is prima  
18 facie evidence that the individual is a victim of identity theft, fraud or not the individual with a  
19 similar name or identifying characteristics.

20 (f) The central repository may not disclose information from the registry except as  
21 provided in [this act].

22 (g) The central repository shall disclose information from the registry to a contributing  
23 justice agency to prevent fraud victimization on request of the agency and when there is reason

1 to believe that identity information concerning a reportable event is may be inaccurate or not  
2 associated with the correct individual.

3 (h) A contributing justice agency, during the process of identifying an individual who is  
4 the subject of a reportable event, shall submit to the central repository biometric identifying  
5 information or identification data provided by the individual for comparison with information in  
6 the registry. If the information or data provided matches, wholly or in part, information in the  
7 registry, the central repository shall notify the contributing justice agency immediately. If there  
8 is a potential inaccuracy or fraud, the contributing justice agency shall use biometric identifying  
9 information and any other identification methodologies available to ensure the accurate identity  
10 of the subject of the reportable event before creating any criminal history record information.

11 (i) On receiving information from the registry that identity information may be inaccurate  
12 or not associated with the correct individual or when an individual produces a valid document  
13 issued by the central repository, a contributing justice agency shall use due diligence to identify  
14 accurately the subject in question.

15 (j) A contributing justice agency may not use information from the registry for a purpose  
16 other than to identify accurately an individual about whom it has requested or received registry  
17 information, including the investigation or prosecution of any criminal or civil matter.

18 (k) If information from the registry is accessed for a reason other the one expressly  
19 permitted under this [act]:

20 (1) the information and any information acquired as a result shall be excluded  
21 from use in any criminal or civil matter; and

22 (2) the central repository shall notify in writing the individual whose information  
23 was obtained improperly from the in writing within 2 business days of discovery.

1 (l) The central repository shall ensure the security of all information in the registry. The  
2 protections shall meet, and may exceed, those provided in Section 7.

3 (m) Information submitted to the registry under subsection (d) expires three years from  
4 the date of receipt unless the individual who provided the information submits a notarized  
5 written request that the information be maintained for another three-year period. The central  
6 repository shall permanently delete all expired information from the registry five days after its  
7 expiration. After information in the registry expires, that information may only be restored to the  
8 registry pursuant to a new submission.

9 (n) On receiving a notarized request from the individual who voluntarily submitted  
10 information to the registry under subsection (d), the central repository shall permanently remove  
11 the information within five business days.

## 12 Discussion Notes

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

20  
21 *Role in employment checks.* The central repository's primary function is to act as the hub  
22 for criminal history record information used for contributing justice purposes. There is, of  
23 course, a growing use of this information for mandated employment, licensing and certification  
24 purposes. Accuracy concerns are heightened in this context. Paralleling efforts considered to be  
25 successful by some in California, this section requires the central repository to make a good faith  
26 effort to ensure that disposition information is connected to arrests and charges. Senator  
27 Grassley and others introduced the Sentencing Reform and Corrections Act of 2015 ("SRCA")  
28 on October 1, 2015. Section 213 of the SRCA is entitled "Ensuring Accuracy of Federal  
29 Criminal Records;" we will review it more closely and monitor its progress in the Congress  
30 before our next meeting. It is worth noting for now, however, that pursuant to the SRCA certain  
31 arrests without disposition information that are more than two years old could not be  
32 disseminated. It may be worth considering, as a committee, if the SRCA approach more or less  
33 desirable.  
34

1            *Outreach to the public and contributing justice agencies.* Section 7(j) and 7(k) assign the  
2 central repository educative and supportive roles. It will try to raise public awareness about the  
3 importance of criminal history record information and how individuals can access their records  
4 to check for accuracy. It will also have the responsibility train contributing justice agencies and  
5 focus on those agencies that are not reporting as required because those agencies present  
6 significant accuracy risks to the entire system. We envision a system of web-based postings,  
7 webinars and guidelines, though the central repository has the flexibility to conduct this outreach  
8 in the manner determined to be effective in that jurisdiction.

9  
10            *Registry to prevent fraud victimization.* Section 6(l), which is modeled in part on a  
11 Minnesota provision, is designed to proactively help individuals who are the victim of identity  
12 theft or believe that they may, be while also improving the accuracy of the criminal record  
13 system more broadly. It allows for these individuals to voluntarily provide information about  
14 themselves, including biometric identifying information, to a restricted registry which would be  
15 used to verify whether a particular person truly is the subject of a reportable event. We expand  
16 this provision, including the provision of a verification letter, to include all individuals who may  
17 seek to be proactive about limiting damaging errors in their own criminal record. The  
18 documentation envisioned in Section 6(l)(4) should help a person without a particular criminal  
19 record from suffering adverse consequences of being confused with the person who actually has  
20 that record. At the same time, we sought to balance these considerations with the burdens  
21 imposed on law enforcement during the identity verification process(es).

## 22            **SECTION 8. SECURITY REQUIREMENTS FOR CONTRIBUTING JUSTICE**

### 23            **AGENCIES AND CENTRAL REPOSITORY.**

24            (a) A contributing justice agency that collects, stores, or disseminates criminal history  
25 record information, intelligence information, or investigative information, and the central  
26 repository shall ensure the confidentiality and security of the information by:

27            (1) establishing procedures to reasonably protect locations where information is

28 maintained from theft, fire, sabotage, flood, wind, or other natural or man-made disasters;

29            (2) ensuring that only authorized personnel have access to the information;

30            (3) selecting, supervising, and training personnel authorized to have access to the  
31 information;

32            (4) ensuring that, if computerized data processing is employed, the equipment  
33 maintaining the information meets computer security standards promulgated by the [senior  
34

1 elected or appointed executive branch official responsible for criminal justice policy]; and  
2 (5) maintaining an index of all data breaches relating to the information, for use  
3 by the [senior elected or appointed official responsible for governmental oversight, audit, or  
4 integrity] under Section 9.

5 **SECTION 9. SUBJECT’S RIGHT OF ACCESS, REVIEW, CHALLENGE,**  
6 **CORRECTION, AND APPEAL.**

7 (a) A subject or the subject’s designee, after positive verification of identity, may access,  
8 review, challenge, correct, and appeal the accuracy and completeness of the subject’s criminal  
9 history record information maintained by a repository or the central repository. Positive  
10 identification may include biometric identifying information pursuant to implementing  
11 regulations under this [act].

12 (b) A subject or designee, after properly submitting a request, may access and review a  
13 copy of the subject’s criminal history record information. Access shall be permitted without  
14 undue delay.

15 (c) A subject or the subject’s designee may challenge the accuracy of the subject’s  
16 criminal history record information by sending the repository or central repository maintaining  
17 the information a written challenge specifying the part of the criminal history record information  
18 that is alleged to be inaccurate and providing the correct information. This challenge shall be  
19 made pursuant to the [administrative procedures act.]

20 (d) A repository or central repository has 45 days from the date of receipt of a challenge  
21 under subsection (c) to the accuracy of information to review and act upon the challenge. If the  
22 repository or central repository does not act within 45 days, the challenge will be deemed valid.  
23 The repository or central repository has the burden of proving to [an administrative law judge]

1 the accuracy of the information by clear and convincing evidence. The [administrative law  
2 judge's] decision on the challenge shall state all information that formed the basis for the  
3 decision, including the jurisdiction and docket number of any relevant court decision.

4 (e) If the [administrative law judge] determines a challenge under subsection (c) is valid,  
5 or a challenge is deemed valid by operation of subsection (c), the repository or central repository  
6 shall:

7 (1) correct its own records;

8 (2) notify all persons that received the inaccurate information, as reflected in the  
9 dissemination logs, of the inaccuracy and the required correction;

10 (3) notify the Federal Bureau of Investigation and the United States Department  
11 of Justice of the inaccuracy and the required correction;

12 (4) provide five corrected copies of the criminal history record information to the  
13 subject or the subject's designee at no cost to the subject or designee; and

14 (5) provide the subject or the subject's designee the names and addresses of all  
15 persons which the inaccurate criminal history record information was disseminated within the  
16 previous five years, and the dates of dissemination.

17 (f) If the [administrative law judge] determines a challenge under subsection (c) is not  
18 valid, the challenge the subject or designee may, not later than 45 days after notification of the  
19 decision, appeal the decision to the [senior elected or appointed executive branch official  
20 responsible for criminal justice policy]. The [senior elected or appointed executive branch  
21 official responsible for criminal justice policy] or that individual's designee shall conduct a  
22 hearing de novo in accordance with the [administrative procedures act].

23 (g) If the [senior elected or appointed executive branch official responsible for criminal

1 justice policy] or that individual’s designee determines the challenge is not valid, the subject or  
2 the subject’s designee may appeal the decision to the [appellate court] not later than 45 days after  
3 the [senior elected or appointed executive branch official responsible for criminal justice policy  
4 or that individual’s designee] notifies the subject or the subject’s designee of the denial. The  
5 [appellate court] will review the denial by the [senior elected or appointed executive branch  
6 official responsible for criminal justice policy] or that individual’s designee for abuse of  
7 discretion.

### 8 **Discussion Notes**

9 *Access, review, challenge, correction and appeal.* This section provides individuals with  
10 robust rights to access and challenge the criminal history record information about them for the  
11 explicit purpose of ensuring that all of the criminal history record information managed by the  
12 state, regardless of its source, is correct and up-to-date. The right to challenge under Section 9(c)  
13 is broad, but the state administrative procedures act in place should be able to address abusive  
14 filers. Our review indicates that most, if not all, jurisdictions already have procedures in place to  
15 addresses matters of this nature. The first review would be resolved by an administrative law  
16 judge, either internal to the entity subject to the challenge (e.g., the central repository) or  
17 otherwise as set forth in the state administrative procedures act, with the burden on the  
18 government given its greater and easier access to the official records. In response to an adverse  
19 ruling, the individual may demand a *de novo* appeal to a separate entity. Again, given the  
20 potential variation in authority and operational capacity, we propose that this task be assigned to  
21 the senior elected or appointed executive branch official responsible for criminal justice policy in  
22 brackets. Upon losing this second round, the individual may appeal to, we propose, the state  
23 appellate court, which will review the second round denial for abuse of discretion.

24  
25 *Administrative review.* In the current draft, we are proscriptive in how a challenge and appeal  
26 should be heard. Should we instead defer to the procedures in place under the Administrative  
27 Procedures Act (APA) mechanisms already in place? An argument in support of the APA  
28 approach might be ease of adoption. However, the current approach ensures standardization and  
29 retains a focus on putting procedures in place designed specifically to increase the accuracy- at  
30 the individual and systematic levels- of the record information.

### 31 32 **SECTION 10. MANDATORY INDEPENDENT ANNUAL AUDIT.**

33 (a) The [senior elected or appointed official responsible for governmental oversight,  
34 audit, or integrity] or that individual’s designee shall conduct an annual audit of the central  
35 repository and a representative sample of all repositories. The audits may be done in conjunction

1 with other audits required by law.

2 (b) An annual audit under subsection (a) shall assess the integrity of each computerized  
3 system and database and each physical location storing criminal history record information to  
4 ensure this [act] is implemented.

5 (c) As part of an annual audits under subsection (a) the [senior elected or appointed  
6 official responsible for governmental oversight, audit, or integrity] or that individual's designee  
7 shall:

8 (1) collect data from a representative sample of all criminal history record  
9 information stored at the central repository and the audited repositories to verify its accuracy;

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

13 (3) evaluate data breaches in the central repository and the audited repositories;

14 (4) ensure that the audited repositories are representative of the overall status of  
15 the system of criminal history record information management and that selection of repositories  
16 to be audited is random and in accordance with best practices; and

17 (5) review the plans, policies, and procedures of at least five percent of all  
18 municipal police departments and ten percent of all [judicial districts] to ensure this [act] is  
19 implemented.

20 (d) The [senior elected or appointed official responsible for governmental oversight,  
21 audit, or integrity] or that individual's designee shall be given access to the government records,  
22 reports, listings, and information required to conduct an annual audit. All officers and  
23 employees of the state or a political subdivision of the state with relevant information shall

1 cooperate with the [senior elected or appointed official responsible for governmental oversight,  
2 audit, or integrity] or designee and provide information requested for an annual audit.

3 (e) The [senior elected or appointed official responsible for governmental oversight,  
4 audit, or integrity] or designee shall prepare and make widely available a public report  
5 containing the results of the annual audits under subsection (a) and a list of any deficiencies and  
6 recommendations for correction of deficiencies.

### 7 **Discussion Notes**

8 *Mandatory audits.* Section 9 provides for mandatory and representative audits. Audits  
9 are crucial if we are to understand how the system is actually working and to prevent the  
10 automatic replication of systematic errors. If we do not understand the nature and prevalence of  
11 the inaccuracies, we cannot effectively address them. We again propose an entity outside of the  
12 day-to-day criminal record system to conduct the audits. Here we provide a broader menu of  
13 options as several potential state entities have inspection or auditing functions. Depending on  
14 existing state structures, the relevant individual might be the Attorney General, the Auditor  
15 General, the Ombudsperson or the Inspector General. The auditing process will also facilitate  
16 the identification of agencies or departments failing to meet their obligations under Section 5 of  
17 the act. While the central repository and other parties have a menu of options to remediate these  
18 deficiencies, notably under Section 10, the dissemination of the results of the audit alone should  
19 serve to increase system-wide compliance, as well as to ensure the central repository is fulfilling  
20 the duties set out in Section 6.

### 21 **SECTION 11. SANCTIONS AND REMEDIES.**

22 (a) A person that violates this [act] or implementing regulations may:

23 (1) be denied access to specified criminal history record information for a time the  
24 [senior elected or appointed executive branch official responsible for criminal justice policy]  
25 determines is appropriate;

26 (2) be subject to a civil penalty or other remedy under this [act]; and

27 (3) if the violator is a government employee, be administratively disciplined by  
28 discharge, suspension, reduction in grade, transfer, or other formal action as the employer  
29 determines is appropriate.  
30

1 (b) The [senior elected or appointed executive branch official responsible for criminal  
2 justice policy] or a subject may bring an action to enjoin the central repository, a repository, a  
3 contributing justice agency, or another person from violating this [act] or to compel compliance  
4 with this [act] concerning an item of criminal history record information. The court may  
5 examine the criminal history record information, intelligence information, or investigative  
6 information at issue in camera.

7 (c) In addition to other available remedies, an individual injured by a reckless violation of  
8 this [act] or implementing regulations may bring an action for compensatory damages. If the  
9 court determines by a preponderance of the evidence that the individual was injured by a reckless  
10 violation of this [act] or implementing regulations, the court may award compensatory damages  
11 of not less than \$500 for each violation, costs of litigation, and reasonable attorney's fees.

12 (d) An officer or employee of the central repository, a repository, or a contributing justice  
13 agency is guilty of a misdemeanor if the officer or employee:

14 (1) knowingly makes a false entry in or false alteration of any criminal history  
15 record information;

16 (2) makes, presents, or uses criminal history record information knowing it to be  
17 false, and the intent that it be taken as genuine; or

18 (3) purposely and unlawfully destroys, conceals, removes, or otherwise impairs  
19 the verity or availability of criminal history record information.

20 **Discussion Notes**

21 *Individual sanctions.* Section 11 provides for an array administrative, civil and criminal  
22 sanctions against individuals who violate the act. It also allows both subjects and the relevant  
23 government official, again in brackets, to seek injunctive relief. The section affords a subject  
24 who is injured by a violation of the act a civil damages remedy with a modest minimum (\$500  
25 per violation) and a fee shifting provision on the theory that the true extent of actual damages  
26 may be difficult to prove. The sanctions set out in this section mirror are modeled after some

1 existing provisions, and are limited in scope. All of this, of course, is also designed to serve as a  
2 clear and enforceable incentive to minimize inaccuracies.

3  
4 *Criminal sanctions.* The limited criminal sanctions available under this Section are  
5 largely based on Model Penal Code §241.8 entitled “Tampering with Public Records or  
6 Information.”

7  
8 **SECTION 12. DUTIES AND AUTHORITY OF [SENIOR ELECTED OR**  
9 **APPOINTED EXECUTIVE BRANCH OFFICIAL RESPONSIBLE FOR CRIMINAL**  
10 **JUSTICE POLICY].**

11 (a) The [senior elected or appointed executive branch official responsible for criminal  
12 justice policy] or designee shall adopt implementing regulations under this [act]. The regulations  
13 shall include provisions that:

14 (1) govern the security, completeness, accuracy, review of, and individual access  
15 to criminal history record information;

16 (2) govern the conduct of an audit under Section 10;

17 (3) ensure that electronic data, including biometric identifying information, are  
18 stored in a manner that reflects best practices for personally identifiable information; and

19 (4) set a maximum reasonable fee for the cost of disseminating criminal history  
20 record information, and adopt a policy providing free access to criminal history record  
21 information for an indigent subject seeking access to the subject’s own information.

22 (b) The [senior elected or appointed executive branch official responsible for criminal  
23 justice policy] or that individual’s designee may investigate all matters relating to the  
24 administration and enforcement of this [act].

25 (c) The [senior elected or appointed executive branch official responsible for criminal  
26 justice policy] or that individual’s designee may bring a civil action for a violation of this [act].

27 (d) [The [senior elected or appointed executive branch official responsible for criminal

1 justice policy] may bring a criminal charge for a violation of this [act].] [The [senior elected or  
2 appointed executive branch official responsible for criminal justice policy] shall refer a suspected  
3 criminal violation, including any relevant criminal history record information, to the appropriate  
4 prosecutorial authority for further review and action.]

5 **Legislative Note:** *This section provides two alternatives depending on the prosecutorial author*  
6 *held by its senior elected or appointed executive branch official responsible for criminal justice*  
7 *policy.*

8  
9

### Discussion Notes

10 *Duties and Authorities of the Senior Elected or Appointed Executive Branch Official*  
11 *Responsible for Criminal Justice Policy.* This administrative section authorizes the senior  
12 elected or appointed executive branch official responsible for criminal justice policy, in brackets,  
13 with various authorities and duties, including adopting regulations and conducting investigations.  
14 As discussed above, this role can be filled by any agency, as long as it has sufficient autonomy  
15 from the central repository and the other enumerated parties in the act to conduct the requisite  
16 checks, including the audits discussed in Section 10. If the senior elected or appointed executive  
17 branch official responsible for criminal justice policy has prosecutorial powers, these authorities  
18 and duties may be discharged by one person. If not, this senior elected or appointed executive  
19 branch official responsible for criminal justice policy shall refer cases of suspected criminal  
20 violations to the appropriate prosecutor.

21  
22

### **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

### **SECTION 14. REPEALS; CONFORMING AMENDMENTS.**

26 (a) . . . .

27 (b) . . . .

28 (c) . . . .

29 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect . . . .