

D R A F T
FOR DISCUSSION ONLY

CRIMINAL RECORDS ACCURACY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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September 9, 2016

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CRIMINAL RECORDS ACCURACY ACT

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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 audit required by section 10 of this act.

11 (3) "Biometric identifying information" means unique attributes of an individual used for
12 identification, including fingerprints, deoxyribonucleic acid (DNA), or other information.
13 [Alternate (3) "Biometric identifying information" means fingerprints.]

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 court, political subdivision or agent of a
18 political subdivision, or governing entity of this state authorized to engage in the administration
19 of criminal justice. The term does not include the central repository. [The [state Supreme Court],
20 or any judicial entity authorized to act on its behalf, may remove the courts of this state from this
21 definition to the extent constitutionally required.]

22 (6) "Criminal history record information" means information collected by a contributing
23 justice agency or the central repository consisting of identifiable descriptions of a subject,

1 possibly including, but not limited to, biometric identifying information, and notations of
2 reportable events. The term does not include investigative information.

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

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

12 (9) “Investigative information” means information collected as a result of an inquiry,
13 formal or informal, about the activities, habits, practices, characteristics, possessions,
14 associations, or financial status of a person collected to anticipate, prevent, monitor, investigate,
15 or prosecute criminal activity.

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

19 (11) “Reportable event” means any of the following occurrences relating to felony or
20 misdemeanor criminal offenses, [summary offenses that become misdemeanors on a second
21 arrest after conviction of the summary offense], but excluding [noncriminal offenses,] [other
22 summary offenses,] [petty offenses], traffic violations [, or offenses under the [Juvenile Court
23 Act]]:

1 (A) an arrest and booking into a detention facility or an arrest resulting in the
2 collection of biometric identifying information;

3 (B) a disposition after an arrest without the initiation of a criminal proceeding;

4 (C) an initiation of a criminal proceeding;

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

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

9 (F) the commencement or conclusion of noncustodial supervision;

10 (G) the completion of a sentence of any kind;

11 (H) an expungement, sealing or set aside of criminal history record information;

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

13 and

14 (J) a finding of mental incompetence by a court of this state at any stage of a
15 criminal proceeding.

16 (12) "Repository" means an entity operated by a contributing justice agency which
17 collects, compiles, maintains, or disseminates criminal history record information.

18 (13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
19 United States Virgin Islands, or any other territory or insular possession subject to the
20 jurisdiction of the United States. The term includes a federally recognized Indian tribe.

21 (14) "Subject" means the individual to whom the substance of criminal history record
22 information refers.

Discussion Notes

1
2
3 *Animating Principles.* This act is premised on at least three principles:

- 4 1. Society at large has a vital interest in the accuracy of criminal history record
5 information.
- 6 2. Subjects of criminal history record information are entitled to have that
7 information be accurate.
- 8 3. The government has an obligation to collect, maintain, and disseminate
9 accurate criminal history record information.

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

16
17 *Administration of criminal justice.* The definition of “administration of criminal justice”
18 is largely based upon the language found in 28 C.F.R. §20.3.

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

26
27 *Central repository.* The definition of “central repository” leaves to the adopting state the
28 decision whether this is a police function, often through the state police, or an independent
29 function. Given the central repository’s coordinating role, the definition does require the central
30 repository to be operationally independent from contributing justice agencies or other
31 repositories, although it can exist within the structure of an agency, such as the state police, that
32 also contains a separate repository.

33
34 *Responsible agency/individual.* The note on contributing justice agency, *infra*, introduces
35 the concept of a “responsible agency/individual.” This draft phrase is used in various places in
36 the notes and in brackets in the text of the act itself. Based on numerous and extensive
37 discussions in the Drafting Committee, we use it to mean the appropriate state agency or
38 individual charged with certain responsibilities under this act. It is most commonly designed to
39 signal a situation when a senior criminal justice policy maker – either in the form of a
40 responsible agency or individual – needs to promulgate a policy or make a decision that is best
41 served by honoring the principle of checks-and-balances. In some states, that will be the
42 Attorney General or the Office of the Attorney General. In other states, it will be a different
43 actor or entity. It need not be filled by the same person or agency each time it is used. That is a
44 decision best left to the adopting state. The phrase “responsible agency/individual,” although
45 perhaps cumbersome, should allow for each state to fill this position appropriately in light of its
46 own constitutional structure and political landscape.

1 *Contributing justice agency.* The definition of “contributing justice agency” is
2 intentionally broad. The goal is to widely distribute the duty to provide information on
3 “reportable events” – such as arrests, charges, and dispositions of all types – to the central
4 repository. This also allows for the collection and inclusion of reportable event and identifying
5 information throughout the process of adjudication and punishment, thereby allowing for
6 multiple opportunities to collect data and resolve issues. The term includes an organized state or
7 municipal police department, sheriff’s department, local detention facility or department, county,
8 regional or state correctional facility or department, probation agency, [office of Attorney
9 General,] [district or prosecuting] attorney, court with criminal jurisdiction, parole board, pardon
10 board, and any agency or sub-unit designated as a contributing justice agency by the [responsible
11 agency/individual].
12

13 *Courts.* Courts are included in the presumptive definition of a “contributing justice
14 agency” because their participation is crucial to the success of any effort to promote the accuracy
15 of criminal records. There are, however, concerns about separation of powers. The presumptive
16 inclusion of courts in Section 1(5) means that, pursuant to Section 5, courts will be required to
17 submit information about reportable events to the central repository as long as the state’s highest
18 court, or its designee, does not opt out on constitutional grounds. An alternative would be to
19 create an opt-in approach through language along these lines: “Contributing justice agency”
20 means a court, if so directed by a rule promulgated by the [state Supreme Court], a political
21 subdivision or agent of a political subdivision, or governing entity of this state authorized to
22 engage in the administration of criminal justice. The term does not include the central
23 repository.”
24

25 *Investigative information.* At the suggestion of various ULC Commissioners, this
26 definition combines the former definitions of investigative information and intelligence
27 information, which were viewed as inappropriately overlapping.
28

29 *Reportable event.* The definition of a “reportable event” is designed to capture all of the
30 significant moments in the life of a criminal case that future actors in the criminal justice system
31 would want to know about that defendant and that case. Though the nomenclature may vary by
32 jurisdiction, these are almost universal in their presence and importance.
33

34 *Reportable Event – Disposition.* We attempted to provide an inclusive yet manageable
35 definition of disposition. If more detail is desired, we could include the current definition found
36 at 28 CFR § 20.3(i), which provides:

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

1 deferred disposition, dismissed-civil action, found insane, found mentally incompetent,
2 pardoned, probation before conviction, sentence commuted, adjudication withheld,
3 mistrial-defendant discharged, executive clemency, placed on probation, paroled, or
4 released from correction supervision. [http://www.gpo.gov/fdsys/pkg/CFR-2002-title28-](http://www.gpo.gov/fdsys/pkg/CFR-2002-title28-voll/pdf/CFR-2002-title28-voll-sec20-3.pdf)
5 [voll/pdf/CFR-2002-title28-voll-sec20-3.pdf](http://www.gpo.gov/fdsys/pkg/CFR-2002-title28-voll/pdf/CFR-2002-title28-voll-sec20-3.pdf).

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

10 **SECTION 4. SCOPE.** For purposes of this [act], a court docket, court file, and
11 information contained in a docket or file, is a public record unless otherwise ordered by a court
12 of competent jurisdiction, promulgated by court rule, or otherwise provided by law.

13 Discussion Notes

14 *Public records.* Section 4 is designed to ensure that information in court dockets and
15 files not under seal, etc. remain public records. It does so without relieving courts of the
16 obligation to provide information to the central repository as a contributing justice agency under
17 Section 5, although the state's highest court, or its designee, may do so by removing the state
18 courts from the definition of contributing justice agency to the extent constitutionally required as
19 set forth in Section 1(5).
20

21 **SECTION 5. DUTIES AND AUTHORITY OF CONTRIBUTING JUSTICE**
22 **AGENCY FOR CRIMINAL HISTORY RECORD INFORMATION.**

23 (a) A contributing justice agency may disseminate criminal history record information
24 only as provided in this [act] or as provided by the law of [this state] other than this act.

25 (b) The following provisions govern the collection of biometric identifying information:

26 (1) A contributing justice agency shall collect biometric identifying information in
27 the manner and form directed by the central repository from an individual arrested, as set forth in
28 Section 2(11)(a), by the agency for felony or misdemeanor criminal offenses, [summary offenses
29 that become misdemeanors on a second arrest after conviction of the summary offense], but
30 excluding [noncriminal offenses,] [other summary offenses,] [petty offenses,] traffic violations,

1 or offenses under the [Juvenile Court Act], and forward the information to the central repository,
2 in the manner and form directed by the central repository, not later than 3 business days after the
3 arrest.

4 (2) If an individual charged by complaint, information, or indictment with felony
5 or misdemeanor criminal offenses, [summary offenses that become misdemeanors on a second
6 arrest after conviction of the summary offense], but excluding [noncriminal offenses,] [other
7 summary offenses,] [petty offenses,] traffic violations, or offenses under the [Juvenile Court Act]
8 is not arrested and instead appears in court pursuant to summons, the individual shall report to
9 the [local municipal police department] or [designated contributing justice agency] not later than
10 ten business days after the court appearance and permit that [department] or [agency] to collect
11 biometric identifying information in the manner and form directed by the central repository. This
12 obligation may be enforced by court order. The [department] or [agency] shall forward the
13 information to the central repository, in the manner and form directed by the central repository,
14 not later than 3 business days after collection.

15 (3) During an investigation, adjudication or correctional process, the head of each
16 contributing justice agency responsible for the detection, apprehension, detention, pretrial
17 release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of
18 an accused person or criminal offender for felony or misdemeanor criminal offenses, [summary
19 offenses that become misdemeanors on a second arrest after conviction of the summary offense],
20 but excluding [noncriminal offenses,] [other summary offenses,] [petty offenses,] traffic
21 violations, or offenses under the [Juvenile Court Act] shall designate an official to promptly
22 determine whether biometric identifying information has previously been collected for that
23 individual in the manner and form directed by the central repository and forwarded to the central

1 repository in the manner and form directed by the central repository.

2 (4) If the head of a contributing justice agency responsible for the detection,
3 apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional
4 supervision, or rehabilitation of an accused person or criminal offender for felony or
5 misdemeanor criminal offenses, [summary offenses that become misdemeanors on a second
6 arrest after conviction of the summary offense], but excluding [noncriminal offenses,] [other
7 summary offenses,] [petty offenses], traffic violations, or offenses under the [Juvenile Court Act]
8 determines, pursuant to paragraph 3 above, that biometric identifying information has not been
9 collected and forwarded to the central repository, the individual shall report to the [local
10 municipal police department] or [designated contributing justice agency] not later than ten
11 business days after that determination and permit that [department] or [agency] to collect
12 biometric identifying information in the manner and form directed by the central repository.
13 This obligation may be enforced by court order. The [department] or [agency] shall forward the
14 information to the central repository, in the manner and form directed by the central repository,
15 not later than 3 business days after collection.

16 (c) A contributing justice agency shall collect, in the manner and form directed by the
17 central repository, information on reportable events with which the contributing justice agency is
18 involved. The agency shall submit the information, in the manner and form directed by the
19 central repository, to the central repository not later than 3 business days after the reportable
20 event.

21 (d) A contributing justice agency shall maintain complete and accurate criminal history
22 record information and report the information as required by this [act] or law of this state other
23 than this [act]. An agency shall establish effective procedures, in compliance with regulations

1 adopted by the [responsible agency/individual], to create and store complete and accurate
2 criminal history record information.

3 (e) Regardless of the manner of discovering inaccurate, including incomplete, criminal
4 history record information or the identity of the person who discovered it, not later than ten
5 business days after discovery, the agency shall:

6 (1) correct its own records; and

7 (2) disseminate a notice about the inaccuracy and the required correction to the
8 central repository and all other persons that received the inaccurate information as reflected in
9 its dissemination logs.

10 (f) A contributing justice agency may disseminate criminal history record information to
11 another contributing justice agency on request in connection with the requesting agency's duties.

12 (g) A contributing justice agency shall disseminate criminal history record information to
13 the subject of the information on request of the subject or the subject's designee, after positive
14 verification of identity and authorization, if appropriate. Positive identification may include
15 biometric identifying information pursuant to implementing regulations under this [act]. If
16 criminal history record information sought by the subject or the subject's designee is maintained
17 by an agency in a record that also contains investigative information or other nonpublic
18 information, the agency may remove that information and disseminate only the criminal history
19 record information. If the agency identifies no criminal history record information concerning
20 the subject, the agency shall indicate to the subject or the subject's designee that no criminal
21 history record information concerning the subject exists and the date of the search. The agency
22 shall respond by disseminating the information or indicating that no such information exists not
23 later than ten business days after the request is properly submitted.

1 (h) A contributing justice agency shall create and maintain a dissemination log, in the
2 manner and form directed by the [responsible agency/individual], listing disseminations of
3 criminal history record information. All disseminations shall be entered into the dissemination
4 log not later than ten business days after criminal history record information is disseminated.
5 The agency shall maintain entries in a dissemination log for as long as it maintains the associated
6 criminal history record information.

7 **Discussion Notes**

8 *Mandatory duty to collect biometric identifying information.* Section 5(b) is vital to the
9 effectiveness of the act. Biometric identifying information, in the form of fingerprints, is
10 currently the gold standard for positive identification for law enforcement purposes. If this
11 information is not used to link an arrest to a charge to a disposition, significant inaccuracies may
12 and do result. In most cases, close matches using name and date of birth are the alternative. This
13 is a clear and common source of inaccuracies – both in the failure to link related reportable
14 events and in the misidentification of the subject. Section 5(b) puts the primary responsibility for
15 this task on the arresting contributing justice agency, which will typically be a police department.
16 In our preliminary explorations, the lack of collection on the “front line” of processing was a
17 significant impediment to the accuracy of criminal records. In some jurisdictions, this appears to
18 be unrelated to funding for equipment, and instead turns on the enforcement of mandatory
19 collection procedures. *See, e.g., Jeffrey Benzing, Fingerprint Hearing: Best and Worst Pa.*
20 *Counties Have Same Equipment*, available at
21 http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html (July
22 23, 2014).

24 *Duty of other contributing justice agencies.* If the arresting agency fails to obtain
25 fingerprints, the act provides a backstop by requiring other, typically chronologically
26 downstream, actors in the contributing justice system to fingerprint the subject. We believe that
27 this “belt-and-suspenders approach” is warranted given the wide variation of fingerprint
28 compliance rates between and within states. For example, we were told that in one large state,
29 there are tens of thousands – if not hundreds of thousands – of essentially orphaned files in the
30 central repository because disposition information cannot be definitively linked by fingerprint to
31 a subject. Furthermore, in that state, the state prison receiving center felt the need to install a
32 Livescan machine (a common biometric data collection station) because of the number of
33 sentenced offenders arriving without fingerprints in the system. At the same time, this
34 jurisdiction has a nearly uniform collection provision for fingerprint information, which
35 highlights the need for multiple opportunities to obtain these key data.

36
37 *Duty to report reportable events.* Section 5(c) requires contributing justice agencies to
38 submit information on reportable events – such as arrests, charges, convictions, sentences,
39 commitments, etc. – with which they were involved to the central repository. If followed, this

1 mandate should go a long way towards solving the problem of missing dispositions. We again
2 took a “belt-and-suspenders approach” by putting this responsibility broadly on multiple actors,
3 even if that means some duplicative reporting to the central repository. Given the large and
4 growing use of electronic records, this should not be burdensome on the contributing justice
5 agencies and may help to reduce inaccuracies.

6
7 *Duty to correct inaccuracies.* Section 5(e), which has a corollary for the central
8 repository as well, requires a contributing justice agency that learns of an inaccuracy – regardless
9 of how it learns of it – to fix it in its own records and to pass along the corrected information to
10 whomever it has provided the inaccurate information. That latter process is facilitated by the
11 maintenance of dissemination logs. Thoroughly tracking the information will allow for more
12 effective correction, as well as providing essential process data for the audit, discussed in Section
13 10.

14
15 *Authority to disseminate and duty to log.* These provisions allow contributing justice
16 agencies to disseminate criminal history record information to other contributing justice agencies
17 and to the subject of the information upon request, and require those agencies to keep track of
18 those disseminations. The central repository, as part of its duties, will set reasonable standards
19 and procedures for this process, ensuring a degree of uniformity in the requesting and
20 dissemination processes.

21
22 These are some of the several provisions that call for implementing regulations. *See*
23 Section 1, Discussion Notes. The act the idea of checks-and-balances and thus anticipates some
24 of these regulations, such as those governing the nature of the dissemination logs, to be
25 controlled by an entity or individual outside of the day-to-day operation of the criminal history
26 system. The central repository is a perfectly appropriate entity to create general operational
27 rules, as in Section 5(b)(1), and no one is impugning the integrity of the individuals within the
28 criminal history system. This is simply a structural point. As noted earlier, the act has provided
29 a generic description of a “responsible agency/individual” in order to accommodate the disparate
30 state practices. Ideally, in the states that use the Attorney General position as the chief law
31 enforcement officer and “minister of justice,” the Attorney General is best suited to fulfill these
32 duties.

33
34 *Fees.* Section 5(g) does not address the cost, if any, the state may charge subjects to
35 obtain criminal history record information about themselves. *See also* Section 6(f). One
36 justification for that choice is the fact that some states may have existing records laws that
37 govern this situation. There was support on the Drafting Committee for the idea that the
38 government should provide this information at no cost to subjects. If, however, the state does
39 charge a fee, there was support on the Drafting Committee for language requiring the cost to be
40 reasonable and consistent with regulations adopted by the [responsible agency/individual] that
41 include a no-cost option for indigent subjects. *See* Section 12(a)(4).

1 [Alternative Section 5 with parenthetical commentary from Judge Reigle]

2 SECTION 5. DUTIES AND AUTHORITY OF CONTRIBUTING JUSTICE

3 AGENCY FOR CRIMINAL HISTORY RECORD INFORMATION.

4 (a) A contributing justice agency may disseminate criminal history record information
5 only as provided in this [act]. *(This section is unchanged.)*

6 (b) The following provisions govern the collection of fingerprints and other biometric
7 identifying information: *(this phrase is unchanged.)*

8 (1) A contributing justice agency, **that is an arresting police agency**, shall
9 collect biometric identifying information in the manner and form directed by **law or the director**
10 **of the central repository**, from an individual arrested by the agency for a felony or misdemeanor
11 [or summary offense that becomes a misdemeanor on a second arrest after conviction of the
12 summary offense,] and forward the information to the central repository, in the manner and form
13 directed by the **director of the central repository**, not later than 48 hours after the arrest. *(bold*
14 *language added).*

15 (2) **A contributing justice agency, that is a court, in which an individual is**
16 **charged by complaint, information, or indictment with a felony or misdemeanor** [, or summary
17 offense that becomes a misdemeanor on a second arrest after conviction of the summary
18 offense,] **shall order the collection of biometric identifying information, in the following**
19 **manner:** *(bold language added.)*

20 (A) **if an individual is not arrested, is not in custody** and appears instead
21 in court pursuant to summons, **and the court is informed that biometric identifying**
22 **information was not collected from the individual;** the court shall order the defendant to
23 report to the [local municipal police department or [designated contributing justice agency] not

1 later than seven business days after the order and permit the police to collect biometric
2 identifying information in the manner and form directed by the **director of the** central
3 repository. The [department] or [agency] shall forward the information to the central repository,
4 in the manner and form directed by the central repository, not later than 48 hours after collection.

5 (B) **if an individual who is arrested or is in custody appears in court,**
6 **and the court is informed that biometric identifying information was not collected from the**
7 **individual; the court shall order the appropriate contributing justice agency to collect the**
8 **biometric identifying information. The [department] or [agency] shall forward the**
9 **information to the central repository, in the manner and form directed by the central**
10 **repository, not later than 48 hours after collection.** *(This is the duty for courts - I broke*
11 *section (2) into A and B to account for the scenarios that may occur.)*

12 (3) **A contributing justice agency, that is a prosecuting agency engaging in** an
13 investigation, arrest, prosecution, adjudication, sentencing, supervision, or custody of a person
14 for a felony or misdemeanor [, or summary offense that becomes a misdemeanor on a second
15 arrest after conviction of the summary offense,] shall determine whether biometric identifying
16 information has been collected for the defendant and **collect or cause to be collected,**
17 **previously uncollected** biometric identifying information in the manner and form directed by
18 the **director of the** central repository. *(This is the duty for prosecutors.).*

19 (4) **A contributing justice agency, that is a correctional agency engaging in** an
20 arrest, prosecution, adjudication, sentencing, supervision, or custody of a person for a felony or
21 misdemeanor [, or summary offense that becomes a misdemeanor on a second arrest after
22 conviction of the summary offense,] shall determine whether biometric identifying information
23 has previously been collected for the defendant within [72] hours of taking the defendant into

1 custody and **collect or cause to be collected, previously uncollected** biometric identifying
2 information in the manner and form directed by the **director of the** central repository and
3 forward the information to the central repository not later than [48] hours after its collection.
4 *(This is the duty for corrections but I beefed it up a bit thinking that it might be the place for the*
5 *most mischief. I bracketed the times for more discussion.)*

6 (c) The following provisions govern the collection and dissemination of reportable
7 events:

8 (1) A contributing justice agency, **that is an arresting policy agency or**
9 **correctional agency**, shall collect, in the manner and form directed by the **director** of the central
10 repository, information on reportable events with which the contributing justice agency is
11 involved. The agency shall submit the information, in the form and manner directed by the
12 director of the central repository, to the central repository not later than 72 hours after the
13 reportable event. *(For the police & prisons – I left the language the same as in the original (c)).*

14 (2) A contributing justice agency, that is a **court or prosecuting agency**, shall:
15 *(Here is where I created the 3 alternatives to account for separation of powers & resource*
16 *problem arguments.)*

17 (A) collect, in the manner and form directed by the **director** of the central
18 repository, information on reportable events with which the contributing justice agency is
19 involved; and

20 **Alternative A**

21 **(B) maintain the information on reportable events and submit the**
22 **information on reportable events in the form and manner directed by the director of the**
23 **central repository, to the central repository not later than 72 hours after the reportable**

1 **event.**

2 **Alternative B**

3 **(B) maintain the information on reportable events and make the**
4 **information on reportable events available for retrieval and collection by the director of**
5 **the central repository, to the central repository not later than 72 hours after the reportable**
6 **event.**

7 **Alternative C**

8 **(B) maintain the information on reportable events.**

9 (d) A contributing justice agency shall maintain complete and accurate criminal history
10 record information and report the information as required by this [act] or law of this state other
11 than this [act]. **The Director of the central repository** shall establish effective procedures, in
12 compliance with regulations adopted by the [Board] to create and store complete and accurate
13 criminal history record information. *(bold language added and I used "Board" as a replacement*
14 *device for "senior elected or appointed executive branch office responsible for criminal justice*
15 *policy ..)*

16 **End of Alternatives**

17 **(e) An agent of a contributing justice agency who discovers inaccurate criminal**
18 **history record information shall within 15 days of discovery:**

19 (1) correct its own records;

20 (2) disseminate a notice about the inaccuracy and the required correction to the
21 central repository and all other persons that received the inaccurate information as reflected in its
22 dissemination logs. *(Just bold language added.)*

23 (f) A contributing justice agency may disseminate criminal history record information to

1 another contributing justice agency on request in connection with the requesting agency's duties.
2 A contributing justice agency shall create and maintain a dissemination log listing disseminations
3 of criminal history record information to another contributing justice agency. *(This is the same)*

4 (g) A contributing justice agency shall disseminate criminal history record information to
5 the subject of the information on request of the subject or the subject's designee, **subject to the**
6 **following provisions:**

7 (1) **the contributing justice agency may promulgate rules to determine the**
8 **identity of the subject and the subject's designee, which may include a requirement that**
9 **biometric information be collected from the subject;**

10 (2) **the cost for the dissemination of the criminal history information must be**
11 **reasonable and there must be a waiver provision for indigent subjects;**

12 (3) **the dissemination must be made within a reasonable time of the request;**

13 (4) **the contributing justice agency may redact investigation information,**
14 **intelligence information or other nonpublic information from the dissemination;**

15 (5) **if the agency identifies no criminal history information record**
16 **information, it shall indicate to the subject or the subject's designee that no criminal**
17 **history records were identified and the date of the search.** *(I left this section substantially*
18 *unchanged in what was included but added some other things that were suggested in the*
19 *discussion and broke it into numbered sections to make it easier to follow).*

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

1 at least one year. *(This section is the same).*

2 **End of Alternative Section 5**

3 **SECTION 6. DUTIES AND AUTHORITY OF CENTRAL REPOSITORY.**

4 (a) The central repository shall collect, store and maintain the criminal history record
5 information reported to it under this [act]. The central repository may only disseminate criminal
6 history record information as provided in this [act].

7 (b) The central repository may request, access, and disseminate records relating to an
8 offense committed outside of this state. The records may include federal summary criminal
9 history information provided by the United States Department of Justice and other information
10 that would qualify as criminal history record information if submitted by a contributing justice
11 agency. For purposes of dissemination, the central repository shall treat information from outside
12 of this state as if it were from this state.

13 (c) The central repository shall facilitate the creation and maintenance of complete and
14 accurate criminal history record information by establishing practices and procedures necessary
15 to as efficiently and automatically as possible resolve conflicts and discover missing data on the
16 same incident or subject.

17 (d) The central repository shall:

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

20 (2) disseminate criminal history record information to the Governor, or the
21 governor's designee, to aid in a decision concerning exercise of the power of [pardon, reprieve,
22 commutation or reduction of sentence, executive clemency, or] interstate extradition or rendition;

23 (3) disseminate criminal history record information as constitutionally required or

1 as directed by a law of [this state] or the United States;

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

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

9 (e) When directed by a law of the state other than this [act] or the United States, the
10 central repository shall disseminate criminal history record information it maintains to a person
11 for employment, licensing, or certification purposes, subject to the following rules:

12 (1) Before the central repository disseminates the information, the central
13 repository shall determine whether the information contains a disposition after an arrest without
14 the filing of a formal criminal charge or a disposition of a formal criminal charge for every arrest
15 or charge. If disposition information is missing, the central repository shall make a good faith
16 effort to determine the status of the disposition of the arrest or charge, and if the central
17 repository discovers the status, add that information to:

18 (A) the relevant records maintained by the central repository; and

19 (B) the report or summary to be disseminated.

20 (2) After engaging in any good faith effort required under paragraph (1) and
21 before the central repository disseminates the information, the central repository shall remove
22 from the report or summary to be disseminated the notation of an arrest, charge, indictment or
23 other information relating to the initiation of criminal proceedings where:

1 (A) eighteen months have elapsed after the date of arrest;

2 (B) no conviction has occurred or can be identified; and

3 (C) no proceedings are pending that may result in a conviction.

4 (3) Not later than 3 business days after the central repository disseminates the
5 information, it shall send the same information to the subject in the form and manner selected by
6 the subject and provided to the requesting entity.

7 (f) The central repository shall disseminate criminal history record information to the
8 subject of the information on request of the subject or the subject's designee, after positive
9 verification of identity and authorization, if appropriate. Positive identification may include
10 biometric identifying information pursuant to implementing regulations under this [act]. If
11 criminal history record information sought by the subject or the subject's designee is maintained
12 by the central repository in a record that also contains investigative information or other
13 nonpublic information, the central repository may remove that information and disseminate only
14 the criminal history record information. If the central repository identifies no criminal history
15 record information, it shall indicate to the subject or the subject's designee that no criminal
16 history record information concerning the subject exists and the date of the search. The central
17 repository shall respond by disseminating the information or indicating that no such information
18 exists not later than 10 business days after the request is properly submitted.

19 (g) The central repository shall create and maintain a dissemination log, in the manner
20 and form directed by the [responsible agency/individual], listing disseminations of criminal
21 history record information. All disseminations shall be entered into the dissemination log not
22 later than ten business days after criminal history record information is disseminated. The
23 central repository shall maintain entries in a dissemination log for as long as it maintains the

1 associated criminal history record information.

2 (h) Not later than 10 business days after discovery of inaccurate, including incomplete,
3 criminal history record information, and regardless of the manner of discovery or the identity of
4 the person who discovered it, the central repository shall:

5 (1) correct its own records; and

6 (2) disseminate a notice about the inaccuracy and the required correction to
7 each contributing justice agency that submitted information about a reportable event concerning
8 the subject of the inaccuracy of the information and the required correction; and

9 (3) notify persons that received the inaccurate information, as reflected in the
10 dissemination logs, including the Federal Bureau of Investigation and United States Department
11 of Justice if the state participates in the Interstate Identification Index System, National
12 Fingerprint File, National Identification Index, National Instant Criminal Background Check
13 System Index, and related federal programs.

14 (i) The central repository shall establish effective procedures, in compliance with any
15 regulations adopted by the [responsible agency/individual], to ensure the completeness and
16 accuracy of criminal history record information. The central repository shall:

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

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

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

1 (j) The central repository may disseminate criminal history record information for
2 statistical or research purposes, if the identity of the subject of the information is not publicly
3 disclosed directly or indirectly. The dissemination and use of the information is subject to
4 procedures established by the central repository to implement this subsection and other
5 applicable law.

6 (k) The central repository shall inform the public about the existence, usage, and
7 accessibility of the criminal history record information maintained by the central repository and
8 other repositories. The central repository also shall provide public notice, updated at least
9 annually, concerning:

10 (1) items of information used to retrieve and link criminal history record
11 information;

12 (2) results of the annual audit required by Section 10 and the status of any
13 remediation; and

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

16 (l) The central repository shall:

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

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

22 **Discussion Notes**

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

1 for both intra-state and inter-state purposes. There are duty of accuracy, logging, and correction
2 provisions that are similar to the ones provided for contributing justice agencies. The central
3 repository is also the primary contact for other states and the federal system, allowing it to serve
4 as a clearing house for the management of the universe of criminal history record information
5 that may be fed into the databases held within that jurisdiction.
6

7 *Fees.* Section 6(f) does not address the cost, if any, the state may charge subjects to
8 obtain criminal history record information about themselves. *See also* Section 5(g). One
9 justification for that choice is the fact that some states may have existing records laws that
10 govern this situation. There was support on the Drafting Committee for the idea that the
11 government should provide this information at no cost to subjects. If, however, the state does
12 charge a fee, there was support on the Drafting Committee for language requiring the cost to be
13 reasonable and consistent with regulations adopted by the [responsible agency/individual] that
14 include a no-cost option for indigent subjects. *See* Section 12(a)(4).
15

16 *Role in employment and related checks.* The central repository's primary function is to
17 act as the hub for criminal history record information used for contributing justice agency
18 purposes. There is, of course, a growing use of this information for government-mandated
19 employment, licensing and certification purposes. Accuracy concerns are heightened in this
20 context in part because there is no related adversarial proceeding before a neutral magistrate.
21 Paralleling efforts in California that are considered to be successful by some, this section
22 requires the central repository to make a good faith effort to ensure that disposition information
23 is connected to arrests and charges. Senator Grassley and others introduced the Sentencing
24 Reform and Corrections Act of 2015 ("SRCA") on October 1, 2015. Section 213 of the SRCA is
25 entitled "Ensuring Accuracy of Federal Criminal Records." It is worth noting for that pursuant
26 to the SRCA certain arrests without disposition information that are more than two years old
27 could not be disseminated.
28

29 *Outreach to the public and contributing justice agencies.* This section also assigns the
30 central repository educative and supportive roles. It will try to raise public awareness about the
31 importance of criminal history record information and how individuals can access their records
32 to check for accuracy. It will also have the responsibility to train contributing justice agencies
33 and focus on those agencies that are not reporting as required because those agencies present
34 significant accuracy risks to the entire system. The act envisions a system of web-based
35 postings, webinars and guidelines, though the central repository has the flexibility to conduct this
36 outreach in the manner determined to be effective in that jurisdiction.
37

38 **SECTION 7. MISTAKEN IDENTITY PREVENTION REGISTRY.**

39 (a) In this section, "mistaken identity prevention registry" or "registry" means a database
40 designed to:

41 (1) prevent mistaken arrests and confusion of an individual with another when
42 criminal history record information is searched; and

1 (2) prevent the inaccurate creation or modification of criminal history record
2 information.

3 (b) The central repository shall create and maintain a mistaken identity prevention
4 registry consisting of identifying information voluntarily provided by (1) any victim of identity
5 theft or fraud, (2) any individual whose name or other identifying characteristic is similar to that
6 of another individual who is the subject of a criminal history record, and (3) any individual
7 concerned about being a potential identity theft or fraud victim.

8 (c) The central repository shall establish reasonable requirements and procedures for an
9 individual to be included in the registry. The requirements shall include collecting biometric
10 identifying information from an individual seeking to be included in the registry and the
11 submission of a request to be included in the registry in a manner determined by the central
12 repository.

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

18 (e) Not later than ten business days after entering an individual in the registry, the central
19 repository shall issue to the individual a document, which shall be deemed prima facie evidence
20 in non-criminal cases establishing that the individual is a victim or potential victim of identity
21 theft, fraud, or that the individual is not the individual with a similar name or identifying
22 characteristics who has a particular criminal record.

23 (f) The central repository may not disclose information from the registry except as

1 provided in this [act].

2 (g) The central repository shall disclose information from the registry to a contributing
3 justice agency to prevent the victimization of an individual on the registry at the request of the
4 agency and when there is reason to believe that identifying information concerning a reportable
5 event may be inaccurate or not associated with the correct individual.

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

14 (i) After receiving information from the registry that identifying information may be
15 associated with another individual or when an individual produces a valid document issued by
16 the central repository, a contributing justice agency shall use good faith to identify accurately the
17 subject in question.

18 (j) A contributing justice agency may not use information from the registry for a purpose
19 other than (1) to identify accurately an individual about whom it has requested or received
20 registry information or (2) to investigate, prosecute or adjudicate an individual for offenses
21 relating to participating in the registry.

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

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

3 (2) the central repository shall notify the individual whose information was
4 obtained improperly from the registry in writing within three business days of discovery.

5 (l) The central repository shall ensure the security of all information in the registry. The
6 protections shall meet, and may exceed, those provided in Section 8.

7 (m) On receiving a request, pursuant to reasonable requirements established by the
8 central repository, from the individual who voluntarily submitted information to the registry
9 under subsection (d), the central repository shall permanently remove the information from the
10 registry within ten business days.

11 Discussion Note

12
13 *Mistaken Identity Prevention Registry.* This section, which is modeled in part on a
14 Minnesota provision, is designed to proactively help individuals who are the victim of identity
15 theft or believe that they may be, while also improving the accuracy of the criminal record
16 system more broadly. It allows for these individuals to voluntarily provide information about
17 themselves, including biometric identifying information, to a restricted registry which would be
18 used to verify whether a particular person truly is the subject of a reportable event. The act
19 expands this provision, including the provision of a verification letter, to include all individuals
20 who may seek to be proactive about limiting damaging errors in their own criminal record. The
21 documentation envisioned will help a person without a particular criminal record from suffering
22 adverse consequences of being confused with the person who actually has that record. At the
23 same time, we sought to balance these considerations with the burdens imposed on law
24 enforcement during the identity verification process. It would be up to the individual state to
25 determine requirements and procedures, but Drafting Committee members have suggested
26 consulting with law enforcement and looking to NLETS as a potential partner. See
27 <http://www.nlets.org>. Additional refinement of this concept may follow from further exploration
28 of the Voluntary Appeals File (“VAF”) program associated with the FBI’s National Instant
29 Criminal Background Check System. See <https://www.fbi.gov/about-us/cjis/nics> and
30 https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf.

31 SECTION 8. SECURITY REQUIREMENTS FOR CONTRIBUTING JUSTICE

32 AGENCIES AND CENTRAL REPOSITORY.

33 (a) A contributing justice agency that collects, stores, or disseminates criminal history
34

1 record information and the central repository shall, in compliance with regulations adopted by
2 the [responsible agency/individual], ensure the confidentiality and security of the information by:

3 (1) establishing procedures to reasonably protect locations where information is
4 maintained from theft, fire, sabotage, flood, wind, or other natural or man-made disasters;

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

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

8 (4) ensuring that, if computerized data processing is employed, the equipment
9 maintaining the information meets computer security standards promulgated by the [responsible
10 agency/individual]; and

11 (5) maintaining an index of all data breaches, for use by the [responsible
12 agency/individual] under Section 10.

13 **SECTION 9. SUBJECT'S RIGHT OF CORRECTION.**

14 (a) A subject or the subject's designee, after positive verification of identity and
15 authorization, if appropriate, may access, review, challenge, seek correction of, and appeal the
16 accuracy, including completeness, of the subject's criminal history record information
17 maintained by a repository or the central repository. Positive identification may include
18 biometric identifying information pursuant to implementing regulations under this [act].

19 (b) A subject or the subject's designee, after properly submitting a request, may access
20 and review a copy of the subject's criminal history record information. Access shall be
21 permitted not later than three business days after the submission of a proper request.

22 (c) A subject or the subject's designee may challenge the accuracy of the subject's
23 criminal history record information by sending the repository or central repository maintaining

1 the information a challenge specifying the part of the criminal history record information that is
2 alleged to be inaccurate, including incomplete, and providing the correct information.

3 (d) A repository or central repository has 40 business days from the date of receipt of a
4 challenge under subsection (c) to the accuracy of information to review and act upon the
5 challenge.

6 (e) If the repository or central repository does not act within 40 business days, the
7 challenge will be deemed valid.

8 (f) If the repository or central repository denies the challenge, the subject or the subject's
9 designee may seek a de novo review before [an administrative law judge]. Before the
10 [administrative law judge], the repository or central repository has the burden of proving the
11 accuracy of the challenged information by a preponderance of the evidence. The [administrative
12 law judge's] decision on the challenge shall state all information that formed the basis for the
13 decision, including the jurisdiction and docket number of any relevant court decision.

14 (g) If the [administrative law judge] determines a challenge under subsection (c) is valid,
15 or a challenge is deemed valid by operation of subsection (e), the repository or central repository
16 shall, not later than three business days after the challenge is determined or deemed valid,:

17 (1) correct its own records;

18 (2) notify all persons that received the inaccurate criminal history record
19 information, as reflected in the dissemination logs, of the inaccuracy and the required correction;

20 (3) notify the Federal Bureau of Investigation and the United States Department
21 of Justice, if applicable, of the inaccuracy and the required correction; and

22 (4) provide five corrected copies, upon request, of the criminal history record
23 information to the subject or the subject's designee at no cost to the subject or designee; and

1 (h) If the [administrative law judge] determines a challenge under subsection (c) is valid,
2 or a challenge is deemed valid by operation of subsection (e), the repository or central repository
3 shall, no sooner than five but not later than ten business days after the challenge is determined or
4 deemed valid, provide the subject or the subject's designee the names and addresses of all
5 persons to which the inaccurate criminal history record information was disseminated within the
6 previous five years, and the dates of dissemination.

7 (1) However, a law enforcement agency receiving notification under section 9(g)
8 shall, not later than three business days after the repository or central repository notified it about
9 the valid challenge, notify the repository or central repository if the disclosure in this subsection
10 would compromise an ongoing criminal investigation by that law enforcement agency.

11 (2) The notification by a law enforcement agency provided for in section 9(h)(1)
12 automatically defers the notification to the subject or the subject's designee concerning that law
13 enforcement agency for 40 business days.

14 (3) The notice and 40-business day deferral procedure set forth in sections 9(h)(1)
15 and 9(h)(2) may be repeated as needed if the law enforcement agency again notifies the
16 repository or central repository, no sooner than three business days, before the expiration of the
17 deferral, that the disclosure in this subsection would compromise an ongoing criminal
18 investigation by that law enforcement agency.

19 (4) Not later than three business days after the expiration of the 40-business day
20 deferral, and any renewals, the repository or central repository shall comply with section 9(h).

21 (i) If the [administrative law judge] determines a challenge under subsection (c) is not
22 valid, the subject or designee may, not later than 40 business days after notification of the
23 decision, appeal the decision to the [appropriate court]. Before the [appropriate court], the

1 subject has the burden of proving validity of the challenge by a preponderance of the evidence.

2 **Discussion Notes**

3 *Access, review, challenge, correction and appeal.* This section provides individuals with
4 rights to access and challenge the criminal history record information about them for the explicit
5 purpose of ensuring that all of the criminal history record information managed by the state,
6 regardless of its source, is correct and up-to-date. Our review indicates that most, if not all,
7 jurisdictions already have procedures in place to addresses matters of this nature. The first
8 review would be resolved internally. In response to an adverse ruling, the individual may
9 demand a *de novo* appeal before a separate entity. Although we use brackets to account for the
10 potential variation in state practice, we propose that this *de novo* appeal be assigned to an
11 administrative law judge. Upon losing this round, the individual may appeal to, we propose, to
12 an appropriate court, which will review the denial for abuse of discretion.

13
14 *Administrative review.* In the current draft, we are prescriptive in how a challenge and
15 appeal should be heard. Should we instead defer to the procedures already in place under the
16 Administrative Procedures Act (APA)? An argument in support of the APA approach might be
17 ease of adoption. However, the current approach ensures standardization and retains a focus on
18 putting procedures in place designed specifically to increase the accuracy – at the individual and
19 systematic levels – of the criminal history record information.

20
21 **SECTION 10. MANDATORY REPRESENTATIVE ANNUAL AUDIT.**

22 (a) The [senior elected or appointed official responsible for governmental oversight,
23 audit, or integrity] or that individual’s designee shall ensure that annual audits of the central
24 repository and a representative sample of all repositories are conducted. The audits may be done
25 in conjunction with other audits required by law. (b) An annual audit under subsection (a)
26 shall assess the integrity of each computerized system and database and each physical location
27 storing criminal history record information to ensure this [act] is implemented.

28 (c) As part of an annual audits under subsection (a) the [senior elected or appointed
29 official responsible for governmental oversight, audit, or integrity] or that individual’s designee
30 shall ensure that the audits:

31 (1) collect data from a representative sample of all criminal history record
32 information stored at the central repository and the audited repositories to assess, at a minimum,

1 consistency, efficiency, and security;

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

5 (3) assess any data breaches and responses to any such breaches in the central
6 repository and the audited repositories;

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

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

13 (d) The [senior elected or appointed official responsible for governmental oversight,
14 audit, or integrity] or that individual's designee shall be given access to the government records,
15 reports, listings, and information required to conduct an annual audit. All officers and
16 employees of the state or a political subdivision of the state with relevant information shall
17 cooperate with the [senior elected or appointed official responsible for governmental oversight,
18 audit, or integrity] or designee and provide information requested for an annual audit.

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

1 **Discussion Notes**

2 *Mandatory audits.* Section 10 provides for mandatory and representative audits. Audits
3 are crucial if we are to understand how the system is actually working and to prevent the
4 automatic replication of systematic errors. If we do not understand the nature and prevalence of
5 the inaccuracies, they cannot be addressed effectively. The auditing process will also facilitate
6 the identification of agencies or departments failing to meet their obligations under the act.
7 While the central repository and other parties have a range of formal options to remediate these
8 deficiencies, notably under Section 11, the public distribution of the results of the audit alone
9 should serve to increase system-wide compliance.

10
11 *Senior elected or appointed official responsible for governmental oversight, audit, or*
12 *integrity.* We propose an individual outside of the day-to-day criminal history record system be
13 responsible for the audits. While the “responsible agency/individual” concept introduced in
14 Section 1, Discussion Notes, can be filled in different ways and need not be the same at all points
15 in this act, we think that the auditing role in this section deserves different language. Depending
16 on existing state structures, appropriate individuals to fill this role might be the Attorney
17 General, the Auditor General, the Ombudsperson, or the Inspector General. Of course, adopting
18 states are free to designate others as they see fit.

19
20 **SECTION 11. SANCTIONS AND REMEDIES.**

21 (a) An individual who violates this [act]:

22 (1) be denied access to specified criminal history record information for a time the
23 [responsible agency/individual] determines is appropriate;

24 (2) be subject to a civil penalty or other remedy as set forth in subsection (c); and

25 (3) consistent with existing [state] other provisions of law, if the violator is a
26 government employee, be administratively disciplined by discharge, suspension, reduction in
27 grade, transfer, or other formal action as the employer determines is appropriate.

28 (b) The [responsible agency/individual] or a subject may bring an action concerning an
29 item of criminal history information to compel compliance with this [act] or enjoin the central
30 repository, a repository, a contributing justice agency, or another person from violating this [act]
31 The court may award costs of litigation and reasonable attorneys’ fees to subjects who prevail in
32 such an action.

1 (c) In addition to other available remedies, an individual injured by an intentional or
2 reckless violation of this [act] or implementing regulations may bring an action for compensatory
3 damages. If the court determines by a preponderance of the evidence that the individual was
4 injured by an intentional or reckless violation of this [act] or implementing regulations, the court
5 may award compensatory damages of not less than \$500 for each violation, costs of litigation,
6 and reasonable attorneys' fees.

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

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

11 (2) makes, disseminates, presents, or uses criminal history record information
12 knowing it to be false with the intent that it be taken as genuine; or

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

15 Discussion Notes

16 *Individual sanctions.* Section 11 provides for an array administrative, civil, and criminal
17 sanctions against individuals who violate the act. It also allows both subjects and the relevant
18 government official, again in brackets, to seek injunctive relief. The section affords a subject
19 who is injured by a violation of the act a civil damages remedy with a modest minimum (\$500
20 per violation) and a fee shifting provision on the theory that the true extent of actual damages
21 may be difficult to prove. The sanctions set out in this section are modeled after some existing
22 provisions, and are limited in scope. All of this, of course, is also designed to serve as a clear
23 and enforceable incentive to minimize inaccuracies.

24
25 *Criminal sanctions.* The limited criminal sanctions available under Section 11(d) are
26 largely based on Model Penal Code §241.8 entitled "Tampering with Public Records or
27 Information." In an effort to avoid duplication, States that already have a statute criminalizing
28 this behavior may choose not to embrace Section 11(d).

1 **SECTION 12. DUTIES AND AUTHORITY OF [RESPONSIBLE**
2 **AGENCY/INDIVIDUAL].**

3 (a) The [responsible agency/individual] or designee shall adopt regulations necessary to
4 implement this [act]. At a minimum, the regulations shall include provisions that:

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

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

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

10 [(4) set a maximum reasonable fee for the cost of disseminating criminal history
11 record information, and adopt a policy providing free access to criminal history record
12 information for an indigent subject seeking access to the subject's own information.]

13 (b) The [responsible agency/individual or that individual's designee] may investigate all
14 matters relating to the administration and enforcement of this [act].

15 (c) The [responsible agency/individual or that individual's designee] may bring a civil
16 action for a violation of this [act].

17 (d) [The [responsible agency/individual or that individual's designee] may bring a
18 criminal charge for a violation of this [act].] [The [responsible agency/individual or that
19 individual's designee] shall refer a suspected criminal violation, including any relevant criminal
20 history record information, to the appropriate prosecutorial authority for further review and
21 action.]

22 ***Legislative Note:*** *This section provides two alternatives depending on the prosecutorial*
23 *authority held by the responsible agency/individual.*
24

1 **Discussion Notes**

2 *Duties and authorities of the responsible agency/individual.* This administrative section
3 provides the responsible agency/individual, in brackets, with various authorities and duties,
4 including adopting regulations and conducting investigations. As discussed above, this role can
5 be filled by any agency or individual, as long as there is sufficient autonomy from the central
6 repository and the other enumerated parties in the act to satisfy checks-and-balances concerns. If
7 the responsible agency/individual has prosecutorial powers, these authorities and duties may be
8 discharged by one agency or individual. If not, the responsible agency/individual shall refer
9 cases of suspected criminal violations to the appropriate prosecutor.

10
11 **SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

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

15 (a)

16 (b)

17 (c)

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