

D R A F T

FOR DISCUSSION ONLY

CRIMINAL RECORDS ACCURACY ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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CRIMINAL RECORDS ACCURACY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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May 31, 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 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 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 including biometric identifying information, and notations of reportable events. The term does
2 not include intelligence information or 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, intelligence information, or investigative information
12 itself.

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

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

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

21 (12) “Reportable event” means any of the following occurrences relating to felony or
22 misdemeanor criminal offenses, [summary offenses that become misdemeanors on a second
23 arrest after conviction of the summary offense], but excluding [noncriminal offenses,] [other

1 summary offenses,] [petty offenses], traffic violations, or offenses under the [Juvenile Court
2 Act]:

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

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

6 (C) an initiation of a criminal proceeding;

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

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

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

12 (G) the completion of sentence;

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

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

15 and

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

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

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

23 (15) “Subject” means the individual to whom the substance of criminal history record

1 information refers.

2 **Discussion Notes**

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

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

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

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

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

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

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

1 perhaps cumbersome, should allow for each state to fill this position appropriately in light of its
2 own constitutional structure and political landscape.

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

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

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

34
35 Several questions and policy choices remain. The Drafting Committee would appreciate
36 guidance on the question of whether we should be more specific with regard to the nature of
37 lower level offenses. For example, should all misdemeanors be considered, or only particularly
38 serious ones? To what extent should the offenses be specifically enumerated in the Act?

39
40 The Drafting Committee debated whether juvenile matters should be covered by this act.
41 The current draft version excludes juvenile matters. The Drafting Committee welcomes input on
42 this topic.

43
44 Another question is if it is desirable to impose a duty on the contributing justice agency to
45 report (as a reportable event in itself) to the central repository that 18 months have passed
46 without any prosecutorial action being taken? If so, this may eliminate a delay in obtaining the

1 information when time is critical for housing or job applicants.

2
3 *Reportable Event – Disposition.* We attempted to provide an inclusive yet manageable
4 definition of disposition. If more detail is desired, we could include the current definition found
5 at 28 CFR § 20.3(i), which provides:

6 Disposition means information disclosing that criminal proceedings have been concluded
7 and the nature of the termination, including information disclosing that the police have
8 elected not to refer a matter to a prosecutor or that a prosecutor has elected not to
9 commence criminal proceedings; or disclosing that proceedings have been indefinitely
10 postponed and the reason for such postponement. Dispositions shall include, but shall not
11 be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental
12 incompetence, case continued without finding, charge dismissed, charge dismissed due to
13 insanity, charge dismissed due to mental incompetency, charge still pending due to
14 insanity, charge still pending due to mental incompetency, guilty plea, nolle prosequi, no
15 paper, nolo contendere plea, convicted, youthful offender determination, deceased,
16 deferred disposition, dismissed-civil action, found insane, found mentally incompetent,
17 pardoned, probation before conviction, sentence commuted, adjudication withheld,
18 mistrial-defendant discharged, executive clemency, placed on probation, paroled, or
19 released from correction supervision.

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

21
22 **SECTION 3. APPLICABILITY.** This [act] applies to persons within this state, to the
23 central repository, and to each contributing justice agency within [this state] that collects,
24 maintains, modifies, disseminates, or receives criminal history record information

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

28 **Discussion Notes**

29 *Public records.* Section 4 is designed to ensure that information in court dockets and
30 files not under seal, etc. remain public records. It does so without relieving courts of the
31 obligation to provide information to the central repository as a contributing justice agency under
32 Section 5, although the state’s highest court, or its designee, may do so by removing the state
33 courts from the definition of contributing justice agency to the extent constitutionally required as
34 set forth in Section 1(5).
35

1 **SECTION 5. DUTIES AND AUTHORITY OF CONTRIBUTING JUSTICE**

2 **AGENCY FOR CRIMINAL HISTORY RECORD INFORMATION.**

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

5 (b) The following provisions govern the collection of fingerprints and other biometric
6 identifying information:

7 (1) A contributing justice agency shall collect biometric identifying information in
8 the manner and form directed by the central repository from an individual arrested, as set forth in
9 Section 2(12)(a), by the agency for felony or misdemeanor criminal offenses, [summary offenses
10 that become misdemeanors on a second arrest after conviction of the summary offense], but
11 excluding [noncriminal offenses,] [other summary offenses,] [petty offenses,] traffic violations,
12 or offenses under the [Juvenile Court Act], and forward the information to the central repository,
13 in the manner and form directed by the central repository, not later than 3 business days after the
14 arrest.

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

1 information to the central repository, in the manner and form directed by the central repository,
2 not later than 3 business days after collection.

3 (3) During an investigation, adjudication or correctional process, the head of each
4 contributing justice agency responsible for the arrest, prosecution, adjudication, sentencing,
5 supervision, or custody of an individual for felony or misdemeanor criminal offenses, [summary
6 offenses that become misdemeanors on a second arrest after conviction of the summary offense],
7 but excluding [noncriminal offenses,] [other summary offenses,] [petty offenses], traffic
8 violations, or offenses under the [Juvenile Court Act] shall designate an official to promptly
9 determine whether biometric identifying information has previously been collected for that
10 individual in the manner and form directed by the central repository and forwarded to the central
11 repository in the manner and form directed by the central repository.

12 (4) If the head of a contributing justice agency responsible for the arrest,
13 prosecution, adjudication, sentencing, supervision, or custody of a person for felony or
14 misdemeanor criminal offenses, [summary offenses that become misdemeanors on a second
15 arrest after conviction of the summary offense], but excluding [noncriminal offenses,] [other
16 summary offenses,] [petty offenses], traffic violations, or offenses under the [Juvenile Court Act]
17 determines, pursuant to paragraph 3 above, that biometric identifying information has not been
18 collected and forwarded to the central repository, the individual shall report to the [local
19 municipal police department] or [designated contributing justice agency] not later than ten
20 business days after that determination and permit that [department] or [agency] to collect
21 biometric identifying information in the manner and form directed by the central repository.
22 This obligation may be enforced by court order. The [department] or [agency] shall forward the
23 information to the central repository, in the manner and form directed by the central repository,

1 not later than 3 business days after collection.

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

7 (d) A contributing justice agency shall maintain complete and accurate criminal history
8 record information and report the information as required by this [act] or law of this state other
9 than this [act]. An agency shall establish effective procedures, in compliance with regulations
10 adopted by the [responsible agency/individual], to create and store complete and accurate
11 criminal history record information.

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

15 (1) correct its own records; and

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

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

21 (g) A contributing justice agency shall disseminate criminal history record information to
22 the subject of the information on request of the subject or the subject's designee, after positive
23 verification of identity and authorization, if appropriate. Positive identification may include

1 biometric identifying information pursuant to implementing regulations under this [act]. If
2 criminal history record information sought by the subject or the subject’s designee is maintained
3 by an agency in a record that also contains investigative information, intelligence information, or
4 other nonpublic information, the agency may remove that information and disseminate only the
5 criminal history record information. If the agency identifies no criminal history record
6 information, it shall indicate to the subject or the subject’s designee that no criminal history
7 record information concerning the subject exists and the date of the search. The agency shall
8 respond by disseminating the information or indicating that no such information exists no later
9 than ten business days after the request is properly submitted.

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

16 Discussion Notes

17 *Mandatory duty to collect biometric identifying information.* We believe that Section
18 5(b) is one of the most important requirements in the act. Biometric identifying information, in
19 the form of fingerprints, is currently the gold standard for positive identification for law
20 enforcement purposes. If this information is not used to link an arrest to a charge to a
21 disposition, significant inaccuracies may and do result. In most cases, close matches using name
22 and date of birth are the alternative. This is a clear and common source of inaccuracies – both in
23 the failure to link related reportable events and in the misidentification of the subject. Section
24 5(b) puts the primary responsibility for this task on the arresting contributing justice agency,
25 which will typically be a police department. In our preliminary explorations, the lack of
26 collection on the “front line” of processing was a significant impediment. In some jurisdictions,
27 this appears to be unrelated to funding for equipment, and instead turns on the enforcement of
28 mandatory collection procedures. *See, e.g.,* Jeffrey Benzing, *Fingerprint Hearing: Best and*
29 *Worst Pa. Counties Have Same Equipment*, available at
30 http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html (July

1 23, 2014).

2
3 *Duty of other contributing justice agencies.* If the arresting agency fails to obtain
4 fingerprints, the act provides a backstop by requiring other, typically chronologically
5 downstream, actors in the contributing justice system to fingerprint the subject. We believe that
6 this “belt-and-suspenders approach” is warranted given the wide variation of fingerprint
7 compliance rates between and within states. For example, we were told that in one large state,
8 there are tens of thousands – if not hundreds of thousands – of essentially orphaned files in the
9 central repository because disposition information cannot be definitively linked by fingerprint to
10 a subject. Furthermore, in that state, the state prison receiving center felt the need to install a
11 Livescan machine (a common biometric data collection station) because of the number of
12 sentenced offenders arriving without fingerprints in the system. At the same time, this
13 jurisdiction has a nearly uniform collection provision for fingerprint information, which
14 highlights the need for multiple opportunities to obtain these key data.
15

16 *Duty to report reportable events.* Section 5(c) requires contributing justice agencies to
17 submit information on reportable events – such as arrests, charges, convictions, sentences,
18 commitments, etc. – with which they were involved to the central repository. If followed, this
19 mandate should go a long way towards solving the problem of missing dispositions. We again
20 took a “belt-and-suspenders approach” by putting this responsibility broadly on multiple actors,
21 even if that means some duplicative reporting to the central repository. Given the large and
22 growing use of electronic records, this should not be burdensome on the contributing justice
23 agencies and may help to reduce inaccuracies.
24

25 *Duty to correct inaccuracies.* Section 5(e), which has a corollary for the central
26 repository as well, requires a contributing justice agency that learns of an inaccuracy – regardless
27 of how it learns of it – to fix it in its own records and to pass along the corrected information to
28 whomever it has provided the inaccurate information. That latter process is facilitated by the
29 maintenance of dissemination logs. Thoroughly tracking the information will allow for more
30 effective correction, as well as providing essential process data for the audit, discussed in Section
31 10.
32

33 *Authority to disseminate and duty to log.* These provisions allow contributing justice
34 agencies to disseminate criminal history record information to other contributing justice agencies
35 and to the subject of the information upon request, and require them to keep track of those
36 disseminations. The central repository, as part of its duties, will set reasonable standards and
37 procedures for this process, ensuring a degree of uniformity in the requesting and dissemination
38 processes.
39

40 These are some of the several provisions that call for implementing regulations. *See*
41 Section 1, Discussion Notes. We value the idea of checks-and-balances and thus want some of
42 these regulations, such as those governing the nature of the dissemination logs, to be controlled
43 by an entity or individual outside of the day-to-day operation of the criminal history system. The
44 central repository is a perfectly appropriate entity to create general operational rules, as in
45 Section 5(b)(1), and we certainly are not impugning the integrity of the individuals within the
46 criminal history system. This is simply a structural point. As noted earlier, we have provided a

1 generic description of a “responsible agency/individual” in order to accommodate the disparate
2 state practices. Ideally, in the states that use the Attorney General position as the chief law
3 enforcement officer and “minister of justice,” we believe that the Attorney General is best suited
4 to fulfill these duties.
5

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

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

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

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

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

30 (d) The central repository shall:

31 (1) disseminate criminal history record information to a contributing justice

1 agency on request by the agency for information sought in connection with the agency's duties;

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

5 (3) disseminate criminal history record information as constitutionally required or
6 as directed by a law of [this state] or the United States;

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

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

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

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

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

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

2 (2) After engaging in a good faith effort and before the central repository
3 disseminates the information, the central repository shall remove from the report or summary to
4 be disseminated the notation of an arrest, charge, indictment or other information relating to the
5 initiation of criminal proceedings where:

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

7 (B) no conviction has occurred; and

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

9 (3) No later than 3 business days after the central repository disseminates the
10 information, it shall send the same information to the subject in the form and manner selected by
11 the subject and provided to the requesting entity.

12 (f) The central repository shall disseminate criminal history record information to the
13 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 the central repository in a record that also contains investigative information, intelligence
18 information, or other nonpublic information, the central repository may remove that information
19 and disseminate only the criminal history record information. If the central repository identifies
20 no criminal history record information, it shall indicate to the subject or the subject's designee
21 that no criminal history record information concerning the subject exists and the date of the
22 search. The central repository shall respond by disseminating the information or indicating that
23 no such information exists no later than 10 business days after the request is properly submitted.

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

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

10 (1) correct its own records; and

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

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

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

22 (1) specify the manner and form in which a contributing justice agency shall
23 submit criminal history record information to the central repository concerning a reportable

1 event, including standards for biometric identifying information, to ensure that multiple pieces of
2 criminal history record information for the same subject are appropriately linked;

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

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

6 (j) The central repository may disseminate criminal history record information for
7 statistical or research purposes, if the identity of the subject of the information is not publicly
8 disclosed directly or indirectly. The dissemination and use of the information is subject to
9 procedures established by the central repository designed to implement this subsection and other
10 applicable law.

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

15 (1) items of information used to retrieve and link criminal history record
16 information;

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

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

21 (l) The central repository shall:

22 (1) provide regular training to contributing justice agencies on how to submit
23 information about a reportable event and why the information is important to both the

1 administration of criminal justice and society; and
2 (2) identify contributing justice agencies and repositories that do not meet
3 minimum standards under this [act] and provide them with remedial training.

4 **Discussion Notes**

5 *Role of the central repository.* The central repository is the hub into and out of which
6 criminal history record information will flow. It serves this role, as it does in many jurisdictions,
7 for both intra-state and inter-state purposes. There are duty of accuracy, logging, and correction
8 provisions that are similar to the ones provided for contributing justice agencies. The central
9 repository is also the primary contact for other states and the federal system, allowing it to serve
10 as a clearing house for the management of the universe of criminal history record information
11 that may be fed into the databases held within that jurisdiction.
12

13 *Fees.* Section 6(f) does not address the cost, if any, the government may charge subjects
14 to obtain criminal history record information about themselves. *See also* Section 5(g). One
15 justification for that choice is the fact that some states may have existing records laws that
16 govern this situation. There was support on the Drafting Committee for the idea that the
17 government should provide this information at no cost to subjects. If, however, the government
18 does charge a fee, there was strong support on the Drafting Committee for language requiring the
19 cost to be reasonable and consistent with regulations adopted by the [responsible
20 agency/individual] that include a no-cost option for indigent subjects. *See* Section 12(a)(4). The
21 Drafting Committee welcomes input on this topic.
22

23 *Role in employment and related checks.* The central repository's primary function is to
24 act as the hub for criminal history record information used for contributing justice agency
25 purposes. There is, of course, a growing use of this information for mandated employment,
26 licensing and certification purposes. Accuracy concerns are heightened in this context in part
27 because there is no related adversarial proceeding before a neutral magistrate. Paralleling efforts
28 considered to be successful by some in California, this section requires the central repository to
29 make a good faith effort to ensure that disposition information is connected to arrests and
30 charges. Senator Grassley and others introduced the Sentencing Reform and Corrections Act of
31 2015 ("SRCA") on October 1, 2015. Section 213 of the SRCA is entitled "Ensuring Accuracy of
32 Federal Criminal Records;" we will monitor its progress in the Congress. It is worth noting for
33 now, however, that pursuant to the SRCA certain arrests without disposition information that are
34 more than two years old could not be disseminated. It may be worth considering if the SRCA
35 approach more or less desirable.
36

37 *Outreach to the public and contributing justice agencies.* This section also assigns the
38 central repository educative and supportive roles. It will try to raise public awareness about the
39 importance of criminal history record information and how individuals can access their records
40 to check for accuracy. It will also have the responsibility train contributing justice agencies and
41 focus on those agencies that are not reporting as required because those agencies present
42 significant accuracy risks to the entire system. We envision a system of web-based postings,

1 webinars and guidelines, though the central repository has the flexibility to conduct this outreach
2 in the manner determined to be effective in that jurisdiction.

3
4 **SECTION 7. MISTAKEN IDENTITY PREVENTION REGISTRY.**

5 (a) In this section, “mistaken identity prevention registry” or “registry” means a database
6 designed to:

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

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

11 (b) The central repository shall create and maintain a mistaken identity prevention
12 registry consisting of identifying information voluntarily provided by victims of identity theft or
13 fraud, individuals whose names or other identifying characteristics are similar to those of others
14 who have criminal history records, and individuals concerned about potential identity theft or
15 fraud victimization.

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

20 (d) An individual may voluntarily provide information to be considered for inclusion in
21 the registry. If the information meets the requirements established in subsection (c), the
22 individual’s name and information shall be entered in the registry. An individual improperly
23 denied inclusion in the registry may seek relief under the [state administrative procedures act] as
24 a contested case.

25 (e) Not later than ten business days after entering an individual in the registry, the central

1 repository shall issue to the individual a document, which shall be deemed prima facie evidence
2 establishing that the individual is a victim or potential victim of identity theft, fraud, or that the
3 individual is not the individual with a similar name or identifying characteristics who has a
4 particular criminal record.

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

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

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

19 (i) On receiving information from the registry that identity information may be associated
20 with another individual or when an individual produces a valid document issued by the central
21 repository, a contributing justice agency shall use good faith to identify accurately the subject in
22 question.

23 (j) A contributing justice agency may not use information from the registry for a purpose

1 other than (1) to identify accurately an individual about whom it has requested or received
2 registry information or (2) to investigate, prosecute or adjudicate an individual for offenses
3 relating to participating in the registry.

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

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

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

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

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

16 Discussion Note

17
18 *Mistaken Identity Prevention Registry.* This section, which is modeled in part on a
19 Minnesota provision, is designed to proactively help individuals who are the victim of identity
20 theft or believe that they may be, while also improving the accuracy of the criminal record
21 system more broadly. It allows for these individuals to voluntarily provide information about
22 themselves, including biometric identifying information, to a restricted registry which would be
23 used to verify whether a particular person truly is the subject of a reportable event. We expand
24 this provision, including the provision of a verification letter, to include all individuals who may
25 seek to be proactive about limiting damaging errors in their own criminal record. The
26 documentation envisioned will help a person without a particular criminal record from suffering
27 adverse consequences of being confused with the person who actually has that record. At the
28 same time, we sought to balance these considerations with the burdens imposed on law
29 enforcement during the identity verification process. It would be up to the individual state to
30 determine requirements and procedures, but Drafting Committee members have suggested
31 consulting with law enforcement and looking to NLETS as a potential partner. *See*

1 <http://www.nlets.org>. Additional refinement of this concept may follow from further exploration
2 of the Voluntary Appeals File (“VAF”) program associated with the FBI’s National Instant
3 Criminal Background Check System. See <https://www.fbi.gov/about-us/cjis/nics> and
4 https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf.

5 6 **SECTION 8. SECURITY REQUIREMENTS FOR CONTRIBUTING JUSTICE**

7 **AGENCIES AND CENTRAL REPOSITORY.**

8 (a) A contributing justice agency that collects, stores, or disseminates criminal history
9 record information and the central repository shall, in compliance with regulations adopted by
10 the [responsible agency/individual], ensure the confidentiality and security of the information by:

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

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

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

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

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

21 **SECTION 9. SUBJECT’S RIGHT OF CORRECTION.**

22 (a) A subject or the subject’s designee, after positive verification of identity and
23 authorization, if appropriate, may access, review, challenge, correct, and appeal the accuracy,
24 including completeness, of the subject’s criminal history record information maintained by a
25 repository or the central repository. Positive identification may include biometric identifying
26 information pursuant to implementing regulations under this [act].

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

4 (c) A subject or the subject's designee may challenge the accuracy of the subject's
5 criminal history record information by sending the repository or central repository maintaining
6 the information a challenge specifying the part of the criminal history record information that is
7 alleged to be inaccurate, including incomplete, and providing the correct information.

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

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

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

19 (g) If the [administrative law judge] determines a challenge under subsection (c) is valid,
20 or a challenge is deemed valid by operation of subsection (e), the repository or central repository
21 shall, no later than three business days after the challenge is determined or deemed valid,:

22 (1) correct its own records;

23 (2) notify all persons that received the inaccurate information, as reflected in the

1 dissemination logs, of the inaccuracy and the required correction;

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

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

6 (h) If the [administrative law judge] determines a challenge under subsection (c) is valid,
7 or a challenge is deemed valid by operation of subsection (e), the repository or central repository
8 shall, no sooner than five but no later than ten business days after the challenge is determined or
9 deemed valid, provide the subject or the subject's designee the names and addresses of all
10 persons which the inaccurate criminal history record information was disseminated within the
11 previous five years, and the dates of dissemination.

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

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

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

1 (4) No later than three business days after the expiration of the 40-business day
2 deferral, and any renewals, the repository or central repository shall comply with section 9(h).

3 (i) If the [administrative law judge] determines a challenge under subsection (c) is not
4 valid, the subject or designee may, not later than 40 business days after notification of the
5 decision, appeal the decision to the [appropriate court]. Before the [appropriate court], the
6 subject has the burden of proving the accuracy of the challenged information by a preponderance
7 of the evidence.

8 **Discussion Notes**

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

19
20 *Administrative review.* In the current draft, we are proscriptive in how a challenge and
21 appeal should be heard. Should we instead defer to the procedures in place under the
22 Administrative Procedures Act (APA) mechanisms already in place? An argument in support of
23 the APA approach might be ease of adoption. However, the current approach ensures
24 standardization and retains a focus on putting procedures in place designed specifically to
25 increase the accuracy – at the individual and systematic levels – of the criminal history record
26 information.

27 28 **SECTION 10. MANDATORY INDEPENDENT ANNUAL AUDIT.**

29 (a) The [senior elected or appointed official responsible for governmental oversight,
30 audit, or integrity] or that individual's designee shall ensure that annual audits of the central
31 repository and a representative sample of all repositories are conducted. The audits may be done
32 in conjunction with other audits required by law.

33 (b) An annual audit under subsection (a) shall assess the integrity of each computerized

1 system and database and each physical location storing criminal history record information to
2 ensure this [act] is implemented.

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

6 (1) collect data from a representative sample of all criminal history record
7 information stored at the central repository and the audited repositories to assess, at a minimum,
8 consistency, efficiency, and security;

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

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

14 (4) are representative of the overall status of the system of criminal history record
15 information management and that selection of repositories to be audited is random and in
16 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 10 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, they cannot be addressed effectively. The auditing process will also facilitate
12 the identification of agencies or departments failing to meet their obligations under the act.
13 While the central repository and other parties have a range of formal options to remediate these
14 deficiencies, notably under Section 11, the public distribution of the results of the audit alone
15 should serve to increase system-wide compliance.

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

25 26 **SECTION 11. SANCTIONS AND REMEDIES.**

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

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

30 (2) be subject to a civil penalty or other remedy as set forth in subsection (c)
31 under this [act]; and

32 (3) consistent with existing [state] law, if the violator is a government employee,

1 be administratively disciplined by discharge, suspension, reduction in grade, transfer, or other
2 formal action as the employer determines is appropriate.

3 (b) The [responsible agency/individual] or a subject may bring an action to enjoin the
4 central repository, a repository, a contributing justice agency, or another person from violating
5 this [act] or to compel compliance with this [act] concerning an item of criminal history record
6 information.

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 are modeled after some existing

1 provisions, and are limited in scope. All of this, of course, is also designed to serve as a clear
2 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 [RESPONSIBLE**
9 **AGENCY/INDIVIDUAL].**

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

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

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

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

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

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

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

24 (d) [The [responsible agency/individual or that individual’s designee] may bring a
25 criminal charge for a violation of this [act].] [The [responsible agency/individual or that
26 individual’s designee] shall refer a suspected criminal violation, including any relevant criminal
27 history record information, to the appropriate prosecutorial authority for further review and

1 action.]

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

4
5

Discussion Notes

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

14
15

SECTION 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

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

SECTION 14. REPEALS; CONFORMING AMENDMENTS.

19 (a)

20 (b)

21 (c)

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