

TO: Drafting Committee
Criminal Records Accuracy Act
Uniform Law Commission

FROM: Robert J. Tennessen, Committee Chair
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RE: Criminal Records Accuracy Act

During our conference call next week, we will be seeking guidance on how to proceed with the next draft in response comments from the floor in San Diego. This guidance will help us craft a draft we anticipate sending to the Style Committee by the end of the year.

Please review the following questions before our call. We hope that by tackling these issues now the process in Louisville will go more smoothly.

We are, of course, also open to discussing other issues as well.

I. Definitions.

1. Should the term “accurate criminal history record information” include the concept of a de minimis error?
2. Is the concept of a “reportable event” sufficiently clear?
3. Do we need to elaborate on the term “criminal offender”?
4. How should “biometric information” be redefined? (*see below*)
5. Should we bracket the term “gross misdemeanor,” delete it from the definition of reportable event, or simply refer to it in the notes?
6. Should the definition of “administration of criminal justice” be amended by striking “rehabilitation of an accused individual or criminal offender” and replace with the words “or rehabilitation of a person”?

II. Clarification.

1. How do we resolve the use of the terms person or individual throughout the Act? As a related matter, what does that mean for remedies?
2. Should the Act be more explicit in stating that it does not specify what information is to be collected, but rather that what is collected is to be accurate?
3. Biometrics
 - a. Should we clarify that multiple taking of fingerprints is unnecessary? If so, how?
 - b. Should we clarify that biometric information does not apply to a corporation?
 - c. Should we clarify that a state may set its own definition of biometric information?
 - d. Can an individual be required to provide biometric information if it hasn't been collected and they have been acquitted or charges dropped?
 - e. How, if at all, do we address the concerns raised about "big brother"?
 - f. Should we address the concern that DNA information may be broadly shared? If so, how?
4. Do we need to address how to correct the criminal history record by submitting biometric information if the record to be corrected does not have biometric information?

III. Access.

1. How often should a person have a right to obtain access to their records?
2. How should we address the issue raised about access to and use of the information provided to be included in the mistaken identity prevention registry?

IV. Correction.

1. Are the notification provisions provided for correction of a criminal history record sufficiently clear and adequate?
2. Should we review the procedures for correcting a criminal history record and whether it is the exclusive way to do so?

V. Juveniles.

1. How should we clarify the application of the Act to offenses committed by juveniles and treated as adjudications rather than juveniles who are charged and tried as adults?

VI. Specific Sections.

§104.

1. Should §104 be retained?
2. Should “provided by law or” be deleted from §104?

§201.

1. Does the term “information” in section 201 include both criminal history record information and non-criminal history information?

§205.

1. Should dissemination logs be classified as public records and should §§205 and 304 be cross-referenced to §105?
2. Is a definition of a dissemination log necessary?
3. How is dissemination handled if the agency no longer exists? Do we need to address that situation?

§303.

1. Should an agency certify under §303(b) that “no record exists” or that “no record can be found”?

§308.

1. Does a means of informing the public under §308 need to be clarified in the text (as opposed to just in the notes) so that a website is adequate?

Section 5 (generally)

1. How do we rework Article 5 because of the floor amendment flipping the default provision from sustained to denied?

§504.

1. Do we need to revise the term “receive” in §504 regarding notification?

§701.

1. Should §701(a)(2) and (c) be bracketed?
2. Do we need to revise the sanctions in §701 in light of the motion that struck (a)(1)?