

D R A F T

FOR ~~APPROVAL~~ DISCUSSION

UNIFORM CRIMINAL RECORDS ACCURACY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

~~MEETING IN ITS ONE HUNDRED AND TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14—JULY 20, 2017~~

~~UNIFORM CRIMINAL RECORDS ACCURACY ACT~~

February 16-17, 2018 Drafting Committee Meeting

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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~~June 12, 2017~~February 8, 2018

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1 (5) “Contributing justice agency” means a court, political subdivision or agent of a
2 political subdivision, or governing entity of ~~the~~this state which is authorized to engage in ~~the~~
3 administration of criminal justice. The term does not include the central repository.

4 (6) “Criminal~~_~~history record information” means information collected, maintained,
5 stored, or disseminated by a contributing justice agency, a repository, or the central repository,
6 consisting of an identifiable ~~descriptions~~description of a subject, including biometric
7 information, and ~~notations~~notation of a reportable event. The term does not include ~~non-criminal~~
8 noncriminal-history~~_~~record information.

9 (7) “Dissemination” means oral, written, or electronic transmission or other disclosure of
10 criminal~~_~~history~~_~~record information to a person other than the central repository.

11 (8) “~~Non-criminal~~Noncriminal-history~~_~~record information” means information collected:
12 (A) as a result of an inquiry about an activity, habit, practice, possession,
13 association, or financial status of an individual,~~collected; and~~
14 (B) to anticipate, prevent, monitor, investigate, or prosecute criminal activity.

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

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

20 ~~——(10) “Reportable event” means any of the following occurrences relating to a felony,~~
21 ~~gross misdemeanor, or misdemeanor criminal offense, but not a [noncriminal offense,] [summary~~
22 ~~offense,] [petty offense,] traffic violation[, or offense under the [juvenile law]]:~~

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

1 information;

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

3 (C) initiation of a criminal proceeding;

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

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

8 (F) commencement or conclusion of noncustodial supervision;

9 (G) completion of a sentence;

10 (H) expungement, sealing, or setting -aside of criminal-history-record

11 information;

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

13 and

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

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

18 (12) "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 (13) "Subject" means the individual ~~to~~about whom ~~the substance of~~ criminal-history-
22 record information refers~~s~~ collected, stored, maintained, or disseminated in this state.

23 ~~**SECTION 103. APPLICABILITY.** This [act] applies to the central repository, each~~

1 repository and contributing justice agency in this state, and each subject about whom criminal
2 history record information is collected, maintained, stored, or disseminated in this state.

3 ~~SECTION 104. PUBLIC RECORD.~~ In this [act], a court docket, court file, and
4 information contained in a docket or file, are public records unless otherwise provided by law or
5 ordered by a court.

6 ~~SECTION 105. DISSEMINATION LOG.~~ A dissemination log shall list each request
7 for, and dissemination of, criminal history record information. The log shall be separate from
8 non-criminal history record information and criminal history record information itself, and shall
9 include the:

10 ~~(1) information requested;~~

11 ~~(2)(1) information disseminated;~~

12 ~~(3)(1) person making the request and its associated address;~~

13 ~~(4)(1) person effectuating the dissemination;~~

14 ~~(5)(1) date of the request and of the dissemination; and~~

15 ~~(6)(1) purpose for which the information was requested or disseminated.~~

16 *Legislative Note: Role of courts. Courts are included in the definition of a “contributing justice*
17 *agency” in Section 102(5) because their participation is crucial to the success of any effort to*
18 *promote the accuracy of criminal records. Concerns have been raised, however, about*
19 *separation of powers principles. The inclusion of courts in this definition means that, pursuant*
20 *to later provisions of the act, courts will be required to submit information about*
21 *reportable*Reportable *events to the central repository. If an*relate to offenses that are typically
22 *categorized as felonies and misdemeanors. Some jurisdictions have other categories of offenses*
23 *that merit inclusion, such as “gross misdemeanors” This is a decision best left to the adopting*
24 *state is concerned about including courts, it is possible to add language either exempting the*
25 *courts or allowing the courts themselves to opt out later. ~~Statutory language authorizing a~~*
26 *judicial opt out could take this form: “The [state Supreme Court], or a judicial entity authorized*
27 *to act on its behalf, may remove the courts of this state from this sub-section under its*
28 *rulemaking authority.” ~~The drafters, however, strongly urge that courts remain within the ambit~~*
29 *of the contributing justice agency definition to the extent constitutionally permissible. Including*
30 *courts as contributing justice agencies will materially enhance the accuracy of criminal history*
31 *record information.*

32
33 *Responsible agency or individual. The discussion note on contributing justice agency, infra,*
34 *introduces the concept of a The phrase “responsible agency or individual.” This phrase is*

1 used in ~~various places in the comments~~this section and in ~~brackets in the text of the act itself.~~
2 ~~The drafters intend it~~Sections 205, 301, 601, 701, and 702 to mean the appropriate state agency
3 or individual charged with ~~certain~~ responsibilities under this act. ~~It is most commonly designed~~
4 ~~to signal a situation when a senior criminal justice policy maker—either in the form of a~~The
5 ~~responsible agency or individual—needs to adopt a regulation or make a decision that is best~~
6 ~~served by honoring the principle of checks and balances. That is, the regulations should be~~
7 ~~adopted by an entity or individual outside of the day-to-day operation of the criminal history~~
8 ~~system. The central repository is a perfectly appropriate entity to create general operational~~
9 ~~rules and no one is impugning the integrity of the individuals within the criminal history system.~~
10 ~~This is simply a structural point.~~need not be the same agency or individual each time the phrase
11 is used. In some states, the “responsible agency or individual” may be the Attorney General or
12 the Office of the Attorney General. In other states, it will be a different actor or entity. ~~It need~~
13 ~~not be filled by the same person or agency each time it is used. That is a decision best left to the~~
14 ~~adopting state. The phrase “responsible agency or individual,” allows for each state to fill this~~
15 ~~position appropriately.~~A state should designate the appropriate agency or individual in light of
16 its own constitutional structure and political landscape. ~~Ideally, in the states that use the~~
17 ~~Attorney General position as the chief law enforcement officer and “minister of justice,” the~~
18 ~~Attorney General is best suited to fulfill these duties.~~

19
20 ~~Public records. Section 104 is designed to ensure that this act is not interpreted as~~
21 ~~limiting access to court records. It provides that information in court dockets and files not under~~
22 ~~seal, etc. remain public records to the extent provided by existing law. The drafters encourage~~
23 ~~adopting states to examine their public records acts to determine whether conforming revisions~~
24 ~~are required.~~

Comment

25
26
27 ~~Principles. This [act] is premised on three principles:~~

28 ~~(1) Society at large has a vital interest in the accuracy of criminal history record~~
29 ~~information.~~

30 ~~(2)(1) Subjects are entitled to have the information kept about them under this [act] be~~
31 ~~accurate criminal history record information.~~

32 ~~(3)(1) The government has an obligation to collect, maintain, store, and disseminate~~
33 ~~accurate criminal history record information.~~

Comment

34
35
36
37 ~~Defined terms, not substance.~~ The style rules of the Uniform Law Commission call for
38 consolidation of definitions for terms that recur throughout an act into a single section early in
39 the act. A definition for a term that appears in only one section should be located in that section.
40 Provisions that state a definition must be definitional only, with the substance pertaining to the
41 term addressed separately.

42
43 ~~Administration of criminal justice.~~ The definition of “administration of criminal justice”
44 is largely based upon the language found in 28 C.F.R. §20.3.

45
46 ~~Biometric information.~~ The definition of “biometric information” is ~~designed~~limited to

1 ~~allow the act to adapt automatically as technology evolves. Right now, fingerprints, which~~ are
2 the gold standard for ensuring that a particular ~~person~~subject is linked to the correct and
3 complete arrest and disposition information. ~~That may change and The use of the definition~~
4 ~~should be able to accommodate such changes. In light of its characteristics, DNA information~~
5 ~~falls within the scope of term~~ “biometric information, ~~though~~” emphasizes the importance of
6 using something beyond an exact or approximate name match to ensure the accuracy of criminal-
7 history record information during the record location, linking and retrieval processes. Using the
8 term “biometric information” also allows a legislature to retain this is not made explicit term if, at
9 some point in the textfuture, it decides that technology has evolved to the point where an equally
10 reliable biometric identification technique is appropriate to include. Biometric information is
11 available from all subjects because the criminal-history-record information maintained pursuant
12 to this act relates exclusively to individuals. This is consistent with current practice.
13

14 *Central repository.* The definition of “central repository” leaves to the adopting state the
15 decision whether this is a police function, often through the state police, or an independent
16 function. Given the central repository’s coordinating role, the definition does require the central
17 repository to be operationally independent from contributing justice agencies or other
18 repositories, although it can exist within the structure of an agency, such as the state police, that
19 also contains a separate repository.
20

21 *Contributing justice agency.* The definition of “contributing justice agency” is
22 intentionally broad. The goal is to widely distribute the duty to provide information on
23 “reportable events” – such as arrests, charges, and dispositions of all types – to the central
24 repository. This also allows for the collection and inclusion of reportable event and biometric
25 information throughout the process of adjudication and punishment, thereby allowing for
26 multiple opportunities to collect data and resolve issues. The term includes an organized state or
27 municipal police department, sheriff’s department, local detention facility or department, county,
28 regional or state correctional facility or department, probation agency, office of Attorney
29 General, district or prosecuting attorney, court with criminal jurisdiction, parole board, pardon
30 board, and any agency or sub-unit designated as a contributing justice agency by the responsible
31 agency or individual.
32

33 Courts are included in a “contributing justice agency” because their participation is
34 crucial to the success of the effort to promote the accuracy of criminal records. An adopting
35 state concerned about including courts because of separation of powers concerns may want to
36 add language either exempting courts or allowing courts themselves to opt-out. Statutory
37 language authorizing a judicial opt-out could take this form: “The [state Supreme Court], or a
38 judicial entity authorized to act on its behalf, may remove the courts of this state from this sub-
39 section under its rulemaking authority.” —~~Non~~The court should be included as a contributing
40 justice agency to the extent constitutionally permissible. Including courts will materially enhance
41 the accuracy of criminal-history-record information.
42

43 *Noncriminal-history-record information.* This definition clarifies that information may
44 be held by a contributing justice agency that is not deemed to be criminal-history-record
45 information.
46

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

5
6 *Reportable Event – Disposition.* The ~~definition~~examples of disposition ~~is~~are designed to
7 be inclusive yet manageable. If more detail is desired, adopting states could include the current
8 definition found at 28 CFR § 20.3(i), which provides:

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

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

24
25 **SECTION 103. APPLICABILITY.** This [act] applies to the central repository, each
26 repository and contributing justice agency, and each subject in this state.

27 **SECTION 104. PUBLIC RECORD.** In this [act], a court docket, court file, and
28 information contained in a docket or file, are public records unless otherwise provided by law
29 other than this [act] or ordered by a court.

30 *Legislative Note: This section is designed to ensure that this act is not interpreted as*
31 *limiting access to court records. It provides that information in court dockets and files not under*
32 *seal, remain public records to the extent provided by existing law. An adopting state should*
33 *examine its public records act to determine whether conforming revisions are required.*

34
35 **SECTION 105. DISSEMINATION LOG.** A dissemination log under Section 205 or
36 304 must include each request for and dissemination of criminal-history-record information. The
37 log must be separate from noncriminal-history-record information and criminal-history-record
38 information, and must include the:

- 1 (1) information requested;
- 2 (2) information disseminated;
- 3 (3) person making the request and its associated address;
- 4 (4) individual effectuating the dissemination;
- 5 (5) date of the request and of the dissemination; and
- 6 (6) purpose for which the information was requested or disseminated.

7 *Legislative Note: A dissemination log should be maintained as long as the associated*
8 *criminal-history-record information is maintained. In a jurisdiction in which records retention*
9 *provisions address this issue, the language specifying duration of record maintenance should be*
10 *adjusted appropriately.*

11 Comment

12
13
14 *Dissemination logs.* The drafters anticipate that the public will have access to
15 dissemination logs in a fashion consistent with existing public records laws in the jurisdiction. A
16 dissemination log should be maintained as long as the associated criminal history record
17 criminal-history-record information is maintained. In a jurisdiction in which existing records
18 retention provisions already speak to this issue the language specifying duration of record
19 maintenance should be adjusted appropriately.

20 [ARTICLE] 2

21 ~~DUTIES AND AUTHORITY OF CONTRIBUTING JUSTICE AGENCY~~

22 SECTION 201. COLLECTION AND SUBMISSION OF INFORMATION TO

23 **CENTRAL REPOSITORY.** ~~Each~~A contributing justice agency that has custody of, or control,
24 authority, or jurisdiction over, an individual for ~~an occurrence that is~~ a reportable event shall
25 collect, maintain, and store in its repository criminal-history-record information on the ~~reportable~~
26 ~~event, and not later than [five] days after the agency receives the information, submit the~~
27 ~~information to the central repository.~~
28 event. Not later than [five] days after the agency collects the information, the agency shall
29 submit the information to the central repository.
30

1 **SECTION 202. COLLECTION AND SUBMISSION OF BIOMETRIC**
2 **INFORMATION.**

3 (a) ~~Each~~A contributing justice agency that has custody of, or control, authority, or
4 jurisdiction over, an individual for ~~an occurrence that is~~ a reportable event shall determine ~~or,~~
5 ~~under the circumstances, cause to be determined~~ whether biometric information about the
6 individual ~~was~~has been collected and submitted to the central repository for the ~~occurrence~~event.
7 If the contributing justice agency is a court, the contributing justice agency representing ~~the~~this
8 state before the court shall make the determination and report the results of its determination to
9 the court.

10 (b) If a contributing justice agency determines under subsection (a) that biometric
11 information ~~was~~has not ~~previously been~~ submitted to the central repository, the individual shall
12 permit collection of biometric information. The agency ~~shall~~, using any legal procedure
13 available to it including a court order if authorized, shall collect or, ~~under the circumstances,~~
14 cause to be collected any ~~previously~~ uncollected biometric information, ~~and not~~ Not later than
15 [five] days after collection, the agency shall submit the information or cause it to be submitted to
16 the central repository.

17 ~~**SECTION 203. CORRECTION OF INACCURATE INFORMATION.**~~

18 ~~(a) A contributing justice agency shall maintain accurate criminal history record~~
19 ~~information in its repository in compliance with rules prescribed by the central repository.~~

20 ~~(b) A contributing justice agency shall, not later than [14] days after discovery that it~~
21 ~~possesses inaccurate criminal history record information in its repository:~~

22 ~~—————(1) correct its own records;~~

23 ~~—————(2) notify all persons, including the central repository, that submitted or received~~

1 ~~the inaccurate information for a criminal justice purpose of the inaccuracy and the required~~
2 ~~correction; and~~

3 ~~===== (3) on request of the subject.~~

4 ~~----- (A) disseminate a notice about the inaccuracy and the required correction~~
5 ~~to any person identified by the subject that received the inaccurate information for a non-criminal~~
6 ~~justice purpose within the previous five years; and~~

7 ~~===== (B) provide to the subject at no cost one official, corrected copy of the~~
8 ~~accurate information.~~

9 ~~===== SECTION 204. DISSEMINATION OF CRIMINAL HISTORY RECORD~~
10 ~~INFORMATION.~~

11 ~~(a) A contributing justice agency may disseminate criminal history record information~~
12 ~~only as provided in this [act] or by law other than this [act].~~

13 ~~(b) A contributing justice agency may disseminate criminal history record information to~~
14 ~~another contributing justice agency on request of the other agency in connection with the~~
15 ~~requesting agency's duties.~~

16 ~~===== SECTION 205. DISSEMINATION LOG OF CONTRIBUTING JUSTICE~~

17 ~~AGENCY. A contributing justice agency shall create, maintain, and store a dissemination log,~~
18 ~~in the manner and form directed by the [responsible agency or individual]. A dissemination of~~
19 ~~criminal history record information shall be entered in the dissemination log not later than [14]~~
20 ~~days after the information is disseminated. The agency shall maintain an entry in the log [as long~~
21 ~~as it maintains the associated information].~~

22 *Legislative Note: Responsible agency or individual. As discussed supra, the phrase*
23 *“responsible agency or individual” is used in various places in the comments and in brackets in*
24 *the text of the act itself, including in this article. The drafters intend it to mean the appropriate*
25 *state agency or individual charged with certain responsibilities under this act. It is most*

1 commonly designed to signal a situation when a senior criminal justice policy maker—either in
2 the form of a responsible agency or individual—needs to adopt a regulation or make a decision
3 that is best served by honoring the principle of checks and balances. That is, the regulations
4 should be adopted by an entity or individual outside of the day-to-day operation of the criminal
5 history system. The central repository is a perfectly appropriate entity to create general
6 operational rules and no one is impugning the integrity of the individuals within the criminal
7 history system. This is simply a structural point. In some states, the “responsible agency or
8 individual” may be the Attorney General or the Office of the Attorney General. In other states, it
9 will be a different actor or entity. It need not be filled by the same person or agency each time it
10 is used. That is a decision best left to the adopting state. The phrase “responsible agency or
11 individual,” allows for each state to fill this position appropriately in light of its own
12 constitutional structure and political landscape. Ideally, in the states that use the Attorney
13 General position as the chief law enforcement officer and “minister of justice,” the Attorney
14 General is best suited to fulfill these duties.

15
16 ——— *Maintaining dissemination logs.* The drafters prefer that dissemination logs be
17 maintained as long as the associated criminal history record information is maintained.
18 Recognizing, however, that existing records retention provisions in certain jurisdictions may
19 already speak to this general issue, the language specifying duration of record maintenance is
20 placed in brackets.

21 22 Comment

23 *Mandatory duty to collect biometric information.* Widely distributing a mandatory duty
24 to collect biometric information is vital to the effectiveness of the act. Biometric information, in
25 the form of fingerprints, is currently the gold standard for positive identification for law
26 enforcement purposes. If this information is not used to link an arrest to a charge to a
27 disposition, significant inaccuracies may and do result. In most cases, close matches using name
28 and date of birth are the alternative. This is a clear and common source of inaccuracies – both in
29 the failure to link related reportable events and in the misidentification of the subject. The act
30 puts the primary responsibility for this task on the arresting contributing justice agency, which
31 will typically be a police department. The lack of collection on the “front line” of processing is a
32 significant impediment to the accuracy of criminal records. In some jurisdictions, this appears to
33 be unrelated to funding for equipment, and instead turns on the enforcement of mandatory
34 collection procedures. See, e.g., Jeffrey Benzing, *Fingerprint Hearing: Best and Worst Pa.*
35 *Counties Have Same Equipment*, available at
36 http://www.pennlive.com/midstate/index.ssf/2014/07/fingerprint_hearing_best_and_w.html (July
37 23, 2014).

38
39 *Accuracy Improvement.* Nothing in the act is designed to expand the ability of the
40 government to collect information to which contributing justice agencies are not otherwise
41 entitled to collect. The goal of the act is to ensure that the information that jurisdictions do
42 collect is done in a regular and reliable way that improves the accuracy of the criminal-history-
43 record system.

44
45 *Collection of Biometric Information.* Section 202 requires individuals to permit the

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

10
11 *Duty of other contributing justice agencies.* If the arresting agency fails to obtain
12 fingerprints, the act provides a backstop by requiring other, typically chronologically
13 downstream, actors in the contributing justice system to fingerprint the subject. The drafters
14 believe that this “belt-and-suspenders approach” is warranted given the wide variation of
15 fingerprint compliance rates between and within states. For example, the drafters learned that in
16 one large state, there are tens of thousands – if not hundreds of thousands – of essentially
17 orphaned files in the central repository because disposition information cannot be definitively
18 linked by fingerprint to a subject. Furthermore, in that state, the state prison receiving center felt
19 the need to install a Livescan machine (a common biometric data collection station) because of
20 the number of sentenced offenders arriving without fingerprints in the system.

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

30 **SECTION 203. CORRECTION OF INACCURATE INFORMATION BY**

31 **CONTRIBUTING JUSTICE AGENCY.**

32 **(a) A contributing justice agency shall maintain accurate criminal-history-record**
33 **information in its repository in compliance with rules adopted by the central repository.**

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

36 **_____ (1) correct its own records;**

37 **_____ (2) notify all persons, including the central repository, that submitted or received**
38 **the inaccurate information for a purpose of administration of criminal justice of the inaccuracy**

1 and the required correction; and

2 (3) on request of the subject:

3 (A) disseminate notice about the inaccuracy and the required correction to
4 any person identified by the subject which received the inaccurate information for a purpose
5 other than administration of criminal justice within five years before the discovery; and

6 (B) provide to the subject at no cost one official, corrected copy of the
7 accurate information.

8 Comment

9 *Duty to correct.* ~~*Duty to correct.*~~ The act requires a contributing justice agency (and in a
10 later provision the central repository) that learns of inaccurate criminal-~~history-record~~
11 information – regardless of how it learns of it – to fix it in its own records and to pass along the
12 corrected information to whomever it has provided the inaccurate information. That latter
13 process is facilitated by the maintenance of dissemination logs. Thoroughly tracking the
14 information will allow for more effective correction, as well as providing essential process data
15 for the audit, discussed *infra*.

16
17 ~~Accuracy remains the overriding goal of the act. ~~history-record information~~~~
18 ~~regardless of how it learns of it – to fix it in its own records and to pass along the corrected~~
19 ~~information to whomever it has provided the inaccurate information. That latter process is~~
20 ~~facilitated by the maintenance of dissemination logs. Thoroughly tracking the information will~~
21 ~~allow for more effective correction, as well as providing essential process data for the audit,~~
22 ~~discussed *infra*.~~

23
24 ~~Accuracy remains the overriding goal of the act.~~ Of course, procedures relating to the
25 mechanics of how criminal-~~history-record~~ information will be corrected and in what form are left
26 to the state and its central repository.

27 SECTION 204. DISSEMINATION OF CRIMINAL-HISTORY-RECORD 28 INFORMATION.

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

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

1 of the requesting agency.

2 **SECTION 205. DISSEMINATION LOG OF CONTRIBUTING JUSTICE**

3 **AGENCY.** A contributing justice agency shall create, maintain, and store a dissemination log,
4 in the manner and form directed by the [responsible agency or individual]. Not later than [14]
5 days after the agency disseminates criminal-history-record information, the agency shall enter
6 the required information in the dissemination log. The agency shall maintain an entry in the log
7 [as long as it maintains the associated information].

8 **Comment**

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

15
16 **[ARTICLE] 3**

17 **~~DUTIES AND AUTHORITY OF~~ CENTRAL REPOSITORY**

18 **SECTION 301. ~~ROLE~~DUTY OF CENTRAL REPOSITORY.**

19 (a) The central repository shall collect, store, maintain, ~~store,~~ and disseminate criminal-
20 history-record information reported to it under this [act].

21 (b) The central repository shall collect, store, maintain, ~~store,~~ and disseminate accurate
22 criminal-history-record information in compliance with ~~regulations~~rules adopted by the
23 [responsible agency or individual].

24 (c) The central repository shall ~~prescribe~~adopt rules ~~and procedures~~ to resolve conflicts
25 and discover missing data for accurate criminal-history-record information.

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

1 SECTION 302. DISSEMINATION OF INFORMATION TO PERSON OTHER

2 THAN SUBJECT. ~~When disseminating~~

3 ~~_____ (a) Before the central repository disseminates~~ criminal-history-record information for a
4 ~~non-purpose other than administration of~~ criminal justice ~~purpose~~ to a person other than the
5 subject, the central repository ~~shall comply with the following procedures:~~

6 ~~_____ (1) Before the central repository disseminates the information, it~~ shall determine whether
7 the information contains a disposition after an arrest without the filing of a formal criminal
8 charge; ~~or a disposition of a formal criminal charge for every arrest or charge.~~ If the information
9 does not contain a disposition, the central repository shall make a good-faith effort to determine
10 the disposition ~~of the arrest or charge, and, if it~~ the central repository determines the disposition,
11 ~~add~~include that disposition ~~to~~in:

12 (A1) the relevant records maintained by the central repository; and

13 (B2) the report or summary to be disseminated.

14 (2b) After making the good-faith effort under ~~paragraph (1)~~ subsection (a) and before the
15 central repository disseminates the information, it shall remove from the report or summary to be
16 disseminated the notation of an arrest, charge, indictment or other information relating to the
17 initiation of criminal proceedings if:

18 (A) ~~1~~ 18 months have elapsed after the date of arrest;

19 (B2) no conviction has occurred ~~or~~;

20 (3) no conviction can be identified; and

21 (C4) no ~~proceedings are~~ proceeding is pending that may result in a conviction.

22 (3c) Not later than [five] days after the central repository disseminates ~~the~~ information,
23 under subsection (a), it shall send the same information to the subject, based on the contact

1 information provided by the person requesting the information.

2 **SECTION 303. DISSEMINATION OF INFORMATION TO SUBJECT.**

3 (a) ~~The~~ Not later than [14] days after an individual submits a request to the central
4 repository ~~shall disseminate for the individual's criminal-history-record information to the~~
5 ~~subject on request of the subject, after verification of the requester's identity and authority.~~

6 ~~_____ (b) If,~~ the central repository, ~~in response~~ shall:

7 (1) disseminate the individual's criminal-history-record information to a request
8 ~~under subsection (the individual; or~~

9 (2) if a), reasonably diligent search identifies no criminal-history-record
10 information about the ~~subject, it shall~~ individual, notify the ~~subject that no information~~
11 ~~concerning the subject exists and the date of its search.~~ individual of that fact.

12 ~~_____ (c) The central repository shall disseminate the criminal history record information or~~
13 ~~notify the subject that no such information exists not later than [14] days after a request is~~
14 ~~submitted under subsection (a).~~

15 ~~_____ (d) _____ (b) Criminal-history-record information disseminated under this section shall~~ must
16 include a ~~prominent~~ conspicuous notification that it is provided solely for review by the
17 ~~subject~~ individual and may not be reliable or current for another use.

18 **SECTION 304. DISSEMINATION LOG. OF CENTRAL REPOSITORY.** The

19 central repository shall create, maintain, and store a dissemination log. ~~A~~ The central repository
20 shall enter a dissemination ~~shall be entered~~ in the log not later than [14] days after information is
21 disseminated. The central repository shall maintain an entry in the log [as long as it maintains the
22 associated information].

23 **SECTION 305. CORRECTION OF INACCURATE INFORMATION.** ~~The central~~

1 ~~repository shall not~~Not later than [14] days after ~~discovery~~the central repository discovers that it
2 possesses inaccurate criminal-history-record information, the central repository shall:

3 (1) correct its own records;

4 ÷

5 ~~(1) correct its own records;~~

6 (2) notify all persons that submitted or received the inaccurate information for ~~a~~ a
7 purpose of administration of criminal justice ~~purpose~~ of the inaccuracy and the required
8 correction; and

9 (3) on request of the subject:

10 (A) disseminate a notice about the inaccuracy and the required correction to any
11 person identified by the subject that received the inaccurate information for ~~a non-purpose other~~
12 than administration of criminal justice ~~purpose~~ within ~~the previous~~ five years before the
13 discovery; and

14 (B) provide to the subject at no cost one official, corrected copy of the accurate
15 information.

16 **SECTION 306. DUTIES ADOPTION OF CENTRAL REPOSITORY RULES.** The

17 central repository shall ~~ensure that the collection, maintenance, storage, and dissemination of~~
18 ~~criminal history record information is accurate. The central repository shall:~~

19 ~~(1) prescribe~~adopt rules:

20 (1) for the manner and form in which a contributing justice agency shall collect, ~~store,~~
21 maintain, store, and ~~submit~~disseminate criminal-history-record information to the central
22 repository ~~on a reportable event~~, including standards for biometric information, and ensure that
23 ~~multiple items of all~~ information for the same subject ~~are~~is linked appropriately;

1 (2) ~~prescribe rules and forms~~ for reporting, exchanging, and ~~challenging the~~
2 ~~accuracy seeking correction~~ of ~~criminal-history-record~~ information under this [act]; ~~including~~
3 ~~forms~~; and

4 (3) ~~prescribe rules~~ necessary to carry out its ~~powers and~~ duties under this [act].

5 **SECTION 307. DISSEMINATION OF INFORMATION FOR STATISTICAL**

6 **ANDOR RESEARCH PURPOSES PURPOSE.** The central repository may:

7 ~~_____ (1) disseminate criminal-history-record information for a statistical or research purposes~~
8 ~~if purpose;~~

9 ~~_____ (2) disseminate personally identifiable information it deems necessary to accomplish the~~
10 ~~information does not disclose statistical or research purpose; and~~

11 ~~_____ (3) limit the identity of any individual directly or indirectly. Subsequent use and~~

12 ~~subsequent~~ dissemination and use of ~~the~~ information ~~disseminated~~ under this section ~~is~~

13 ~~subject pursuant~~ to rules ~~prescribed adopted~~ by the central repository, ~~consistent with other laws~~
14 ~~of this state or the United States.~~

15 **Comment**

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

20
21 **SECTION 308. PUBLIC INFORMATION.** The central repository shall inform the

22 public about the existence, ~~usage,~~ and accessibility of criminal-history-record information

23 ~~collected, stored, maintained, and disseminated~~ by ~~repositories and~~ the central repository ~~and~~

24 ~~other repositories.~~ The central repository shall inform the public, at least annually, concerning

25 ~~the:~~

26 (1) ~~the quantity extent~~ and general nature of ~~the~~ criminal-history record information

1 collected,
2 stored, maintained, and disseminated in ~~the~~this state;
3 (2) ~~the~~ number of corrections to criminal_history_record information made by repositories
4 and the central repository;
5 (3) results of ~~the~~ audits under Section 602 and the status of any ~~remediation~~correction of
6 deficiencies; and
7 (4) requirements and forms for access, review, and correction of criminal_history_record
8 information in repositories and the central repository.

9 **SECTION 309. TRAINING.**

10 (a) The central repository shall provide regular training to contributing justice agencies
11 ~~about~~concerning submitting information on a reportable event and the importance of the
12 information to ~~both society~~subjects, the public, and the criminal_justice system.

13 (b) The central repository shall identify contributing justice agencies and repositories that
14 do not meet ~~minimum standards under~~the requirements of this [act] and provide ~~them~~ remedial
15 training.

16 ***Legislative Note:** Responsible agency or individual. As discussed supra, the phrase*
17 *“responsible agency or individual” is used in various places in the comments and in brackets in*
18 *the text of the act itself, including in this article. The drafters intend it to mean the appropriate*
19 *state agency or individual charged with certain responsibilities under this act. It is most*
20 *commonly designed to signal a situation when a senior criminal justice policy maker—either in*
21 *the form of a responsible agency or individual—needs to adopt a regulation or make a decision*
22 *that is best served by honoring the principle of checks and balances. That is, the regulations*
23 *should be adopted by an entity or individual outside of the day-to-day operation of the criminal*
24 *history system. The central repository is a perfectly appropriate entity to create general*
25 *operational rules and no one is impugning the integrity of the individuals within the criminal*
26 *history system. This is simply a structural point. In some states, the “responsible agency or*
27 *individual” may be the Attorney General or the Office of the Attorney General. In other states, it*
28 *will be a different actor or entity. It need not be filled by the same person or agency each time it*
29 *is used. That is a decision best left to the adopting state. The phrase “responsible agency or*
30 *individual,” allows for each state to fill this position appropriately in light of its own*
31 *constitutional structure and political landscape. Ideally, in the states that use the Attorney*

1 *General position as the chief law enforcement officer and “minister of justice,” the Attorney*
2 *General is best suited to fulfill these duties.*

3
4 ~~———— *Maintaining dissemination logs. The drafters prefer that dissemination logs be*~~
5 ~~*maintained as long as the associated criminal history record information is maintained.*~~
6 ~~*Recognizing, however, that existing records retention provisions in certain jurisdictions may*~~
7 ~~*already speak to this general issue, the language specifying duration of record maintenance is*~~
8 ~~*placed in brackets.*~~

9
10 ~~Comment~~
11 Comment

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

19
20 *Verification of identify and authorization.* Verification of identity may include biometric
21 information pursuant to implementing regulations under this act.

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 purposes of government-
26 mandated and voluntary employment, licensing, etc. Accuracy concerns are heightened in this
27 context in part because there is no related adversarial proceeding before a neutral magistrate.
28 Inspired in part by efforts in California that many consider successful, this section requires the
29 central repository to make a good faith effort to ensure that disposition information is connected
30 to arrests and charges. *See*. Cal. Code. Regs. tit. 11, § 720 (2017). Senator Grassley and others
31 introduced the Sentencing Reform and Corrections Act of 2015 (“SRCA”) on October 1, 2015.
32 Although Congress did not pass the SRCA, it is worth noting that SRCA’s Section 213, which
33 was entitled “Ensuring Accuracy of Federal Criminal Records,” provided that certain arrests
34 without disposition information that were more than two years old could not be disseminated. *Cf.*
35 Idaho Code Ann. § 67-3008(2)(iv)(“A record of an arrest that does not contain a disposition after
36 twelve (12) months from the date of arrest may only be disseminated by the department to
37 criminal justice agencies, to the subject of the record, or to a person requesting the criminal
38 history information with a signed release from the subject of the record.”).

39
40 *Duty to correct.* The act requires central repository (and in an earlier provision
41 contributing justice agencies) that learns of inaccurate criminal_history_record information –
42 regardless of how it learns of it – to fix it in its own records and to pass along the corrected
43 information to whomever it has provided the inaccurate information. That latter process is
44 facilitated by the maintenance of dissemination logs. Thoroughly tracking the information will
45 allow for more effective correction, as well as providing essential process data for the audit,

1 discussed *infra*.

2
3 ~~Accuracy remains the overriding goal of the act. record information regardless~~
4 ~~of how it learns of it — to fix it in its own records and to pass along the corrected information to~~
5 ~~whomever it has provided the inaccurate information. That latter process is facilitated by the~~
6 ~~maintenance of dissemination logs. Thoroughly tracking the information will allow for more~~
7 ~~effective correction, as well as providing essential process data for the audit, discussed *infra*.~~

8
9 ~~Accuracy remains the overriding goal of the act.~~ Of course, procedures relating to the
10 mechanics of how criminal-history-record information will be corrected and in what form are left
11 to the state and its central repository.

12
13 *Outreach to the public and contributing justice agencies.* This section also assigns the
14 central repository educative and supportive roles. It will try to raise public awareness about the
15 importance of criminal-history-record information and how individuals can access their records
16 to check for accuracy. It will also have the responsibility to train contributing justice agencies
17 and focus on those agencies that are not reporting as required because those agencies present
18 significant accuracy risks to the entire system. The act envisions a system of web-based
19 postings, webinars and guidelines, though the central repository has the flexibility to conduct this
20 outreach in the manner determined to be effective in that jurisdiction. This same system could be
21 used to update the public on the audit results and subsequent remediation. Existing central
22 repository websites could satisfy these requirements.

23 [ARTICLE] 4

24 MISTAKEN-IDENTITY-PREVENTION REGISTRY

25
26 **SECTION 401. CREATION AND MAINTENANCE OF REGISTRY.** The central
27 repository shall create and maintain a mistaken-identity-prevention registry:

28 (1) designed to prevent:

29 (A) mistaken arrest and confusion of an individual with another individual when
30 criminal-history-record information is searched; and

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

32 and

33 (2) consisting of information voluntarily provided by:

34 (A) a victim of mistaken identity; or

35 (B) an individual whose name or other identifying characteristic is similar to that

1 of another individual who is the subject of ~~a particular item of~~ criminal history record
2 information.

3 **SECTION 402. ~~INFORMATION INCLUDED IN~~ REQUIREMENTS FOR**
4 **REGISTRY.**

5 (a) The central repository shall ~~prescribe rules and~~ adopt procedures for entry of an
6 individual ~~to be entered~~ in the mistaken identity prevention registry. The ~~rules and~~ procedures
7 ~~shall include~~ must require:

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

9 (2) collection of biometric information from the individual.

10 (b) ~~An~~ The central repository shall enter in the mistaken identity prevention registry
11 information concerning an individual who satisfies the requirements ~~and procedures~~ under
12 subsection (a) ~~shall be entered in the mistaken identity prevention registry. An~~. If the central
13 repository denies entry of information concerning an individual improperly ~~denied~~ excluded from
14 entry in the registry, the individual may seek relief under [the state administrative procedure act]
15 as a contested case.

16 **SECTION 403. CERTIFICATION.** Not later than [14] days after entering information
17 concerning an individual in the mistaken identity prevention registry, the central repository shall
18 provide the individual a certification that the individual is not the individual with a similar name
19 or identifying ~~characteristics~~ characteristic who is the subject of ~~a particular item of~~ criminal
20 history record information. The certification is prima facie evidence of the facts certified.

21 **SECTION 404. ~~DISCLOSURE~~ DISSEMINATION OF REGISTRY**
22 **INFORMATION.**

23 (a) The central repository may not use or ~~disclosed~~ disseminate information from the

1 mistaken-identity-prevention registry except as provided in this [article].

2 (b) The central repository shall ~~disclosed~~disseminate information from the mistaken-
3 identity-prevention registry to a contributing justice agency ~~when~~if there is reason to believe that
4 identifying information on a reportable event may be inaccurate or ~~not~~ associated with the
5 ~~correct~~wrong individual.

6 (c) The central repository may ~~disclosed~~disseminate information from the mistaken-
7 identity-prevention registry to a national mistaken-identity-prevention registry if the national
8 registry is created and maintained by a federal law enforcement agency with a purpose and
9 protections similar to the registry created in this [article] ~~if the national registry is created and~~
10 ~~maintained by the Federal Bureau of Investigation.~~].

11 *Legislative Note: This section is designed to ensure that this information from the*
12 *Mistaken-Identity-Prevention Registry is used exclusively for its intended purpose. An adopting*
13 *state should examine its public records act to determine whether conforming revisions are*
14 *required.*

15
16 **SECTION 405. MISTAKEN VERIFICATION OF IDENTITY MATCH.** If a
17 contributing justice agency seeks to establish the identity of an individual and the individual
18 presents a certification issued under Section 403, the agency shall accept the certification ~~as~~
19 ~~prima facie evidence~~ of the individual's identity unless the agency has a reasonable basis to
20 doubt the individual's identity or the authenticity of the certification, in which case the agency
21 shall contact the central repository to verify its authenticity using the ~~rules prescribed~~procedures
22 adopted by the central repository.

23 **SECTION 406. LIMITATION ON USE OF REGISTRY INFORMATION.**

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

26 (1) identify accurately an individual about whom the agency has requested or

1 received registry information; or

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

4 (b) If information in the mistaken-identity-prevention registry is intentionally negligently,
5 recklessly, or negligently intentionally accessed or used for a purpose other than permitted under
6 subsection (a):

7 (1) the information and any information acquired as a result of the improper
8 access ~~shall be excluded from~~ use is not admissible in any criminal or civil action; and

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

12 SECTION 407. REMOVAL OF INFORMATION FROM REGISTRY.

13 (a) The central repository shall ~~prescribe rules~~ adopt procedures regarding a request to
14 remove information from the mistaken-identity-prevention registry.

15 (b) Not later than [14] days after receiving a request from an individual for removal of
16 information the individual voluntarily submitted under Section 402(~~ba~~), the central repository
17 shall remove the information from the mistaken-identity-prevention registry.

18 ~~Discussion Note~~

19 Comment

20 *Mistaken-Identity-Prevention Registry.* Identification mistakes can lead to inaccurate
21 criminal-history-record information and erroneous arrests. *See, e.g.,* Stephanie Chen, *Officer,*
22 *You've Got the Wrong Person*, cnn.com (Feb. 15, 2010), available at
23 <http://www.cnn.com/2010/CRIME/02/15/colorado.mistaken.identity.arrest/> (“A mistaken
24 identity arrest occurs almost every day, said policing experts and officials at the National
25 Association of Criminal Defense Lawyers.”); Christopher N. Osher, *Wrongfully Jailed: Records*
26 *Details More Than 500 Mistaken-Identity Arrests in Denver in Seven Years*,
27 www.denverpost.com (Jan. 7, 2012), available at

1 [http://www.denverpost.com/2012/01/07/wrongfully-jailed-records-detail-more-than-500-](http://www.denverpost.com/2012/01/07/wrongfully-jailed-records-detail-more-than-500-mistaken-identity-arrests-in-denver-in-seven-years/)
2 [mistaken-identity-arrests-in-denver-in-seven-years/](http://www.denverpost.com/2012/01/07/wrongfully-jailed-records-detail-more-than-500-mistaken-identity-arrests-in-denver-in-seven-years/). This article, which is inspired in part by a
3 Minnesota provision, is designed to proactively help individuals who are the victim of identity
4 theft, while also improving the accuracy of the criminal record system more broadly. It allows
5 for these individuals to voluntarily provide information about themselves, including biometric
6 information, to a restricted registry which would be used to verify whether a particular person
7 truly is the subject of a reportable event. There are also analogies to the Voluntary Appeals File
8 (“VAF”) program associated with the FBI’s National Instant Criminal Background Check
9 System. See <https://www.fbi.gov/about-us/cjis/nics> and [https://www.fbi.gov/about-](https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf)
10 [us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf](https://www.fbi.gov/about-us/cjis/nics/appeals/nics_vaf_brochure_eng.pdf).

11
12 This article provides for the creation of certification for relevant individuals who choose
13 to be proactive about limiting damaging errors in their own criminal record. This article
14 envisions that this certification will help ~~a person~~ an individual without a particular criminal
15 record from suffering adverse consequences of being confused with the ~~person~~ individual who
16 actually has that record. At the same time, the drafters seek to balance these considerations with
17 the burdens imposed on law enforcement during the identity verification process. It is up to the
18 individual state to determine requirements and procedures, but the drafters encourage states to
19 consult with law enforcement and look to NLETS as a potential partner. See
20 <http://www.nlets.org>.

21 22 [ARTICLE] 5

23 ~~SUBJECT’S RIGHT TO CORRECT CORRECTION OF CRIMINAL HISTORY~~ 24 RECORD INFORMATION

25 **SECTION 501. ~~RIGHT OF ACCESS AND REVIEW.~~** A subject may access and
26 review the subject’s criminal ~~history~~ record information ~~collected, maintained, or~~ stored by a
27 repository or the central repository. The repository or central repository shall permit access not
28 later than [five] days after ~~submission~~ receipt of a proper request from the subject and, ~~if~~
29 ~~appropriate,~~ verification of the requester’s identity and authority.

30 **SECTION 502. ~~CHALLENGE OF ACCURACY. A REQUEST TO CORRECT.~~**
31 Not more than once each calendar year, a subject may ~~challenge and~~ seek correction of criminal-
32 history ~~record~~ information by sending the repository ~~or central repository~~ maintaining the
33 information ~~a challenge~~ or the central repository a request specifying the item of information
34 alleged to be inaccurate and providing correct information.

1 **SECTION 503. ~~ACTION ON CHALLENGE~~ REVIEW OF REQUEST.**

2 (a) Not later than [40] days after receipt of a ~~challenge request~~ under this [article], a
3 repository or the central repository shall review and ~~act on~~approve or deny the ~~challenge unless~~
4 ~~the request. The~~ director of the repository or central repository may extend the time to review the
5 request for [21] days if the director certifies, ~~and notifies the subject,~~ that there is good cause for
6 ~~a nonrenewable [21]-day~~an extension and notifies the subject. The extension may not be
7 renewed.

8 (b) If the repository or central repository does not act within the time provided in
9 subsection (a), the ~~challenge request~~ is deemed ~~sustained~~denied.

10 (c) [The state administrative procedure act] governs administrative and judicial review of
11 ~~an~~ action by a repository or the central repository on a ~~challenge request~~ under this [article].
12 Notwithstanding the provisions of [the state administrative procedure act], if the request is
13 denied as provided in subsection (b), the government has the burden of proof in the immediately
14 subsequent review.

15 **SECTION 504. CORRECTION OF RECORDS.** If a ~~challenge repository or the~~
16 ~~central repository approves a request~~ under this [article] ~~is sustained, a~~, the repository or the
17 central repository, not later than [five] days after the ~~challenge is sustained~~decision becomes
18 final and not subject to appeal, shall:

19 (1) correct its own records;

20 (2) notify ~~all persons that submitted or received~~the requestor and recipient for each entry
21 in dissemination log in which the inaccurate information was disseminated for a criminal justice
22 purpose of the inaccuracy and the required correction; ~~and~~

23 (3) notify the contributing justice agency that provided the inaccurate information of the

1 inaccuracy and the required correction; and

2 (4) on request of the subject:

3 (A) disseminate a notice about the inaccuracy and the required correction to any
4 person identified by the subject that received the inaccurate information for a ~~non-purpose other~~
5 than administration of criminal justice ~~purpose~~ within ~~the previous~~ five years after the receipt;
6 and

7 (B) provide the subject at no cost one official, corrected copy of the accurate
8 criminal_history_record information.

9 ~~Discussion Note~~

10 Comment

11 *Access, review, challenge, correction and appeal.* This article provides subjects rights to
12 access and challenge the criminal_history_record information about them for the explicit purpose
13 of ensuring that all of the criminal_history_record information managed by the state, regardless of
14 its source, is correct and up-to-date. While section 503(c) largely defers to the state's
15 administrative procedure act, the ~~drafters anticipate~~draft requires that the government will have
16 the burden of proving the accuracy of the challenged information by a preponderance of the
17 evidence in an administrative review following an automatic denial triggered by governmental
18 unresponsiveness.

19
20 Accuracy remains the overriding goal of the act. Of course, procedures relating to the
21 mechanics of how criminal_history_record information will be corrected and in what form are left
22 to the state and its central repository.
23

1 [ARTICLE] 6

2 SYSTEMS SECURITY AND AUDITS

3 SECTION 601. SECURITY REQUIREMENTS ~~FOR CONTRIBUTING JUSTICE~~

4 ~~AGENCIES AND CENTRAL REPOSITORY.~~; A contributing justice agency, a repository,
5 and the central repository, in compliance with ~~regulations~~rules adopted by the [responsible
6 agency or individual], shall ensure the confidentiality and security of ~~the criminal history record~~
7 information it collects, maintains, stores, and disseminates. The agency ~~or, repository, and~~
8 central repository shall:

- 9 (1) ~~prescribe~~adopt rules ~~and procedures to reasonably protect each location~~
10 ~~where~~requiring protection of information that is stored or maintained from loss or damage;
11 (2) ensure that only an authorized ~~persons have~~person has access to the information;
12 (3) select, supervise, and train ~~persons~~individuals authorized to have access to the
13 information;
14 (4) if computerized data processing is used, ensure that the equipment maintaining the
15 information meets computer security standards ~~promulgated~~adopted by the [responsible agency
16 or individual]; and
17 (5) maintain an index of all~~each~~ data ~~breaches, which shall be made~~breach and make the
18 index available on request to the [senior elected or appointed official responsible for
19 governmental oversight, audit, or integrity] and the [responsible agency or individual].

20 *Legislative Note: The senior elected or appointed official responsible for governmental*
21 *oversight, audit, or integrity should be an individual outside of the day-to-day operation of the*
22 *criminal-history-record-information system who is qualified to conduct these audits. Depending*
23 *on the existing state structure, potential appropriate individuals to fill this role might be the*
24 *Attorney General, the Auditor General, the Ombudsperson, the Inspector General, or other*
25 *officer.*
26

1 **SECTION 602. ~~MANDATORY REPRESENTATIVE~~ AUDIT.**

2 (a) The [senior elected or appointed official responsible for governmental oversight,
3 audit, or integrity] shall ~~ensure that~~cause an audit to be conducted at least once every [three]
4 years of the central repository and a representative sample of all repositories ~~is conducted at least~~
5 ~~every [three] years. The audits may be done in conjunction with another.~~

6 (b) If the [senior elected or appointed official responsible for governmental oversight,
7 audit-

8 ~~— (b) An audit under , or integrity] certifies that an audit required by an entity of the United~~
9 ~~States satisfies the requirements of this section shall, no additional audit is required.~~

10 (c) An audit under this section must assess the integrity of each computerized system and
11 database and each physical location ~~storing~~where criminal-history-record information ~~for~~
12 ~~compliance with this [act]. is stored.~~

13 (ed) An audit under this section of the central repository, ~~shall~~ must assess:

14 (1) ~~evaluate~~ the operational practices of the central repository ~~to assess for~~
15 consistency, efficiency, and security; and

16 (2) ~~assess~~ any data breach in the central repository and response to the breach.

17 (e) Audits of repositories under this section must:

18 (1) be representative of the overall status of the system of criminal-history-record
19 information management and ensure that selection of repositories audited is random and in
20 accordance with best practices; and

21 ~~(d)~~ (2) review the plans, policies, and procedures of a representative sample
22 comprising at least [five] percent of all [police and sheriff's] departments and [10] percent of all
23 [judicial districts] for compliance with this [act].

1 (f) An audit under this section of a repository ~~shall~~must:

2 (1) collect data from a representative sample of all criminal ~~history record~~
3 information stored at the repository to assess consistency, efficiency, and security;

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

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

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

11 ~~—————(5) review the plans, policies, and procedures of a representative sample
12 comprising at least [five] percent of all police and sheriff's departments and [10] percent of all
13 [judicial districts] for compliance with this [act].~~

14 ~~————(e _____(g) The central repository or ~~central~~ repository shall give the [senior elected or
15 appointed official responsible for governmental oversight, audit, or integrity] access to the
16 records, reports, listings, and information required to conduct an audit under this section. ~~All~~
17 ~~officers, employees, and contractors~~An officer, employee, or contractor of ~~the~~this state or a
18 political subdivision of ~~the~~this state with relevant information shall cooperate with the [senior
19 elected or appointed official responsible for governmental oversight, audit, or integrity] and
20 provide information requested for an audit.~~

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

1 deficiencies.

2 ~~**Legislative Note:** Responsible agency or individual. As discussed supra, the phrase~~
3 ~~“responsible agency or individual” is used in various places in the comments and in brackets in~~
4 ~~the text of the act itself, including in this article. The drafters intend it to mean the appropriate~~
5 ~~state agency or individual charged with certain responsibilities under this act. It is most~~
6 ~~commonly designed to signal a situation when a senior criminal justice policy maker—either in~~
7 ~~the form of a responsible agency or individual—needs to adopt a regulation or make a decision~~
8 ~~that is best served by honoring the principle of checks and balances. That is, the regulations~~
9 ~~should be adopted by an entity or individual outside of the day-to-day operation of the criminal~~
10 ~~history system. The central repository is a perfectly appropriate entity to create general~~
11 ~~operational rules and no one is impugning the integrity of the individuals within the criminal~~
12 ~~history system. This is simply a structural point. In some states, the “responsible agency or~~
13 ~~individual” may be the Attorney General or the Office of the Attorney General. In other states, it~~
14 ~~will be a different actor or entity. It need not be filled by the same person or agency each time it~~
15 ~~is used. That is a decision best left to the adopting state. The phrase “responsible agency or~~
16 ~~individual,” allows for each state to fill this position appropriately in light of its own~~
17 ~~constitutional structure and political landscape. Ideally, in the states that use the Attorney~~
18 ~~General position as the chief law enforcement officer and “minister of justice,” the Attorney~~
19 ~~General is best suited to fulfill these duties.~~

20
21 ~~Senior elected or appointed official responsible for governmental oversight, audit, or~~
22 ~~integrity. The act envisions that the senior elected or appointed official responsible for~~
23 ~~governmental oversight, audit, or integrity is an individual outside of the day to day operation of~~
24 ~~the criminal history record information system who is qualified to conduct these audits. While~~
25 ~~the “responsible agency or individual” concept can be filled in different ways and need not be~~
26 ~~the same at all points in this act, the drafters believe that the auditing role in this article deserves~~
27 ~~different language. Depending on existing state structures, potential appropriate individuals to~~
28 ~~fill this role might be the Attorney General, the Auditor General, the Ombudsperson, or the~~
29 ~~Inspector General. Of course, adopting states are free to designate others as they see fit.~~

30 ~~**Legislative Note:** In Section 602(d)(2), the bracketed provision about police and sheriff’s~~
31 ~~is designed to capture the universe of law enforcement agencies that collect, store, maintain and~~
32 ~~disseminate criminal-history-record information while the bracketed provision about judicial~~
33 ~~districts is designed to capture the universe of courts.~~

34
35

Comment

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

39
40 *Mandatory audits.* This article provides for mandatory and representative audits. Audits
41 are essential to understanding how the criminal-history-record information structure is actually
42 working and to prevent the automatic replication of systematic errors. If policy makers do not
43 understand the nature and prevalence of the inaccuracies, they cannot address them effectively.
44 The auditing process will also facilitate the identification of agencies or departments failing to

1 meet their obligations under the act. While the central repository and other parties have a range
2 of formal options to remediate these deficiencies, the public distribution of the results of the
3 audit results alone may serve to increase system-wide compliance.

4
5 **[ARTICLE] 7**

6 **ENFORCEMENT AND IMPLEMENTATION**

7 **SECTION 701. SANCTIONS AND REMEDIES.**

8 (a) An individual or contributing justice agency that violates this [act], in addition to
9 other remedies provided by this [act] or by law other law, than this [act], may be:

10 (1) ~~be denied access, for a time determined by the [responsible agency or~~
11 ~~individual], to specified criminal-history-record information, specified repositories, and/or the~~
12 ~~central repository for a time determined by the [responsible agency or individual];~~ _____

13 ~~(2) subject to a civil penalty or other remedy under subsection (c); and~~

14 ~~(3) consistent with law of this state other than this [act], if the violator is a~~
15 ~~government employee, be administratively disciplined.~~

16 ~~(2) be subject to a civil penalty or other remedy under subsection (c); and~~

17 ~~(3) consistent with law of this state other than this [act], if the violator is a~~
18 ~~government employee, be administratively disciplined.~~

19 (b) ~~In addition to other available remedies, the~~The [responsible agency or individual],
20 central repository, or ~~a~~ subject, may ~~bring, in addition to other available remedies, commence~~ an
21 action ~~concerning an item of criminal history record information~~ to compel compliance with this
22 [act] or enjoin ~~the central repository, a repository, a contributing justice agency, or another~~
23 ~~person from violating this [act]~~ violation of this [act]. The court may award ~~costs of litigation~~
24 ~~and~~ reasonable attorney's fees and court costs to a subject who prevails in the action.

25 (c) ~~In addition to other available remedies, a~~A subject injured by an intentional or

1 reckless violation of this [act] or ~~implementing regulations, may bring~~ rules adopted under this
2 [act] may, in addition to other available remedies, commence an action for actual damages. If
3 the court determines by a preponderance of the evidence that the subject was injured by an
4 intentional or reckless violation, the court shall award the greater of actual damages, or not less
5 than \$[500] per violation up to a maximum of \$[2,000] per action, in addition to the costs of
6 litigation and reasonable attorney’s fees.

7 **Legislative note:** The phrase “responsible agency or individual” is used in this and other places
8 in the act to mean the appropriate state agency or individual charged with responsibilities under
9 this act when regulations should be adopted by an entity or individual outside of the day-to-day
10 operation of the criminal history system. In some states, the “responsible agency or individual”
11 may be the Attorney General or the Office of the Attorney General. In other states, it will be a
12 different actor or entity. ~~If the court determines by a preponderance of the evidence that the~~
13 subject was injured by an intentional or reckless violation, the court shall award the greater of
14 actual damages, or not less than \$[500] per violation up to a maximum of \$[2,000] per action, in
15 addition to the costs of litigation and reasonable attorney’s fees.

16 The responsible agency or individual need not be the same agency or individual each
17 time it is used. A state should fill this position appropriately in light of its own constitutional
18 structure and political landscape. In a state that uses the Attorney General position as the chief
19 law enforcement officer and “minister of justice,” the Attorney General is best suited to fulfill
20 these duties.

21
22 **SECTION 702. DUTIES AND AUTHORITY OF [RESPONSIBLE AGENCY, OR**
23 **INDIVIDUAL].**

24 (a) The [responsible agency or individual] shall adopt ~~regulations~~ rules necessary to
25 implement this [act]. The ~~regulations shall~~ rules must include a provision that:

26 (1) governs the security, accuracy, dissemination, and review of, and individual

1 access to, criminal history record information; ~~[and]~~

2 ~~(2) ensures that electronic data, including biometric information, are stored in a~~
3 ~~manner that reflects best practices for personally identifiable information; and~~

4 ~~(2) ensures that electronic data, including biometric information, are stored in a~~
5 ~~manner that reflects best practices for personally identifiable information; and~~

6 (3) sets a reasonable maximum fee for the cost of disseminating criminal history
7 record information and provides an indigent subject ~~at least one~~ free ~~annual~~ access to the
8 subject's information at least once each calendar year.

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

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

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

16 ~~(d) The [responsible agency or individual] may bring a civil action to enforce this [act].~~

17 ***Legislative Note: Responsible agency or individual. As discussed supra, the note: The***
18 ***phrase "responsible agency or individual" is used in various this and other places in the***
19 ***comments and in brackets in the text of the act itself, including in this article. The drafters***
20 ***intend it to mean the appropriate state agency or individual charged with certain***
21 ***responsibilities under this act. It is most commonly designed to signal a situation when a senior***
22 ***criminal justice policy maker — either in the form of a responsible agency or individual — needs***
23 ***to adopt a regulation or make a decision that is best served by honoring the principle of checks-***
24 ***and balances. That is, the when regulations should be adopted by an entity or individual outside***
25 ***of the day-to-day operation of the criminal history system. In some states, the "responsible***
26 ***agency or individual" may be the Attorney General or the Office of the Attorney General. In***
27 ***other states, it will be a different actor or entity. The central repository is a perfectly***
28 ***appropriate entity to create general operational rules and no one is impugning the integrity of***
29 ***the individuals within the criminal history system. This is simply a structural point. In some***
30 ***states, the "responsible agency or individual" may be the Attorney General or the Office of the***

1 ~~Attorney General. In other states, it will be a different actor or entity. The responsible agency~~
2 ~~or individual need not be filled by the same person or agency or individual each time it is used.~~
3 ~~That is a decision best left to the adopting~~ state. ~~The phrase “responsible agency or~~
4 ~~individual,” allows for each state to should~~ fill this position appropriately in light of its own
5 constitutional structure and political landscape. ~~Ideally, in the states~~In a state that ~~useuses~~ the
6 Attorney General position as the chief law enforcement officer and “minister of justice,” the
7 Attorney General is best suited to fulfill these duties.

8 9 **Comment**

10 *Individual sanctions.* This article provides for an array of sanctions against individuals
11 who violate the act. It also allows both subjects and the relevant government official, again in
12 brackets, to seek injunctive relief. The article affords a subject who is injured by a violation of
13 the act a civil damages remedy with a modest minimum (\$500 per violation up to \$2,000 for
14 related violations) and a fee-shifting provision on the theory that the true extent of actual
15 damages may be difficult to prove. *Cf.* 18 U.S.C. § 2724(b). These sanctions are modeled after
16 some existing provisions, and are limited in scope. All of this, of course, is also designed to
17 serve as a clear and enforceable incentive to minimize inaccuracies.

18
19 *Criminal sanctions.* The drafters do not propose a criminal sanction, in part because they
20 believe that existing criminal statutes cover behavior that warrants a response by the criminal
21 justice system. While anyone can report a suspected criminal violation to the appropriate
22 prosecutorial authorities, the drafters anticipate that the responsible agency or individual and the
23 senior elected or appointed official responsible for governmental oversight, audit, or integrity
24 will be particularly attentive to such circumstances. Of course, the act does not limit the
25 prosecutorial power of any individual or entity to enforce existing law.

26 27 **[ARTICLE] 8**

28 **MISCELLANEOUS PROVISIONS**

29 **SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

32 **[SECTION 802. SEVERABILITY.** If any provision of this [act] or its application to
33 any person or circumstance is held invalid, the invalidity does not affect other provisions or
34 applications of this [act] which can be given effect without the invalid provision or application,
35 and to this end the provisions of this [act] are severable.]

36 *Legislative Note:* Include this section only if this state lacks a general severability statute or a

1 *decision by the highest court of this state stating a general rule of severability.*

2 **SECTION 803. REPEALS; CONFORMING AMENDMENTS.**

3 (a)

4 (b)

5 (c)

6 **SECTION 804. EFFECTIVE DATE.** This [act] takes effect