

Model Fusion Center Statute

Section 1. Definitions

- A. “Audit Log” means a tamper-resistant record of activities on a Law Enforcement Database.
- B. “Data Analytics” means any hardware, software, and/or service capable of analyzing data in order to detect or predict events, persons, objects, or associations. Data Analytics include, but are not limited to, automated license plate recognition, facial recognition, anomaly detection, social media or social network analysis, and predictive policing algorithms.
- C. “Law Enforcement Database” means any system used to store, catalog, access, or analyze information or data capable of being associated with a particular individual or group, including but not limited to audio, video, images, text, metadata, location data, and biometric information.
- D. “Terrorist Activity” means any deliberate acts dangerous to human life that are a violation of the criminal laws of the United States or of any State and appear to be intended:
 - 1. To intimidate or coerce a civilian population;
 - 2. To influence the policy of a government by intimidation or coercion; or
 - 3. To affect the conduct of a government by mass destruction, assassination, or kidnapping.

Section 2. Authorization for State Fusion Center

- A. There is established a State Fusion Center. It shall be called [name]. The mission of the State Fusion Center is to facilitate information sharing and coordination among State and local law enforcement agencies to help ensure an effective response to emergencies, terrorism, and serious criminal offenses, while protecting the civil rights and civil liberties of all individuals.
- B. A Fusion Center Director shall be appointed by the Governor, subject to confirmation by the State Senate.
- C. The [Office of the State Attorney General or Other Agency] shall provide administrative support to and be the custodian of the records of the State Fusion Center.
- D. The State Fusion Center shall enter into a Memorandum of Understanding (“MOU”) with each public agency engaged in the sharing of information and/or data with the State Fusion Center. Each MOU shall identify the relationships of the parties to the MOU and shall require all parties to comply with the provisions of this Act and the rules and regulations of the Criminal Justice Data Oversight Board.

Section 3. Criminal Justice Data Oversight Board

- A. There is established a Criminal Justice Data Oversight Board (“Oversight Board”) which shall, in accordance with the rulemaking provisions of the State Administrative Procedure Act, adopt rules and regulations governing the collection, retention, analysis, and sharing of data in Law Enforcement Databases.
- B. The Oversight Board shall be composed of seven members, each appointed to a four-year term:
 - 1. The State Attorney General or their designee;
 - 2. The Commissioner of the State Police or their designee;
 - 3. The State Public Defender / Director of the State Defenders Association or their designee;
 - 4. The State Chief Privacy Officer or their designee;
 - 5. The State Chief Information Officer or their designee; and
 - 6. Two members of civil liberties organizations, to be selected by the Governor.

If a vacancy on the Oversight Board occurs, the appointing authority shall make an appointment which shall become immediately effective.

- C. The Oversight Board shall meet at regular intervals to carry out the duties set forth in this Act. Official action by the Oversight Board requires the approval of a majority of its members.
- D. Members of the Oversight Board are entitled to compensation [if state law permits] and may be reimbursed for necessary travel and other expenses incurred in the performance of their duties as members of the Oversight Board. The Oversight Board may employ and fix the compensation of such professional assistants and clerical and other employees as the Oversight Board deems necessary for the effective conduct of its work.

Section 4. Covered Agencies

Editor’s Note. In some jurisdictions, agencies such as regional intelligence centers conduct information-sharing activities in a manner similar to state fusion centers. The purpose of this Section is to ensure that the provisions of this Act and any Oversight Board regulations apply to such agencies.

- A. The Oversight Board shall, on an annual basis, determine which State and/or regional law enforcement agencies engage in interagency data and information sharing to such an extent that such sharing constitutes a principal function of the agency (“Covered Agencies”).
- B. Within one-hundred eighty (180) days of a determination by the Oversight Board that an agency is a Covered Agency, such agency shall cease all collection, retention, analysis, and distribution of information and data unless:

1. The agency has received express authorization to engage in such activities by the State Legislature, and
 2. The agency has established MOUs meeting all requirements set forth in Section 2(D) of this Act.
- C. The State Fusion Center and each Covered Agency shall designate a representative responsible for reporting to the Oversight Board, overseeing compliance with all applicable statutes and regulations, and conducting trainings for relevant agency personnel.

Section 5. Authorized Duties

Editor's Note. The mission of fusion centers has expanded considerably since their inception. Fusion centers initially focused on the sharing of intelligence to prevent terrorist attacks; now, many fusion centers investigate ordinary criminal, and even non-criminal, activity. Indeed, much controversy has arisen over the use of fusion centers to collect and disseminate information about political protests and other First Amendment-protected activities. In light of the sensitive nature of the data handled by fusion centers, this Section limits their duties to the investigation of terrorism, serious offenses, and other emergencies, and establishes additional safeguards related to the investigation of First Amendment-protected activities.

- A. *Authorized Duties.* The State Fusion Center is authorized to collect, retain, analyze, and distribute information and data that would reasonably assist in the prevention, investigation, and/or coordination of the response to the following events:
1. Terrorist activity;
 2. Hostile military or paramilitary actions;
 3. Law enforcement emergencies in which immediate action is needed to save lives and/or to protect property, public health, and safety;
 4. Criminal offenses classified as Part I offenses under the Federal Bureau of Investigation's Uniform Crime Report Program;
 5. Missing and/or abducted persons;
 6. Natural or man-made disasters;
 7. Threats to critical infrastructure; and
 8. Fire or medical emergencies.
- B. The State Fusion Center shall not retain, analyze, or distribute information or data except in furtherance of the authorized duties set forth in Section 5.A of this Act.
- C. The State Fusion Center and Covered Agencies shall not retain, analyze, or distribute information or data about the political, religious, or social views of any individual or group unless:
1. Such information or data directly relates to an investigation of criminal or terrorist activity covered in Section 5.A of this Act;

2. There are reasonable grounds to suspect that the subject of the information is involved in criminal or terrorist activity;
3. There is a plausible basis to conclude either (a) that the person or group is advocating conduct which poses a threat to public safety or (b) has committed or intends to commit criminal or terrorist activity on account of a particular political, religious, or social view; and
4. Reasonable efforts have been made to minimize the retention, analysis, and/or distribution of such information or data.

Section 6. Data Quality

Editor's Note. Some fusion centers have been criticized for disseminating potentially unreliable information. One analysis found that fusion centers distributed Suspicious Activity Reports ("SARs") describing individuals as suspicious based on their ethnicity; another found that only 2.3% of SARs furthered an FBI investigation or involved someone on a terrorism watch list.¹ A 2012 report by a Senate subcommittee concluded that intelligence distributed by fusion centers was "of uneven quality," and was "oftentimes shoddy, rarely timely," and "more often than not unrelated to terrorism."² The purpose of this Section is to help ensure the reliability of data distributed by fusion centers.

- A. The State Fusion Center and Covered Agencies shall only distribute information or data determined to have sufficient indicia of reliability. This determination, which shall be memorialized in writing and included with the distributed information and/or data, shall be based upon the following criteria:
 1. The source and nature of the information or data;
 2. Whether the information or data has been independently corroborated;
 3. The degree of detail of the information or data; and
 4. Other criteria to be established by the Oversight Board.
- B. The State Fusion Center and Covered Agencies shall conduct periodic data quality reviews, in conformance with procedures to be established by the Oversight Board. The purpose of such reviews shall be to identify and destroy data and information when:
 1. The information or data is erroneous, misleading, obsolete, or otherwise unreliable;
 2. The retention period for such information or data has expired; or
 3. The information or data has been collected or retained in violation of the provisions of this Act or any other applicable statute or regulation.

¹ See Michael German et al., *Ending Fusion Center Abuses*, Brennan Ctr. (Dec. 15, 2022), <https://www.brennancenter.org/our-work/policy-solutions/ending-fusion-center-abuses>.

² See PERMANENT SUBCOMM. ON INVESTIGATIONS, U.S. SENATE, FEDERAL SUPPORT FOR AND INVOLVEMENT IN STATE AND LOCAL FUSION CENTERS (2012).

Section 7. Privacy

Editor's Note. Fusion centers often collect, access, and disseminate significant quantities of data, from data contained in law enforcement databases to location data collected through technologies such as automated license plate readers. The purpose of this Section is to mitigate potential privacy risks resulting from these activities.

- A. The Oversight Board shall establish rules governing how the State Fusion Center and Covered Agencies may collect, access, analyze, and distribute criminal justice data. These rules shall address, at a minimum, the following topics:
 1. **Data retention.** The Oversight Board shall, after consultation with relevant experts and stakeholders, establish a retention period for criminal justice data, which shall be the shortest possible retention period consistent with the needs of law enforcement in accomplishing the purposes set forth in Section 5(A) of this Act.
 2. **Sensitive data-types.** The Oversight Board shall, after consultation with relevant experts and stakeholders, establish a list of "Sensitive Data-Types," which shall include, at a minimum, biometric data and real-time and historical location data. The Oversight Board shall establish appropriate procedural requirements governing the handling of Sensitive Data-Types. Pending the establishment of these requirements, the State Fusion Center and Covered Agencies shall be required to obtain a warrant based upon probable cause prior to using, analyzing, or distributing Sensitive Data-Types.
 3. **Distribution of data.** The Oversight Board shall, after consultation with relevant experts and stakeholders, establish procedural requirements governing the distribution of information and data by the State Fusion Center and Covered Agencies. These shall include, at a minimum, a requirement that agency personnel certify (a) that dissemination of the information or data is in furtherance of an authorized duty set forth in Section 5 of this Act, and (b) that the information or data satisfies the data quality requirements set forth in Section 6 of this Act.
 4. **Analytics.** The Oversight Board shall, after consultation with relevant experts and stakeholders, determine which Data Analytics the State Fusion Center and Covered Agencies may use in connection with collected data and shall establish appropriate procedural requirements for their use.
- B. The Oversight Board shall establish minimum information technology standards for the State Fusion Center and Covered Agencies. These standards shall include, at a minimum, the criminal intelligence standards provided by the United States Department of Justice in 28 C.F.R. part 23 and by State law.

Section 8. Management, Training, and Compliance

- A. The Oversight Board shall publish training standards regarding the provisions of this Act and any rules established by the Oversight Board and shall ensure the State Fusion Center and Covered Agencies conduct appropriate training consistent with those standards.

- B. The Oversight Board shall establish rules requiring the creation of Audit Logs for the use of certain Law Enforcement Databases by the State Fusion Center and Covered Agencies. These rules shall specify to which Law Enforcement Databases this requirement applies and the required content of such Audit Logs.
- C. The Oversight Board shall establish rules requiring the State Fusion Center and Covered Agencies to maintain a record of any information or data shared externally. This record shall include, at a minimum, the nature of the information or data shared, the persons or entities with whom the information or data was shared, and the reasons for such sharing.
- D. The Oversight Board shall conduct annual audits of the State Fusion Center and each Covered Agency for compliance with the provisions of this Act and any rules established by the Oversight Board. An agency being audited shall provide to the Oversight Board any access to systems, data, and/or personnel that the Oversight Board requires to conduct its assessment. The Oversight Board shall issue a public report with the results of each audit.
- E. The Oversight Board shall develop appropriate hiring protocols for the State Fusion Center including, if appropriate for certain positions, background investigations and/or security clearances.

Section 9. Remedies

- A. Any person or entity injured as a result of a violation of this Act by the State Fusion Center and/or a Covered Agency shall have a civil cause of action against such agency for actual damages and reasonable costs and attorneys' fees. A court shall award punitive damages in an amount no less than \$10,000 if the agency's violation of this Act was knowing and intentional.
- B. The Oversight Board or any court of this State shall prohibit an agency from collecting, retaining, analyzing, or disseminating certain types or categories of information and/or data where necessary to stop ongoing substantial violations or this Act, or to prevent future substantial violations of this Act.

Section 10. Severability

The provisions in this Act are severable. If any part of provision of this Act, or the application of this Act to any person or circumstance, is held invalid, the remainder of this Act, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 11. Preemption

Nothing in this Act shall be construed to preempt or supersede any other law or regulation imposing additional requirements on agencies related to the use of information and/or data, including the use of Law Enforcement Databases, except to the extent that such law or

regulation requires the retention of data for a period longer than that established by the Oversight Board.

Section 12. Effective Date

This Act shall take effect on [DATE].