

## LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066

### Informational Statement

LCB File No. R019-16

LCB File No. R011-16

#### 1. A clear and concise explanation of the need for the adopted regulation.

The NRS and NAC establish the authority of the Nevada Department of Public Safety, General Services Division (the Division) which includes, adopting regulations governing biometric identifiers and the information and data derived from biometric identifiers.

NRS Chapter 179A authorizes the Division to adopt regulations governing biometric identifiers and the information and data derived from biometric identifiers. *See* NRS 179A.075, NRS 179A.080, and NRS 179A.150.

The Division has adopted regulations governing records of criminal history to include biometric identifiers. The amendment to the regulation adds to the language establishing the governance of the collection, use, safeguarding, handling, retention, storage, dissemination, destruction, and the methods by which a person may request the removal of his or her biometric identifiers from the Central Repository and any other agency where his or her biometric identifiers have been stored.

The proposed regulation would also update the procedure for request by a nonprofit agency for a background check on a volunteer. *See* NRS 179A.310(5) (explaining that “[t]he Director of the Department shall adopt regulations to carry out the provisions of this section.”).

The need for the proposed regulation changes is to update regulations and ensure regulations are current and in compliance with NRS 179A.075(1); NRS 179A.080(1-15); NRS 179A.150(11) and NRS 179A.310(12-14). Additionally, through this proposed regulation, law enforcement agencies will have the capability to utilize modern technology in the more accurate and timely identification of individuals.

The proposed regulations, referenced as LCB File No. R019-16, contain the following additions, amendments, and repeals:

**Section 2.** contains proposed regulatory language to define the term “Authorized Recipient”

**Section 3.** contains proposed regulatory language to define the term “Security Policy”

**Section 4.** provides for adoption by reference of the federal Criminal Justice Information Services Security Policy

**Section 5.** provides for adoption by reference of the Nevada Criminal Justice Information System Administrative Policies

**Section 6.** adds language to NAC 179A.020 to clarify which employment agencies would employ a “custodian of records”

**Section 7.** alters the language in NAC 179A.040 to meet the regulation requirements in NRS 179A.075 for the governance of biometric identifiers specific to collecting, using,

safeguarding, handling, retaining, storing, disseminating, and destroying its records of criminal history in accordance with the Security Policy, the Administrative Policies, and the Nevada Revised Statutes

**Section 8.** adds language to NAC 179A.060 to clarify which agencies must ensure that each person who is engaged in data processing and who has access to information in the records of criminal history meets the standards established for employment as a custodian of records. It also adds language to specify that the standards are established pursuant to NAC 179A.070 and the Security Policy. In addition, it adds language requiring the agencies to instruct their personnel periodically on policies and procedures for handling records of criminal history

**Section 9.** adds language to NAC 179A.070 to clarify which agencies must ensure that each person who is engaged in data processing and who has access to information in the records of criminal history meets the standards established for employment as a custodian of records.

**Section 10.** adds language to NAC 179A.080 to clarify which agencies must adhere to this regulation as it relates to an audit by the Director of an informational system of Nevada records of criminal history

**Section 11.** repeals outdated language in NAC 179A.090 relating to the proper procedure for challenging the accuracy of a record of criminal history

**Section 12.** adds language to NAC 179A.150 to clarify that a state background check of a volunteer may be made pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority being offered, language is being repealed to be consistent with the new background check authorities

**Section 13.** adds language to NAC 179A.160 to clarify that a state background check is authorized pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority being offered, language is being repealed to be consistent with the new background check authorities

**Section 14.** adds language to clarify that a grant of money from the Revolving Account to a nonprofit agency may be awarded if the agency applies for a grant of money pursuant to NAC 179A.150 and has complied with all requirement set forth in that section

**Section 15.** repeals NAC 179A.050 due to the existence of duplicative language in NAC 179A.060

The proposed regulations, referenced as LCB File No. R011-16, contain the following additions, amendments, and repeals:

**Section 1.** adds a new section to provide the definition of a “Record of criminal history” for reference purposes.

**2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Public comment was solicited as follows pursuant to NRS 233B.0603:

A Notice of Workshop to Solicit Comment on Proposed Regulations was held 1:00 pm January 8, 2016, at the Gaming Control Board, 1919 College Parkway, Carson City, NV

with video conferencing to the Gaming Control Board, 555 E Washington Ave, Suite 2450, Las Vegas, NV. This Workshop covered LCB File No. R019-16 and R011-16.

*Public Comments:*

None

A written comment was received from the Nevada Criminal Justice Information System Southern Nevada Technical Subcommittee Chair, Carmen Tarrats dated January 22, 2016. The request was to consider revising NAC 179A.060(4) to add language to further clarify who the agency head may designate to instruct personnel on policies and procedures for handling of records of criminal history.

Notice Of Intent To Act Upon A Regulation; Public Comment Hearing was held at 10:00 am, on June 10, 2016 at the Gaming Control Board, 1919 College Parkway, Carson City, NV with video conferencing to the Gaming Control Board, 555 E Washington Ave, Suite 2450, Las Vegas, NV. This Public Comment Hearing covered all 16 sections of LCB File No. R019-16 and section one of R011-16. In addition to the meeting locations listed below, the Public Comment Hearing was posted at all county library main branches.

*Public Comments:*

Terry Daus, Information Security Manager for the City of Henderson:

Mr. Daus wanted to draw everyone's attention to the last line in section 9, where it states that "each agency of criminal justice and authorized recipients shall provide means of collecting using, safe guarding, etc. in accordance with provisions of the security policy, administrative policies, and the state security policies and it's procedures." Mr. Daus explained that this would require all agencies of criminal justice in the state to comply with the state security policies. The state security policies are in conflict at some point or inconsistent and the state security policies are specifically for the executive branch. As NRS 242 states numerous times in sections 111 and 115, those policies do not apply to the Nevada Criminal Justice Information System. The City of Henderson and many other agencies are not a part of the executive branch. In addition, the City of Henderson and many other agencies all signed up to comply with NCJIS and Federal agencies and have no problem with that. But complying with the state security policies would override and undermine the individual agency's ability to authorize and develop security policies, making them subordinate to the state being published. It changes the individual states responsibilities under CJIS state record law, while removing their authority to independently meet the CJIS and NCJIS requirements in the manor best suited to all agency's environment, funding, and needs. Mr. Daus respectfully requested that the part of the sentence at the end of section nine be dropped; taking out any states security policies, standards and procedures established etc. and leaving it as originally, Mr. Daus believes that it wasn't intended that all law enforcement agencies in the state have to comply with these regulations according to the CJIS Security Policies and the Administrative Policies of the Nevada Criminal Justice Information System. Mr. Daus was available for any questions.

Notice Of Intent To Act Upon A Regulation; Public Comment Hearing was held at 9:00 am, on September 23, 2016 at the Gaming Control Board, 1919 College Parkway, Carson

City, NV with video conferencing to the Gaming Control Board, 555 E Washington Ave, Suite 2450, Las Vegas, NV. This Public Comment Hearing covered all 15 sections of LCB File No. R019-16 and section one of R011-16. In addition to the meeting locations listed below, the Public Comment Hearing was posted at all county library main branches.

*Public Comments:*

None

Notices were sent to all persons on the agency's mailing list for administrative regulations, other interested person who have requested an agenda from the Division, and posted at the following locations:

Department of Public Safety, 555 Wright Way, Carson City, NV 89711; Department of Public Safety – General Services Division, 333 West Nye Lane, Carson City, NV 89706; the meeting locations; all criminal justice agencies; the Nevada State Library, Archives and Public Records; to the librarian of the main public library in each county; the Division's public website: <http://gsd.nv.gov/Resources>; the Nevada Office of the Attorney General's Public Notice website: <http://notice.nv.gov>; and the Legislative Counsel Bureau's website: <https://www.leg.state.nv.us/App/Notice/A/>.

Pursuant to NRS 241.020 (2)(c), a copy of supporting materials for the meeting may be obtained by contacting Paula Ryssman at (775) 684-6202, General Services Division at 333 West Nye Lane, Suite 100, Carson City, Nevada 89706.

**3. The number of persons who:**

**(a) Attended each hearing:**

|                                   |   |
|-----------------------------------|---|
| 01/08/2016 Workshop               | 5 |
| 06/10/2016 Public Comment Hearing | 6 |
| 09/23/2016 Public Comment Hearing | 5 |

**(b) Testified at each hearing:**

|                                   |   |
|-----------------------------------|---|
| 01/08/2016 Workshop               | 0 |
| 06/10/2016 Public Comment Hearing | 1 |
| 09/23/2016 Public Comment Hearing | 0 |

**(c) Submitted written comments:**

|                                   |   |
|-----------------------------------|---|
| 01/08/2016 Workshop               | 1 |
| 06/10/2016 Public Comment Hearing | 0 |
| 09/23/2016 Public Comment Hearing | 0 |

**4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

**(a) Name;**

Carmen Tarrats

- (b) **Telephone number;**  
702-828-8399
- (c) **Business address;**  
400 S. Martin L. King Boulevard, Las Vegas, Nevada 89106
- (d) **Business telephone number;**  
See (b)
- (e) **Electronic mail address; and**  
c4543t@lvmpd.com
- (f) **Name of entity or organization represented.**  
Las Vegas Metropolitan Police Department
- (a) **Name;**  
Terry Daus
- (b) **Telephone number;**  
702-267-4260
- (c) **Business address;**  
Unknown
- (d) **Business telephone number;**  
See (b)
- (e) **Electronic mail address; and**  
terry.daus@cityofhenderson.com
- (f) **Name of entity or organization represented.**  
City of Henderson

**5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary. N/A**

The General Services Division, Central Repository determined that small business would not be impacted in any way due to the fact that one portion of the revision only impacts law enforcement agencies and the other portion of the revisions clarifies the authorized federal and state authority for submissions of fingerprints for background checks on volunteers who work with children through non-profit entities.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

The Central Repository accepted and adopted the recommended language provided by the Legislative Counsel Bureau with revisions based on public comment.

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

- (a) **Estimated economic effect on the businesses which they are to regulate.**

none

- (b) **Estimated economic effect on the public which they are to regulate.**

none

8. **The estimated cost to the agency for enforcement of the proposed regulation:**

The General Services Division, Central Repository does not project any extra costs for enforcement of the proposed regulations as existing resources will be utilized in current business practices.

9. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The proposed regulation overlaps or duplicates federal regulations and policies with state regulations and policy regulating the same activity in order to ensure state compliance with mandatory federal law. The Federal Bureau of Investigation (FBI) enforces Title 28, Part 20, Code of Federal Regulations and the Criminal Justice Information Services (CJIS) Security Policy specific to records of criminal history. Criminal Justice Information (CJI) is the term used to refer to all of the FBI CJIS provided data necessary for law enforcement and civil agencies to perform their missions including, but not limited to biometric, identity history, biographic, property, and case/incident history data. Criminal History Record Information (CHRI), sometimes informally referred to as "restricted data", is a subset of CJI. Due to its comparatively sensitive nature, additional controls are required for the access, use and dissemination of CHRI. Title 28, Part 20, Code of Federal Regulations (CFR), defines CHRI and provides the regulatory guidance for dissemination of CHRI.

The security of records of criminal history regulated by the FBI as described above is duplicated in the Nevada State Security, Policies, Standards and Procedures enforced by the Nevada Department of Administration, Enterprise Information Technology Services Division as well as the Nevada Criminal Justice Information System administrative policies enforced by the Nevada Department of Public Safety General Services Division. Duplication is necessary for state actors to be held to the federal standard. Duplication guarantees that state governance exists to ensure proper authority and compliance at the state level. Moreover, duplication allows for the creation of internal policies and procedures to further clarify governance as it relates to agencies within this state.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The proposed regulations will not be more stringent than federal regulations.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

No fees are associated with these regulations.