

**PROPOSED REGULATION OF THE DIRECTOR OF THE
DEPARTMENT OF PUBLIC SAFETY**

LCB File No. R019-16

(This regulation was split out from R011-16 for separate consideration)

Proposed Permanent Regulation Amendment

Explanation of Proposed Changes: The amendments to NAC Chapter 179A proposed by the General Services Division provides the governance for the collection and maintenance of certain information relating to records of criminal history to include a complete set of fingerprints, one or more fingerprints or other “biometric identifier” which is defined as a fingerprint, palm print, scar, bodily mark, tattoo, voiceprint, facial image, retina image or iris image of a person. The proposed change will help ensure proper governance of biometric identifiers and the information and data derived therefrom specific to their 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 amendments to NAC Chapter 179A also modify the authority for a request by a nonprofit agency for a background check on volunteers who work with children. The proposed modification provides the accurate reference to the approved federal and state authorities for submissions of fingerprints specific to a background check on volunteers who work with vulnerable populations such as children.

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- 179A.280 Form for relief of disability; removal of information from database.

GENERAL PROVISIONS

NAC 179A.010 Definitions. (NRS 179A.010) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 179A.015 to 179A.037, inclusive, have the meanings ascribed to them in those sections.

(Supplied in codification; A by Dep't of Motor Veh. & Pub. Safety by R099-00, 8-31-2000; A by Dep't of Pub. Safety by R023-10, 7-22-2010, & by Central Repository for Nev. Records of Crim. Hist. by R045-10, 7-22-2010)

NAC 179A.015 “Central Repository” defined. (NRS 179A.045) “Central Repository” means the Central Repository for Nevada Records of Criminal History.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000)

NAC 179A.020 “Custodian of records” defined. (NRS 179A.080) “Custodian of records” means a person who is employed by an agency of criminal justice in a position in which he or she has responsibility for the maintenance and dissemination of records of criminal history.

[Comm'n on Crimes, Delinquency and Corrections, No. 1, eff. 10-16-80]

NAC 179A.030 “Director” defined. “Director” means the Director of the Department of Public Safety.

(Supplied in codification)

NAC 179A.031 “Information relating to records of mental health” defined. (NRS 179A.167) “Information relating to records of mental health” means information contained in a record:

1. Transmitted to the Central Repository pursuant to NRS 159.0593, 174.035, 175.533, 175.539, 178.425 or 433A.310; or
2. Transmitted to the National Instant Criminal Background Check System pursuant to NRS 179A.163.

(Added to NAC by Dep't of Pub. Safety by R023-10, eff. 7-22-2010, & by Central Repository for Nev. Records of Crim. Hist. by R045-10, eff. 7-22-2010)

NAC 179A.035 “Revolving Account” defined. (NRS 179A.310) “Revolving Account” means the Revolving Account to Investigate the Background of Volunteers Who Work With Children created pursuant to NRS 179A.310.

(Added to NAC by Dep’t of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000)

NAC 179A.037 “Volunteer” defined. (NRS 179A.310) “Volunteer” means:

1. A volunteer of a nonprofit agency who works directly with children; or
2. A prospective volunteer of a nonprofit agency who will work directly with children.

(Added to NAC by Dep’t of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000)

NEW NAC

“Authorized Recipient” defined. “Authorized Recipient” means (1) a non-governmental entity authorized by federal statute or federal executive order to receive criminal history record information for non-criminal justice purposes, or (2) a government agency authorized by federal statute, federal executive order, or state statute which has been approved by the United States Attorney General to receive criminal history record information for non-criminal justice purposes.

NEW NAC

“Authorized Federal Authority” defined. “Authorized Federal Authority” means a federal law that authorizes fingerprint submissions for a fingerprint based background check on individuals working with vulnerable populations.

NEW NAC

Adoption by reference of the Federal Bureau of Investigation’s Criminal Justice Information Services (CJIS) Security Policy and periodic review of the CJIS Security Policy.

1. The Central Repository hereby adopts by reference the Federal Bureau of Investigation’s Criminal Justice Information Services (CJIS) Security Policy. The publication is available, free of charge, from the Federal Bureau of Investigation’s website at the Internet address <https://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.

2. The Central Repository will periodically review the standards and the requirements in the CJIS Security Policy described in subsection 1. Within 30 days after each review, the Central Repository will determine whether any change made to the CJIS Security Policy is appropriate for application in this State. If the Central Repository does not disapprove a change to the adopted CJIS Security Policy within 30 days after each review, the change is deemed to have been approved by the Central Repository.

NEW NAC

Adoption by reference of the Nevada Criminal Justice Information System (NCJIS) Administrative Policies and periodic review of the NCJIS Administrative Policies.

1. The Central Repository hereby adopts by reference the Nevada Criminal Justice Information System (NCJIS) Administrative Policies. The publication is available, free of charge, from the Central Repository at 333 West Nye Lane, Suite 100, Carson City, NV 89706 or by calling (775) 684-6262.

2. *The Central Repository will periodically review the standards and the requirements in the NCJIS Administrative Policies described in subsection 1. Within 30 days after each review, the Central Repository will determine whether any change made to the NCJIS Administrative Policies is appropriate for application. If the Central Repository does not disapprove a change to the adopted NCJIS Administrative Policies within 30 days after each review, the change is deemed to have been approved by the Central Repository.*

NEW NAC

Adoption by reference of the Nevada State Security Policies, Standards and Procedures and periodic review of the Nevada State Security Policies, Standards and Procedures.

1. *The Central Repository hereby adopts by reference the Nevada State Security Policies, Standards and Procedures. The publication is available, free of charge, from the State of Nevada Enterprise IT website at the Internet address <http://it.nv.gov/governance/state-policy-procedures/>.*

2. *The Central Repository will periodically review the standards and the requirements in the Nevada State Security Policies, Standards and Procedures described in subsection 1. Within 30 days after each review, the Central Repository will determine whether any change made to the Nevada State Security Policies, Standards and Procedures is appropriate for application. If the Central Repository does not disapprove a change to the Nevada State Security Policies, Standards and Procedures within 30 days after each review, the change is deemed to have been approved by the Central Repository.*

NAC 179A.040 Security of records of criminal history generally. (NRS 179A.080)

1. Each agency of criminal justice *and each authorized recipient* shall provide a means of protecting, *safeguarding, storing, disseminating, and destroying* its records of criminal history *in accordance with the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy, the Nevada Criminal Justice Information System (NCJIS) Administrative Policies and the Nevada State Security Policies, Standards and Procedures.*

~~{(a) During any times when the records are accessible to unauthorized persons; and
—(b) In any circumstances where the records are unattended during certain hours of the day.
—2. Each agency of criminal justice shall provide a means of eliminating the operational capability of computer terminals which give access to the Central Repository whenever those terminals are not under the direct control of authorized personnel.
—3. The Central Repository must be provided with a means of preventing access to the computer facility except by authorized personnel.
—4. Computer printouts which contain records of criminal history and are generated as a result of testing the system or trouble shooting must be destroyed after such a use.}~~

[Comm'n on Crimes, Delinquency and Corrections, No. 5, eff. 10-16-80]—(NAC A by Dep't of Pub. Safety by R023-10, 7-22-2010)

NAC 179A.050 Authorization for access; instruction of personnel. (NRS 179A.080)

1. Only those persons specifically authorized by an agency of criminal justice *or an authorized recipient* may have routine access to areas and devices where records of criminal history are stored.

2. Each agency of criminal justice *and authorized recipient* shall instruct its *authorized* personnel periodically on its policies and procedures for handling records of criminal history.

NEW NAC: Authorization for use of records of criminal history.

As used in this section, records of criminal history are authorized to be used in accordance with the administration of criminal justice as defined in NRS 179A.020 or such other purposes as defined by Nevada Revised Statutes or Federal Authorities.

NEW NAC: Collection of records of criminal history.

As used in this section, the collection of records of criminal history is to be conducted in accordance with NRS 179A.075.

NEW NAC: Retention of records of criminal history.

Adoption by reference and periodic review of certain standards of retention of documents and records.

1. The Central Repository hereby adopts by reference the State Agency Retention Schedules Schedule for the Department of Public Safety General Services Division adopted by the Nevada State Library, Archives and Public Records. The publication is available, free of charge, from the Department of Public Safety General Services Division' website at the Internet address

http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/State/1_General_Schedule/General%20Schedule.PDF.

2. The Central Repository will periodically review the standards and the requirements in the Retention Schedule described in subsection 1. Within 30 days after each review, the Central Repository will determine whether any change made to the Retention Schedule is appropriate for application. If the Central Repository does not disapprove a change to the adopted Retention Schedule within 30 days after each review, the change is deemed to have been approved by the Central Repository.

NAC 179A.060 Security of records at the Central Repository, an agency of criminal justice, and an authorized recipient. (NRS 179A.080)

1. Each person who is engaged in data processing and who has access to information in the records of criminal history ~~at~~ an agency of criminal justice must meet the standards established for employment as a custodian of records and pursuant to FBI Criminal Justice Information Services (CJIS) Security Policy.

2. Only those persons specifically authorized by ~~the head of the repository~~ the standards established for employment as a custodian of records and the CJIS Security Policy may have access to areas and devices where records of criminal history are stored or accessed.

3. The Central Repository must maintain duplicate copies of the computerized records of criminal history in a safe storage area located outside the normal confines of the data processing area. To the extent practicable, the copies must be kept current with new information being entered into the computerized records.

4. The head of the agency of criminal justice, the authorized recipient, or his or her designee shall instruct his or her personnel periodically on policies and procedures for handling records of criminal history.

[Comm'n on Crimes, Delinquency and Corrections, No. 8, eff. 10-16-80]

NAC 179A.070 Standards for employment as custodian of records. (NRS 179A.080)

1. Every person who maintains or disseminates Nevada records of criminal history must meet the standards described in this section for employment as a custodian of records.

2. Before being appointed by an agency as a custodian of records, a person must provide the agency with:

(a) A statement of his or her personal history and such other information as the agency may require to determine the person's ability to perform the duties of the position; and

(b) Two fingerprint cards with his or her fingerprints so that a state and national background check of the person's records of criminal history can be performed.

3. The agency may retain statements and documents received from the person seeking the appointment and may use the facts obtained therefrom to determine the person's suitability for the appointment.

4. A person is disqualified from appointment as a custodian of records if he or she has:

(a) Been convicted of any crime for which registration is required pursuant to chapter 179C or 179D of NRS;

(b) Been convicted of two or more crimes of which fraud or intent to defraud is an element, or two or more offenses of larceny;

(c) Been convicted of any crime in which stealing, altering, falsifying or defacing public records is an element;

(d) Practiced or attempted to practice any deception or fraud in his or her application, examination, documentation or statements or in securing eligibility for appointment as a custodian of records; or

(e) Any outstanding criminal warrants for the person's arrest.

5. ~~†An agency of criminal justice†~~ *The agency* may set higher standards for its appointment of a custodian of records than those established by this section.

[Comm'n on Crimes, Delinquency and Corrections, No. 6, eff. 10-16-80]—(NAC A by Dep't of Pub. Safety by R023-10, 7-22-2010)

NAC 179A.080 Audits of informational systems. (NRS 179A.080) An audit by the Director of an informational system of Nevada records of criminal history must include an examination of:

1. The agency ~~†s†~~ *of criminal justice's* method of reporting information to the Central Repository;

2. The completeness and accuracy of the agency ~~†s†~~ *of criminal justice's* records;

3. The agency ~~†s†~~ *of criminal justice's and authorized recipient's* controls over disseminating its records;

4. The agency ~~†s†~~ *of criminal justice's and authorized recipient's* physical, technical and administrative security; and

5. The agency ~~†s†~~ *of criminal justice's and authorized recipient's* provisions for allowing a person to exercise the right to review and challenge his or her Nevada record of criminal history.

[Comm'n on Crimes, Delinquency and Corrections, No. 10, eff. 10-16-80]—(NAC A by Dep't of Pub. Safety by R023-10, 7-22-2010)

CORRECTION OF RECORDS

NAC 179A.090 Challenge to accuracy of records of criminal history; correction; removal. (NRS 179A.080, 179A.150)

1. Any person who believes that an error exists in a record of his or her criminal history may challenge the accuracy of the record or any erroneous entry in it.

2. The challenge must be presented to the agency of criminal justice in which the information was originally recorded and must be made on a form prescribed by the Director.

3. Upon receiving the challenge, the agency shall review the record and, in writing, grant or deny the challenge.

4. If a correction of the challenged record is allowed, the agency shall modify its record and the corresponding record in the Central Repository. ~~{The agency shall complete the bottom section of the proper form, allowing or denying the modification.}~~ If the ~~{modification}~~ challenge is denied, the agency shall explain the reason for the denial.

5. The proper method to request removal of a record of criminal history is provided for in NRS 179.245 through NRS 179.259.

[Comm'n on Crimes, Delinquency and Corrections, No. 2, eff. 10-16-80]—(NAC A by Dep't of Pub. Safety by R023-10, 7-22-2010)

NAC 179A.100 Dissemination of notice of correction. (NRS 179A.080) If an agency finds that a person's record of criminal history is incorrect, the agency shall complete the form prescribed by the Director for disseminating a notice of corrections. In completing the form, the agency shall:

1. Include a full description of the person;
2. Include the original record of the person;
3. Explain the necessary corrections; and
4. Sign the form.

[Comm'n on Crimes, Delinquency and Corrections, No. 3, eff. 10-16-80]

NAC 179A.110 Appeals. (NRS 179A.080)

1. If a correction of a record of criminal history is not allowed by an agency, the person making the challenge may appeal, in writing, to the Director of the Department of Public Safety, 555 Wright Way, Carson City, Nevada 89711.

2. A copy of the form used to challenge the record and a copy of the person's record must accompany the appeal.

3. The Director will make a decision on the appeal, requiring or denying a modification of the record.

4. The Director will give the agency and the person who appealed notice of the disposition of the matter.

5. If a modification is required pursuant to the appeal, the agency shall complete the proper form and disseminate the proper information.

[Comm'n on Crimes, Delinquency and Corrections, No. 4, eff. 10-16-80]

REVOLVING ACCOUNT TO INVESTIGATE BACKGROUND OF VOLUNTEERS WHO WORK WITH CHILDREN

NAC 179A.150 Procedure for request by nonprofit agency for background check on volunteer. (NRS 179A.310)

1. Before submitting a request to the Central Repository for a background check of a volunteer, a nonprofit agency must apply for a grant of money from the Revolving Account pursuant to NRS 179A.310 on the form prescribed by the Central Repository.

2. A nonprofit agency that requests a state background check of a volunteer *pursuant to NRS 179A.100 or an authorized federal authority* must submit to the Central Repository a noncriminal fingerprint ~~impression~~ card that contains the fingerprints of the volunteer about whom the request is made. ~~{The card must be completed by an entity that has the ability to record fingerprint impressions, such as a county sheriff's office or municipal police department.~~

~~— 3. — A nonprofit agency that submits a request for a background check of a volunteer may request a national background check in addition to a state background check. An agency that requests a national background check must, in addition to the fingerprint card required pursuant to subsection 2, submit an FD-258 fingerprint card to the Central Repository.~~

(Added to NAC by Dep't of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000; A by Dep't of Pub. Safety by R023-10, 7-22-2010)

NAC 179A.160 Performance of background check by Central Repository; denial of request for grant of money from Account. (NRS 179A.310)

1. Upon receipt of a request for a background check that complies with NAC 179A.150, the Central Repository shall:

(a) Except as otherwise provided in subsection 2, conduct a background check of state records pursuant to ~~{NRS 179A.210;}~~ *NRS 179A.100 or an authorized federal authority.* ~~{and~~

~~— (b) If the request includes a request for a national background check, send the FD-258 fingerprint card to the Federal Bureau of Investigation for a search of the criminal history records of the Federal Bureau of Investigation.~~

2. If the Central Repository denies a request for a grant of money from the Revolving Account due to insufficient funds, the Central Repository shall not conduct a background check pursuant to ~~{NRS 179A.210}~~ *NRS 179A.100 or the authorized federal authority* and shall return the fingerprint card to the nonprofit agency.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000; A by Dep't of Pub. Safety by R023-10, 7-22-2010)

NAC 179A.180 Criteria for grant of money from Account; use of money. (NRS 179A.310)

1. The Central Repository shall not award a grant of money from the Revolving Account unless:

(a) The nonprofit agency that requested the background check:

(1) Is registered as a nonprofit agency with the Secretary of State;

(2) Provides a service in this state which involves working with persons who are less than 16 years of age; and

(3) Has complied with NAC 179A.150; and

(b) The person about whom the background check is made:

(1) Is a volunteer for the nonprofit agency who requested the background check; and

(2) Has direct contact with and provides services primarily to, or will have direct contact with and will provide services primarily to, persons who are less than 16 years of age and who are residents of this state.

2. The Central Repository shall use money from the Revolving Account to pay for the costs of conducting background checks for volunteers.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000; A by Dep't of Pub. Safety by R023-10, 7-22-2010)

NAC 179A.190 Priority of allocation of money in Account. (NRS 179A.310) The Director will allocate money in the Revolving Account for award based on the date that the request was received by the Central Repository.

(Added to NAC by Dep't of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000; A by Dep't of Pub. Safety by R023-10, 7-22-2010)

NAC 179A.200 Contributions to Account. (NRS 179A.310)

1. A person may contribute money to the Revolving Account by gift, donation, bequest, grant or other source of money.

2. A person who desires to make a contribution to the Revolving Account must submit with the contribution a letter which states:

(a) That the contribution is being made towards the Revolving Account to offset the costs of background checks of volunteers; and

(b) The name of the person making the contribution.

3. A contribution to the Revolving Account must be made payable to the "Nevada State Treasurer."

(Added to NAC by Dep't of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000)

TRANSMITTAL OF MENTAL HEALTH INFORMATION TO NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

NAC 179A.250 Form for transmittal; entry of information into database of National Instant Criminal Background Check System; contents of database; confidentiality of information. (NRS 179A.167)

1. The Central Repository will make available to the courts of this State a form for the transmittal of information relating to records of mental health.

2. Upon receipt of a form for the transmittal of information relating to records of mental health, the Central Repository will ensure that the information reported in the record is included in the database of the National Instant Criminal Background Check System.

3. The information included in the database of the National Instant Criminal Background Check System must provide, without limitation, the following information concerning the person who is the subject of the records of mental health:

(a) Full legal name;

(b) Date of birth;

(c) State of residence, if available;

(d) Place of birth, if available;

(e) Gender;

(f) Race, if available;

(g) Height, if available;

(h) Weight, if available;

(i) Hair and eye color, if available;

(j) Social security number, if available;

(k) Aliases, if any; and

(l) Any other information that assists with establishing the identity of the person.

4. The Central Repository will ensure the confidentiality of the information included on the forms for the transmittal of information relating to records of mental health received by the courts by maintaining such forms in a secure environment with limited access.

(Added to NAC by Central Repository for Nev. Records of Crim. Hist. by R045-10, eff. 7-22-2010)

NAC 179A.260 Identification by Director or designee of erroneous information in database; procedure for correction. (NRS 179A.167) If the Director or the Director's designee determines that information relating to records of mental health held by the Central Repository and included in the database of the National Instant Criminal Background Check System is inaccurate, insufficient or incomplete in any material respect, the Central Repository shall:

1. If it is determined to be an error in data entry in the database of the National Instant Criminal Background Check System, correct the error within 1 business day.

2. If it is determined to be an error contained in a form for the transmittal of information relating to records of mental health provided by a court, provide the person who is the subject of information relating to records of mental health the name of the court and a person employed at the court who may be contacted for the purpose of challenging the accuracy of the information contained in such records. Upon receipt from a court of a corrected form for the transmittal of information relating to records of mental health, the Central Repository shall make the corrections to the database of the National Instant Criminal Background Check System within 3 business days.

3. Provide a letter to the person who is the subject of information relating to records of mental health and to the court who provided the information contained in such records stating that the information contained in the records has been corrected in the database of the National Instant Criminal Background Check System.

(Added to NAC by Dep't of Pub. Safety by R023-10, eff. 7-22-2010)

NAC 179A.270 Inspection, review or challenge by certain persons to accuracy of information; fee. (NRS 179A.167) A person who is or believes he or she may be the subject of information relating to records of mental health held by the Central Repository and included in the database of the National Instant Criminal Background Check System may inspect, review or challenge the accuracy of the information contained in such records by:

1. Appearing in person at the office of the Central Repository;
2. Providing a government-issued photo identification card as proof of identity;
3. Completing the form designated by the Central Repository to permit inspection, review or challenge of the accuracy of the information contained in such records; and
4. Paying the fee of \$18.45 for inspection, review or challenge of the accuracy of the information contained in such records in the form of a certified check or money order made payable to the "Records and Technology Division of the Department of Public Safety."

(Added to NAC by Central Repository for Nev. Records of Crim. Hist. by R045-10, eff. 7-22-2010)

NAC 179A.280 Form for relief of disability; removal of information from database. (NRS 179A.167)

1. The Central Repository shall make available to the courts of this State a form for the relief from disability of a person who is the subject of information relating to records of mental health.

2. Within 5 business days after receiving from a court a form for the relief from disability of a person who is the subject of information relating to records of mental health, the Central Repository shall remove such records from the database of the National Instant Criminal Background Check System and destroy any forms related to such records held by the Central Repository.

3. As used in this section, “form for the relief from disability” means the form used by a court to transmit a record of an order issued pursuant to NRS 179A.163.

(Added to NAC by Dep’t of Pub. Safety by R023-10, eff. 7-22-2010)