

SECOND REVISED PROPOSED REGULATION
OF THE DIRECTOR OF THE
DEPARTMENT OF PUBLIC SAFETY

LCB File No. R019-16

July 7, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-10 and 15, NRS 179A.080; §11, NRS 179A.080 and 179A.150; §§12-14, NRS 179A.080 and 179A.310.

A REGULATION relating to records of criminal history; revising provisions relating to records of criminal history; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Director of the Department of Public Safety to adopt regulations for administering the provisions of chapter 179A of NRS, which concerns records of criminal history. (NRS 179A.080)

Sections 4 and 5 of this regulation, respectively, provide that the Director adopts by reference the *Security Policy* of the Criminal Justice Information Services Division of the Federal Bureau of Investigation (hereinafter “*Security Policy*”) and the *Administrative Policies* of the Nevada Criminal Justice Information System (hereinafter “*Administrative Policies*”). **Sections 4 and 5** also provide that the Director or his or her designee will periodically review each publication and, not later than 30 days after each review, determine whether any change made to either publication is appropriate for application. If the Director or his or her designee does not disapprove a change made to a publication within 30 days after a review, the change is deemed to be approved.

Sections 7-10 of this regulation apply certain provisions relating to records of criminal history that currently apply to the Central Repository for Nevada Records of Criminal History or agencies of criminal justice, or both, to authorized recipients, which **section 2** of this regulation generally defines as certain entities authorized to receive information concerning records of criminal history for noncriminal justice purposes. **Section 7** of this regulation requires each agency of criminal justice and authorized recipient to provide a means of collecting, using, safeguarding, handling, retaining, storing, disseminating and destroying its records of criminal history in accordance with the provisions of chapter 179A of NAC and chapter 179A of NRS, the *Security Policy* and the *Administrative Policies*. **Section 8** of this regulation requires each person who is engaged in data processing and has access to information in the records of criminal history at the Central Repository, an agency of criminal justice or an authorized

recipient to meet the standards established for employment as a custodian of records and the standards established in the *Security Policy*. **Section 8** also specifies that only those persons who meet such requirements or who are specifically authorized by the Central Repository, an agency of criminal justice or an authorized recipient may have access to areas and devices where records of criminal history are stored or accessed. **Section 15** of this regulation repeals provisions now included in **section 8**. **Section 9** of this regulation decreases the number of fingerprint cards that a person, before being appointed as a custodian of records, must provide to the Central Repository, an agency of criminal justice or an authorized recipient, as applicable, for the purpose of performing a state and national background check of the person's records of criminal history.

Existing law establishes the Revolving Account to Investigate the Background of Volunteers Who Work With Children. The money in the Account may only be used to pay the costs of the Central Repository to process requests from nonprofit agencies to determine whether a volunteer or prospective volunteer of an agency who works or will work directly with children has committed certain offenses. Existing law requires the Director of the Department to adopt regulations to carry out provisions relating to the Account. (NRS 179A.310) **Sections 12 and 13** of this regulation: (1) provide references to the provisions of state and federal law that authorize a nonprofit agency to request, and the Central Repository to conduct, a background check of a volunteer or prospective volunteer; and (2) revise provisions relating to the submission of fingerprint cards. **Section 12** also revises provisions relating to the submission of a request to the Central Repository by a nonprofit agency for a background check of a volunteer or prospective volunteer by authorizing, instead of requiring, the nonprofit agency to apply for a grant of money from the Account before submitting the request.

Section 1. Chapter 179A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Authorized recipient” means:*

1. A nongovernmental entity authorized by federal law or an executive order of the President of the United States to receive information concerning records of criminal history for noncriminal justice purposes; or

2. A government agency authorized by federal law, an executive order of the President of the United States or a state law that has been approved by the Attorney General of the United States to receive information concerning records of criminal history for noncriminal justice purposes.

Sec. 3. *“Security Policy” means the Security Policy of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, as adopted by reference in section 4 of this regulation.*

Sec. 4. 1. *The Director hereby adopts by reference the Security Policy of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, which is available, free of charge, at the Internet address <https://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>.*

2. *The Director or his or her designee will periodically review the standards and requirements in the Security Policy and, not later than 30 days after the completion of each review, determine whether any change made to the Security Policy is appropriate for application. If the Director or his or her designee does not disapprove a change made to the Security Policy within 30 days after a review, the change is deemed to be approved by the Director or his or her designee.*

Sec. 5. 1. *The Director hereby adopts by reference the Administrative Policies of the Nevada Criminal Justice Information System, which is available from the Central Repository, free of charge, at 333 West Nye Lane, Suite 101, Carson City, Nevada 89706, or by telephone at (775) 684-6262.*

2. *The Director or his or her designee will periodically review the standards and requirements in the Administrative Policies and, not later than 30 days after each review, determine whether any change made to the Administrative Policies is appropriate for application. If the Director or his or her designee does not disapprove a change made to the Administrative Policies within 30 days after a review, the change is deemed to be approved by the Director or his or her designee.*

Sec. 6. NAC 179A.020 is hereby amended to read as follows:

179A.020 “Custodian of records” means a person who is employed by *the Central Repository*, an agency of criminal justice *or an authorized recipient* in a position in which he or she has responsibility for the maintenance and dissemination of records of criminal history.

Sec. 7. NAC 179A.040 is hereby amended to read as follows:

179A.040 ~~{-}~~ Each agency of criminal justice *and authorized recipient* shall provide a means of ~~{protecting}~~ *collecting, using, safeguarding, handling, retaining, storing, disseminating and destroying* its records of criminal history ~~{-~~

~~—(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.~~ *{-*

in accordance with the provisions of this chapter and chapter 179A of NRS, the Security Policy and the Administrative Policies of the Nevada Criminal Justice Information System, as adopted by reference in section 5 of this regulation.

Sec. 8. NAC 179A.060 is hereby amended to read as follows:

179A.060 1. Each person who is engaged in data processing and who has access to information in the records of criminal history at ~~{a repository}~~ *the Central Repository, an agency*

of criminal justice or an authorized recipient must meet the standards established for employment as a custodian of records ~~{}~~ *pursuant to NAC 179A.070 and the standards established in the Security Policy.*

2. Only those persons *who meet the requirements of subsection 1 or who are* specifically authorized by the ~~{head of the repository}~~ *Central Repository, an agency of criminal justice or an authorized recipient* may have access to areas and devices where records of criminal history are stored ~~{}~~ *or accessed.*

3. ~~{Duplicate}~~ *The heads of the Central Repository, each agency of criminal justice and each authorized recipient or their respective designees shall instruct their personnel periodically on policies and procedures for handling records of criminal history.*

4. *The Central Repository shall maintain duplicate* copies of ~~{the}~~ *its* computerized records of criminal history ~~{must be made and placed}~~ 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 repository shall instruct his or her personnel periodically on policies and procedures for handling records of criminal history.}~~

Sec. 9. NAC 179A.070 is hereby amended to read as follows:

179A.070 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 *the Central Repository, an agency of criminal justice or an authorized recipient* as a custodian of records, a person must provide the *Central Repository, agency of criminal justice or authorized recipient, as applicable,* with:

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

(b) ~~Two~~ **One** fingerprint ~~cards~~ **card** 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 **Central Repository**, agency **of criminal justice or authorized recipient** 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~~ **The Central Repository**, an agency of criminal justice **or an authorized recipient** may set higher standards for its appointment of a custodian of records than those established by this section.

Sec. 10. NAC 179A.080 is hereby amended to read as follows:

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}~~ method of *the agency of criminal justice of* reporting information to the Central Repository;
2. The completeness and accuracy of the ~~{agency's}~~ records ~~{}~~ *of the agency of criminal justice;*
3. The ~~{agency's}~~ controls *of the agency of criminal justice or authorized recipient* over disseminating its records;
4. The ~~{agency's}~~ physical, technical and administrative security ~~{}~~ *of the agency of criminal justice or authorized recipient;* and
5. The ~~{agency's}~~ provisions *of the agency of criminal justice or authorized recipient* for allowing a person to exercise the right to review and challenge his or her Nevada record of criminal history.

Sec. 11. NAC 179A.090 is hereby amended to read as follows:

- 179A.090 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.~~

Sec. 12. NAC 179A.150 is hereby amended to read as follows:

179A.150 1. Before submitting a request to the Central Repository for a background check of a volunteer, a nonprofit agency ~~{must}~~ *may* 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 subsection 5 of NRS 179A.100 or a provision of federal law that authorizes the submission of fingerprints for a fingerprint-based background check of a person working with vulnerable populations, including, without limitation, children,* 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.}~~

Sec. 13. NAC 179A.160 is hereby amended to read as follows:

179A.160 1. Upon receipt of a request for a background check that complies with NAC 179A.150, the Central Repository shall ~~{~~

~~—(a) Except}, *except* as otherwise provided in subsection 2, conduct a background check of state records pursuant to ~~{NRS 179A.210; 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.]~~ *subsection 5 of NRS 179A.100 or a provision of federal law that authorizes the submission of fingerprints for a fingerprint-based background check of a person working with vulnerable populations, including, without limitation, children.*

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]~~ *subsection 1* and shall return the fingerprint card to the nonprofit agency.

Sec. 14. NAC 179A.180 is hereby amended to read as follows:

179A.180 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]~~ *Applied for a grant of money pursuant to* NAC 179A.150 ~~[;]~~ *and has complied with all requirements set forth in that section;* 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.

Sec. 15. NAC 179A.050 is hereby repealed.

TEXT OF REPEALED SECTION

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

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

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