

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

LCB File No. R023-10

(This draft replaces the one posted 2/11/10 as certain provisions relating to records of
mental health have been moved to LCB File No. R045-10)

CHAPTER 179A - RECORDS OF CRIMINAL HISTORY

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GENERAL PROVISIONS

NAC 179A.010 Definitions. (NRS 179A.080, 179A.310) 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; by Dep't of Motor Veh. & Pub. Safety by R099-00, 8-31-2000) -
Need to update to reflect no longer DMV & PS and change 179A.037 to add the citations for two additional definitions.

NAC 179A.015 “Central Repository” defined. (NRS 179A.080, 179A.310)
“Central Repository” means the Central Repository for Nevada Records of Criminal History *housed within the Department of Public Safety, Records and Technology Division.*

(Added to NAC by Dep't of Motor Veh. & Pub. Safety by R099-00, eff. 8-31-2000)
Need to update to reflect no longer DMV & PS

NAC 179A.020 “Custodian of records” defined. “Custodian of records” means a person who is employed by an agency of criminal justice in a position in which he 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.033 “Region” defined. (NRS 179A.080, 179A.310) “Region” means a group of counties for which a certain percentage of the money in the Revolving Account has been allocated pursuant to NAC 179A.190.~~

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

NAC 179A.035 “Revolving Account” defined. (NRS 179A.080, 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)
Need to update to reflect no longer DMV & PS

NAC 179A.037 “Volunteer” defined. (NRS 179A.080, 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)
Need to update to reflect no longer DMV & PS

NAC 179A.xxx *National Instant Criminal Background Check System (NICS) defined.*
“National Instant Criminal Background Check System (NICS)” means the national system created by the federal Brady Handgun Violence Prevention Act of 1993, Public Law 103-159.

NOTE: This section has been removed from this regulation and is located in R045-10: NAC 179A.xxx Record of Mental Health defined. “Record of Mental Health” means information contained in a record transmitted to the Central Repository pursuant to NRS 159.055, 174.035, 175.433, 175,539, 178.425, or 433A.310.

NAC 179A.040 Security of records generally.

1. Each agency of criminal justice shall provide a means of protecting 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 of Nevada Records of Criminal History whenever those terminals are not under the direct control of authorized personnel.
3. The 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 179A.050 Authorization for access; instruction of personnel.

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.
(Comm’n on Crimes, Delinquency and Corrections, No. 7, eff. 10-16-80)

NAC 179A.060 Security of records at repository.

1. Each person who is engaged in data processing and who has access to information in the records of criminal history at a repository must meet the standards established for employment as a custodian of records.
2. Only those persons specifically authorized by the head of the repository may have access to areas and devices where records of criminal history are stored.
3. Duplicate copies of the 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 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.

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 personal history and such other information as the agency may require to determine his ability to perform the duties of the position; and

(b) Two fingerprint cards with his fingerprints *so that a state and national criminal history records check 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 his suitability for the appointment.

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

(a) Been convicted of any crime for which registration is required pursuant to NRS ~~[207.090 or 207.152]~~ *179C or 179D*;

(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; or

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

(e) Outstanding criminal warrants for his arrest.

5. An agency of criminal justice 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 179A.080 Audits of informational systems. An audit by the Director of an informational system of Nevada records of criminal history will include an examination of:

1. The agency's method of reporting information to the Central Repository;

2. The completeness and accuracy of the agency's records;

3. The agency's controls over disseminating its records;

4. The agency's physical, ~~and~~ administrative, *and technical* security; and

5. The agency's provisions for allowing a person to exercise his right to review and challenge his Nevada record of criminal history.

(Comm'n on Crimes, Delinquency and Corrections, No. 10, eff. 10-16-80)

CORRECTION OF RECORDS

NAC 179A.090 Challenges.

1. Any person who believes that an error exists in a record of his 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 of Nevada Records of Criminal History. The agency shall complete the bottom section of the proper form, allowing or denying the modification. If the modification is denied, the agency shall explain the reason for the denial.

(Comm'n on Crimes, Delinquency and Corrections, No. 2, eff. 10-16-80)

NAC 179A.100 Dissemination of notice of correction. 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.

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; fees; request for award of money from Account. (NRS 179A.080, 179A.310)

1. Before submitting a request to the Central Repository for a background check of volunteer, a nonprofit agency must ~~open an account with the Central Repository and enter into a memorandum of understanding with the Central Repository.~~ *apply for and be granted an account designated as eligible for a grant award 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 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. ~~In addition to the fingerprint card, the nonprofit agency that requests a background check must:~~

~~—(a) Pay \$15 to the Central Repository for each background check requested; or~~

~~—(b) Submit a request to the Central Repository for an award of money from the Revolving Account pursuant to NAC 179A.170 to pay the cost of the background check.]~~

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 ~~;~~

~~—(a) In] in~~ addition to the fingerprint card required pursuant to subsection 2, submit an FD-258 fingerprint card to the Central Repository . ~~]; and~~

~~—(b) In addition to the fee described in subsection 2, pay \$18 to the Central Repository for each background check requested.]~~

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

4. The Central Repository may use money from the Revolving Account to offset the cost of conducting a national background check.

NAC 179A.160 Performance of background check by Central Repository; denial of request for award of money from Account. (NRS 179A.080, 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; 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 an award of money from the Revolving Account, *because funds in the Account to Investigation the Background of Volunteers Who Work With Children have been depleted*, the Central Repository shall not conduct a background check pursuant to NRS 179A.210 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)

~~[NAC 179A.170 Verification of availability of money in Account. (NRS 179A.080, 179A.310)~~

~~—1. Before submitting a request for an award of money from the Revolving Account, a nonprofit agency must check the balance of available money in the Account for the region in which the agency is located by calling the account status telephone number established by the Central Repository.~~

~~—2. A nonprofit agency shall not submit a request for an award of money in the Revolving Account in an amount of more than 50 percent of the total amount of money available in the Account for award to nonprofit agencies in the region in which the agency is located.~~

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

NAC 179A.180 Criteria for award of money from Account. (NRS 179A.080, 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) ~~[Has not received money from the Revolving Account within the 30 days immediately preceding the date the request is processed;~~

~~—(2)]~~ Is registered as a nonprofit agency with the Secretary of State;

~~[(3)]~~ (2) Provides a service in this state which involves working with persons who are less than 16 years of age; and

~~[(4)]~~ (3) Has complied with NAC 179A.150 ~~];~~

(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; and

~~{(c) The amount of the request is less than or equal to 50 percent of the total amount of money available in the Account for award in the region in which the agency is located.}~~

2. The Central Repository shall ~~{award money allocated to a region pursuant to NAC 179A.190 to nonprofit agencies in that region in the order that requests are received.}~~ *use money from the Revolving Account to offset the cost of conducting background checks for volunteers.*

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

NAC 179A.190 Allocation of money in Account. (NRS 179A.080, 179A.310)

1. ~~{When the Director receives money for deposit in the Revolving Account and when redistributing money in the Account pursuant to subsection 2, the}~~ *The* Director will allocate money in the Revolving Account for award *based on the date the request was received by the Central Repository.* ~~{in the following manner:~~

~~—(a) Seventy percent of the money will be allocated for award to requests from nonprofit agencies in Clark, Nye and Lincoln counties;~~

~~—(b) Twenty-seven percent of the money will be allocated for award to requests from nonprofit agencies in Washoe, Douglas, Lyon, Churchill, Humboldt, Pershing, Lander, Mineral, Storey and Esmeralda counties, and Carson City; and~~

~~—(c) Three percent of the money will be allocated for award to requests from nonprofit agencies in Elko, White Pine and Eureka counties.~~

~~—2. Biannually, the Director will determine the total amount of money in the Revolving Account and redistribute the money in accordance with subsection 1.}~~

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

NAC 179A.200 Contributions to Account. (NRS 179A.080, 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)

Chapter 179A of NAC is hereby amended by adding thereto a new section to read as follows:

MENTAL HEALTH DETERMINATIONS FOR ENTRY INTO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS)

NOTE: This section has been removed from this regulation and is located in R045-10:

Section 1. *Form for transmitting a record of mental health to the Central Repository for data entry into the NICS database. The Central Repository shall make available to Nevada courts a form for the transmittal of a record of mental health of an individual for the purposes of entry into the database of the National Instant Criminal Background Check System.*

NOTE: This section has been removed from this regulation and is located in R045-10:

Section 2. *Transmittal of a record of mental health from the Central Repository to the NICS database.*

1. *Upon receipt of a record of mental health form from a Nevada court, the Central Repository shall enter information about the subject of the record into the database of the National Instant Criminal Background Check System.*
2. *Information to be entered into the NICS database includes, but is not limited to, the subject's:*
 - a. *Full legal name;*
 - b. *Date of birth;*
 - c. *State of residency (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 available); and*
 - l. *Any other information that assists with establishing the identity of the subject.*
3. *The Central Repository shall ensure the confidentiality of records of mental health forms by maintaining such forms in a secure environment with limited access.*

NOTE: This section has been removed from this regulation and is located in R045-10:

Section 3. *Procedure to permit inspection, review, or challenge of information relating to a record of mental health by those persons who are the subjects thereof. An individual who believes he may be the subject of a record of mental health housed within the Central Repository and entered into the NICS database may inspect, review, or challenge the accuracy of such a record by:*

1. *Appearing in person at the office of the Central Repository;*
2. *Providing a governmentally 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 record; and*
4. *Paying the fee in effect at the time for inspection, review, or challenge of the record in the form of a certified check or money order payable to the Records and Technology Division.*

Section 4. *Procedure for the correction of any information relating to a record of mental health found by the Director or his designee to be inaccurate, insufficient or incomplete in any*

material respect; timeframe to correct a record of mental health; dissemination of corrected information. If the Director or his designee determines that information contained in an individual's record of mental health housed at the Central Repository and entered into the NICS database is inaccurate, insufficient, or incomplete in any material respect, the Central Repository shall:

- 1. If determined to be a data entry error in the NICS database, correct the error within one (1) business day.*
- 2. If determined to be an error with the record of mental health form provided by a Nevada court, provide the subject of the record with the name of the court and a contact person within the court for the purposes of challenging the accuracy of the court information.*
- 3. Make corrections in the NICS database within three (3) business days of receipt of the corrected form from the Nevada court.*
- 4. Provide a letter to the subject of the mental health record and to the Nevada court that the subject's record has been corrected in the NICS database.*

Section 5. *Relief of Mental Health Disability Form. The Central Repository shall make available to Nevada courts a form for the relief of disability of an individual having a record of mental health at the Central Repository and in the NICS Database.*

Within five (5) business days of receiving the relief from disability form from a Nevada court, the Central Repository shall remove an individual's record of mental health from the NICS database and destroy any and all forms related to the individual's record of mental health at the Central Repository.