

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

LCB File No. R023-10

April 5, 2010

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

AUTHORITY: §§1-4, NRS 179A.167; §§5-9, NRS 179A.080; §§10-14, NRS 179A.310.

A REGULATION relating to records; requiring the Central Repository for Nevada Records of Criminal History to take certain action if it is determined that there is inaccurate or insufficient information relating to a record of mental health; requiring the Central Repository to make a certain form relating to records of mental health available to courts; making various changes relating to the Revolving Account to Investigate the Background of Volunteers Who Work With Children; and providing other matters properly relating thereto.

Section 1. Chapter 179A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“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.

Sec. 3. *If the Director or his 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.

Sec. 4. *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 of 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.

Sec. 5. NAC 179A.010 is hereby amended to read as follows:

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, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 179A.040 is hereby amended to read as follows:

179A.040 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}~~ *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.

Sec. 7. 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 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 ~~and~~ *so that a state and national background check of his 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 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;~~ *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; ~~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 ~~and~~; *or*

(e) Any 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.

Sec. 8. 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 ~~[will]~~ *must* 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 , *technical* and administrative 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.

Sec. 9. 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 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.

Sec. 10. 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 ~~[open an account with]~~ *apply for a grant of money from*

the Revolving Account pursuant to NRS 179A.310 on the form prescribed by the Central Repository . ~~[and enter into a memorandum of understanding with 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.]~~

Sec. 11. 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 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}~~ *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 and shall return the fingerprint card to the nonprofit agency.

Sec. 12. 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) ~~{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; *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 . ~~{; 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 pay for the cost of conducting background checks for volunteers.*

Sec. 13. NAC 179A.190 is hereby amended to read as follows:

179A.190 ~~[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 ~~[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.]~~ *based on the date that the request was received by the Central Repository.*

Sec. 14. NAC 179A.033 and 179A.170 are hereby repealed.

TEXT OF REPEALED SECTIONS

179A.033 “Region” defined. “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.

179A.170 Verification of availability of money in Account.

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.