

**ADOPTED REGULATION OF THE CENTRAL REPOSITORY
FOR NEVADA RECORDS OF CRIMINAL HISTORY**

LCB File No. R045-10

Effective July 22, 2010

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

AUTHORITY: §§1-4, NRS 179A.167; §5, NRS 179A.080.

A REGULATION relating to records; requiring the Central Repository for Nevada Records of Criminal History to make a form for the transmittal of information relating to records of mental health available to courts; establishing procedures for a person who is the subject of information relating to records of mental health held by the Central Repository to review and correct information which is inaccurately or insufficiently contained in the record of mental health; 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. *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.*

Sec. 4. *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.”*

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.

**INFORMATIONAL STATEMENT FOR LEGISLATIVE REVIEW OF ADOPTED
REGULATIONS AS REQUIRED BY NRS 233B.066
LCB FILES R023-10 and R045-10**

The following informational statement is submitted for the adopted amendments to the Nevada Administrative Code (NAC) Chapter 179A.

1. A description of how public comment was solicited, a summary of the public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations R023-10 and R045-10, Notices of Workshop to Solicit Comments on a Proposed Regulation, and Notices of Intent to Act Upon a Regulation were sent via U.S. mail and email on May 7, 2010, to persons who were known to or believed to have an interest in the subject of placing records of mental health into the National Instant Criminal Background Check system for the purposes of background checks for the sale of firearms in the State of Nevada; the process for inspecting, challenging, and removing a record of mental health that has been placed into the National Instant Criminal Background Check System; revisions for the use of the Child Volunteer Trust Account to conduct criminal history background checks on volunteers working with children under the age of 16; and updating/removing obsolete language in NAC Chapter 179A. These documents were also made available at the website of the Central Repository for Nevada Records of Criminal History at <http://nvrepository.state.nv.us>, mailed to all county libraries in which the Nevada Department of Public Safety does not maintain an office, and posted in the main entry lobbies at the following locations:

Nevada Department of Public Safety
Records and Technology Division
333 W. Nye Lane, Suite 100
Carson City, Nevada 89706

Nevada Department of Public Safety
Campos Building
215 W. Bonanza Rd.
Las Vegas, Nevada 89101

Nevada State Library & Archives
100 Stewart Street
Carson City, Nevada 89701

The Richard Bryan Building
901 S. Stewart Street
Carson City, Nevada 89701

The Blasdel Building
209 E. Musser Street
Carson City, Nevada 89701

A workshop was held to solicit public comments upon the proposed regulations R023-10 and R045-10 on May 24, 2010, at 10:00 a.m. at the Nevada State Library and Archives located at 100 Stewart Street in Carson City, Nevada. There were no attendees from the public at this meeting, nor were any written comments received by the agency. A copy of the notice and a full transcript of the workshop are attached hereto.

On June 7, 2010, a public hearing on the Notice of Intent to Act Upon a Regulation was conducted at 10:00 a.m. at the Nevada State Library and Archives located at 100 Stewart Street in Carson City, Nevada, as noticed on May 7, 2010 and again on May 27, 2010 in compliance with the Nevada Open Meeting Law. There were no attendees from the public at this meeting, nor were any written comments received by the agency. A copy of the notice and a full transcript of the hearing are attached hereto.

Copies of the meeting minutes from the public workshop and public hearing may be obtained by sending a written request to the Nevada Department of Public Safety, Records and Technology Division, Central Repository for Nevada Records of Criminal History, 333 W. Nye Lane, Suite 100, Carson City, Nevada 89701, (775) 684-6262, or via email to aguderian@dps.state.nv.us.

2. **The number of persons who:**
 - a. **Attended each hearing:** May 24, 2010 – 0; June 7, 2010 – 0
 - b. **Testified at each hearing:** May 24, 2010 – 0; June 7, 2010 – 0
 - c. **Submitted to the agency written comments:** No written comments were received.

3. **A description of how comments were solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question 1.

4. **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 proposed regulations R023-10 and R045-10 were adopted on June 7, 2010, without any changes as no comments were received from the public indicating the Director's Office or the Central Repository should consider otherwise.

5. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:**
 - a. **Both adverse and beneficial effects; and**
 - b. **Both immediate and long-term effects.**

Business Impacts

The Department of Public Safety, Director's Office, and the Central Repository for Nevada Records of Criminal History are not regulatory bodies and do not regulate the activities or industry of businesses within the State of Nevada. Therefore, there are

no: (a) adverse and beneficial effects or (b) immediate and long-term effects on the for-profit business community as a result of the adopted regulations.

However, with the revisions to the use of the Child Volunteer Trust Account in regulation R023-10, there may be a beneficial impact to private, non-profit businesses that use the Trust Account to pay for criminal history background checks of volunteers who work with children under 16 years of age.

The revisions in the adopted regulations simplify the procedures such private non-profit businesses must use to gain access to the Trust Account to run criminal history background checks on their volunteers. The simplified procedures are easier to understand and therefore the effects are seen as beneficial and not adverse. The effects of these changes will be felt immediately upon final approval of these regulations by the Nevada Secretary of State's Office. The long-term effects will be a simplified process for access to the Trust Account, which is seen as beneficial for the private, non-profit business community.

Public Impacts

Aside from changes to the use of the Child Volunteer Trust Account and other "clean-up" provisions in regulation R023-10, the main intent of both sets of regulations is to codify the procedures to be used by the Department of Public Safety's Director's Office and the Central Repository for Nevada Records of Criminal History when entering an individual's record of mental health into the Denied Persons Index of the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS) for the purposes of denying that individual the ability to purchase or possess a firearm in compliance with the Brady Handgun Violence Prevention Act of 1993 (Public Law 103-159). The regulations further specify the process that must be followed for an individual to inspect, challenge, and have a record of mental health removed from the NICS' Denied Persons Index.

The authority for the adoption of these regulations stems from Assembly Bill 46 of the 2009 Legislative Session, which brings Nevada into compliance with the federal NICS Improvements Amendments Act of 2007. The federal act came about as a direct result of the shooting tragedy that occurred at Virginia Tech in April 2007 where 32 students were murdered and several others were injured by a classmate who had a history of mental illness, but was sold a firearm because his mental health record was not entered into the NICS' Denied Persons Index.

(a) Adverse and Beneficial Effects:

The only adverse effect that regulations R023-10 and R045-10 may have on the public are that individuals whose mental health records are submitted to the Central Repository by Nevada courts for entry into the NICS' Denied Persons Index will be denied the purchase or possession of firearms for as long as those individuals are adjudicated by Nevada courts as having a mental health disability.

The beneficial effects on the public are twofold:

(1) Individuals who are adjudicated by Nevada courts as having mental health disabilities will be denied the purchase or possession of firearms for as long as those mental health disabilities remain in effect. This could help to prevent a tragedy like the one at Virginia Tech in 2007.

(2) Individuals who have been adjudicated as having mental health disabilities will now have a procedure as specified in the adopted regulations to appeal those adjudications and to receive relief from those mental health disabilities in order to have their firearms rights restored. Prior to the NICS Improvement Amendments Act and Nevada's AB 46, there was no such process for individuals to seek relief from their mental health disabilities.

(b) Immediate and Long-term Effects:

Immediate and long-term effects are expected to be similar to the adverse and beneficial effects as stated under question (a) above.

6. The estimated cost to the agency for enforcement of the proposed regulations.

The Central Repository will not have to acquire any additional equipment or staff to enforce the regulations as adopted. Therefore, the estimated cost to the agency for enforcement of Regulations R023-10 and R045-10 is \$0. However, there will be a slight increase in workload in the Central Repository's Brady Background Check Unit. The inspection and challenge process will add to the duties of existing staff in the Brady Unit in terms of locating an individual's record of mental health and his/her NICS record, if any; assisting the individual with the inspection and challenge process; removing the individual's record of mental health maintained by the Central Repository and in the NICS' Denied Persons Index if so warranted; and notifying the individual of the actions taken. Because this is an additional duty, the Nevada Legislature granted the Central Repository the authority to charge a fee for this service, which is specified within regulation R045-10.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulations do not overlap or duplicate the regulations of other state government agencies. The regulations implement the federal NICS Improvement Amendments Act of 2007 (Public Law 110-180), which was enacted on January 8, 2008. The federal Bureau of Alcohol, Tobacco, Firearms, and Explosives is the regulating agency in terms of the process for the relief of a mental health disability adjudication.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The regulations do not include provisions which are more stringent than a federal regulation which regulates the same activity.

9. 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.

The regulations provide for a new fee of \$18.45 for an individual to inspect his record of mental health housed by the Department of Public Safety, Records and Technology Division, Central Repository for Nevada Records of Criminal History. The money will be used to offset the cost of staff's time to locate an individual's record of mental health housed within the Central Repository and in the NICS Denied Persons Index, meet with the individual, explain the challenge process, make corrections in the NICS system, and notify the individual of the correction.

Because this is a new procedure and fee, the Central Repository does not have enough information on the number of challenges we can expect to receive and therefore on which to base revenue estimates. However, it is anticipated that the amount of revenue generated will be small given that the number of mental health adjudications by Nevada courts is small compared with other adjudications.

The Central Repository will track the workload and revenue related to these mental health inspections and then use those estimates as the basis for future budget requests for additional staff, to be paid for by the collected fees, if it appears that the additional workload will warrant such action in future biennia.

10. Statement, if any, to interested persons explaining the principal reasons for and against adopting the regulations and reason(s) for overruling the consideration urged against its adoption (NRS 233B.064(2)).

The principal reasons for adoption of Regulations R023-10 and R045-10 as proposed are to implement the provisions of Assembly Bill 46 of the 2009 Legislative Session, as codified in NRS 179A.163 – NRS 179A.167. The statutes bring the State into compliance with the NICS Improvements Amendments Act of 2007 (the Act) and they specify the procedures that the Director's Office and the Central Repository will follow to comply with key provisions of the Act. The regulations also clarify the conditions for usage of the Child Volunteer Trust Account for background checks of volunteers working with children under 16 years of age, and they update language that is obsolete.

Neither businesses nor the public submitted any reasons, either orally or in writing, against the adoption of Regulations R023-10 and R045-10; therefore, the regulations have been adopted as proposed and reviewed by the Legislative Counsel Bureau.