

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

LCB File No. R023-10

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; §§5-9, 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 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.

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 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.

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 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 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 the person's 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 costs 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.

**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.