

Brian Sandoval
Governor



James M. Wright
Director

General Services Division
333 West Nye Lane, Suite 100
Carson City, Nevada 89706
Telephone (775) 684-6262 – Fax (775) 684-6265
www.nvrepository.state.nv.us

Julie Butler
Division Administrator

NOTICE OF PUBLIC MEETING

The General Services Division, 333 West Nye Lane, Suite 100, Carson City, Nevada, 89706 Telephone Number (775) 684-6262, is proposing the Adoption, Amendment, and Repeal of regulations pertaining to Chapter 179A of the Nevada Administrative Code.

A public comment hearing and adoption meeting has been set for 10:00 am, on Friday, June 10, 2016 at the Gaming Control Board, 1919 College Parkway, Carson City, NV with video conferencing to the Gaming Control Board, 555 E Washington Ave, Suite 2450, Las Vegas, NV.

AGENDA

Please Note: The Nevada Department of Public Safety, General Services Division (the Division) may 1) address agenda items out of sequence to accommodate persons appearing before the Division or to aid the efficiency or effectiveness of the meeting; 2) combine items for consideration by the public body; and 3) pull or remove items from the agenda at any time.

Public comment is welcomed by the Division. A period of public comment will take place at the beginning of the meeting and again prior to the adjournment of the meeting. The Division may limit each speaker to 5 minutes, as time allows and at her/his sole discretion. Everyone who is interested in speaking will be given the opportunity to speak at either or both public comment periods. Comments will not be restricted based on viewpoint. Once all items on the agenda are completed, the meeting will adjourn.

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1. **Call to order and introduction of General Services Division representatives**
 2. Opening Remarks

The purpose of the public hearing is to solicit comments from interested persons on the following general topic that may be addressed in the proposed regulations:

The Division will discuss the establishment of revisions to and the addition of new regulations pursuant to Assembly Bill 224 regarding the governance of biometric identifiers and the information and data derived from biometric identifiers, including, without limitation:

- (1) Their collection, use, safeguarding, handling, retention, storage, dissemination and destruction; and

(2) The methods by which a person may request the removal of his or her biometric identifiers from the Central Repository and any other agency where his or her biometric identifiers have been stored.

The Division will also discuss the establishment of revisions to the regulations concerning the submission of fingerprints for the purposes of a background check of volunteers who work with children to allow for submission based on authorized federal and state authority.

At the conclusion of the public comment hearing, the Division will discuss the potential adoption of the proposed regulations, referenced as LCB File No. R019-16 and LCB File No. R011-16.

I. PUBLIC COMMENT HEARING

3. **Public comment**

4. **For discussion and possible action** - The proposed regulations, referenced as LCB File No. R019-16 and LCB File No. R011-16, contain the following proposed changes:

- a) LCB File No. R019-16 – Section 2. contains proposed regulatory language to define the term “Authorized Recipient”
- b) LCB File No. R019-16 – Section 3. contains proposed regulatory language to define the term “Security Policy”
- c) LCB File No. R019-16 – Section 4. provides for adoption by reference of the federal Criminal Justice Information Services Security Policy
- d) LCB File No. R019-16 – Section 5. provides for adoption by reference of the Nevada Criminal Justice Information System Administrative Policies
- e) LCB File No. R019-16 – Section 6. provides for adoption by reference of the Nevada State Policies, Standards and Procedures
- f) LCB File No. R019-16 – Section 7. provides for adoption by reference of the Nevada State Library, Archives, and Public Records General Retention Schedule
- g) LCB File No. R019-16 – Section 8. adds language to NAC 179A.020 to clarify which employment agencies would employ a “custodian of records”
- h) LCB File No. R019-16 – Section 9. alters the language in NAC 179A.040 to meet the regulation requirements in NRS 179A.075 for the governance of biometric identifiers specific to collecting, using, safeguarding, handling, retaining, storing, disseminating, and destroying its records of criminal history in accordance with the Security Policy, the Administrative Policies, the State Security Policies, Standards, and Procedures, and the Nevada Revised Statutes
- i) LCB File No. R019-16 – Section 10. adds language to NAC 179A.060 to clarify which agencies must meet the standards established for employment as a custodian of records. It also adds language to specify that the standards are established pursuant to NAC 179A.070 and the Security Policy. In addition, it adds language requiring the agencies to instruct their personnel periodically on policies and procedures for handling records of criminal history
- j) LCB File No. R019-16 – Section 11. adds language to NAC 179A.070 to clarify which agencies must adhere to this regulation as it relates to the appointment of a custodian of records
- k) LCB File No. R019-16 – Section 12. adds language to NAC 179A.080 to clarify which agencies must adhere to this regulation as it relates to an audit by the Director of an informational system of Nevada records of criminal history

- l) LCB File No. R019-16 – Section 13. repeals outdated language in NAC 179A.090 relating to the proper procedure for challenging the accuracy of a record of criminal history
- m) LCB File No. R019-16 – Section 14. adds language to NAC 179A.150 to clarify that a state background check of a volunteer may be made pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority being offered, language is being repealed to be consistent with the new background check authorities
- n) LCB File No. R019-16 – Section 15. adds language to NAC 179A.160 to clarify that a state background check is authorized pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority being offered, language is being repealed to be consistent with the new background check authorities
- o) LCB File No. R019-16 – Section 16. repeals NAC 179A.050 due to the existence of duplicative language in NAC 179A.060
- p) LCB File No. R011-16 - Section 1. contains proposed regulatory language to define the terms “Record of criminal history” and “biometric identifier” for reference purposes

5. **Public Comment**

6. **For discussion** – The Division will discuss the potential for small business impact

7. **Public comment**

II. ADOPTION MEETING

1. **For discussion and possible action** – The Division will discuss the public comments and may possibly take action to alter the proposed regulations referenced as LCB File No. R019-16 and LCB File No. R011-16

2. **Public comment**

3. **For discussion and possible action** – The Division may act to adopt the proposed regulations, referenced as LCB File No. R019-16 and LCB File No. R011-16, with or without alterations

4. **Public comment**

5. **Adjournment**

A copy of all materials related to the proposed regulations may be obtained at the public meeting or by contacting Mindy McKay, Records Bureau Chief, at 775-684-6205. The agency’s small business impact statement is attached. Additionally, all meeting materials including the proposed regulations are available for viewing at the Division’s public website: <http://gsd.nv.gov/Resources>. Meeting materials may also be picked up in person from at the following location:

Department of Public Safety – General Services Division

333 West Nye Lane, Carson City, NV 89706


Telephone: 775-684-6262 Fax: 775-687-3289

We are pleased to make reasonable accommodations for members of the public with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the General Services Division, in writing, at 333 West Nye Lane, Suite 100, Carson City, Nevada, 89706 or call Mindy McKay, at (775) 684-6205, no later than five working days prior to the meeting.

This Notice of Public Meeting has been sent to all persons on the agency's mailing list for administrative regulations, other interested person who have requested an agenda from the Division, and posted at the following locations:

Department of Public Safety, 555 Wright Way, Carson City, NV 89711; Department of Public Safety – General Services Division, 333 West Nye Lane, Carson City, NV 89706; the meeting locations; all criminal justice agencies; the Nevada State Library, Archives and Public Records; to the librarian of the main public library in each county; the Division's public website: <http://gsd.nv.gov/Resources>; the Nevada Office of the Attorney General's Public Notice website: <http://notice.nv.gov>; and the Legislative Counsel Bureau's website: <https://www.leg.state.nv.us/App/Notice/A/>.

Before 9 a.m. on June 7, 2016.



Signature

Brian Sandoval
Governor



James M. Wright
Director

General Services Division
333 West Nye Lane, Suite 100
Carson City, Nevada 89706
Telephone (775) 684-6262 – Fax (775) 684-6265
www.nvrepository.state.nv.us

Julie Butler
Division Administrator

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption, Amendment, and Repeal

Of

Regulations of the Central Repository

PUBLIC COMMENT HEARING NOTICE: The Nevada Department of Public Safety, General Services Division (the Division) will hold a public hearing at 10:00 a.m., on June 10, 2016, at the Gaming Control Board, 1919 College Parkway, Carson City, NV with video conferencing to the Gaming Control Board, 555 E Washington Ave, Suite 2450, Las Vegas, NV. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, and repeal of regulations that pertain to Chapter 179A of the Nevada Administrative Code (NAC).

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. **A statement of the need for and purpose of the proposed regulations.**

In 2015, the Nevada Legislature enacted Assembly Bill 224, which altered existing law to provide that the General Services Division of the Department of Public Safety may request and receive information from the Federal Bureau of Investigation by, depending upon the purpose of the request, the submission of a complete set of fingerprints, one or more fingerprints or other “biometric identifier” which is defined as a fingerprint, palm print, scar, bodily mark, tattoo, voiceprint, facial image, retina image or iris image of a person. Assembly Bill 224 also requires that the General Services Division, Central Repository adopt certain regulations governing biometric identifiers and the information and data derived therefrom. See NRS 179A.075, NRS 179A.080, and NRS 179A.150.

The Division has adopted regulations governing records of criminal history, which now includes biometric identifiers. The proposed amendments to the existing regulations add to the language establishing the governance of the collection, use, safeguarding, handling, retention, storage, dissemination, destruction, and the methods by which a person may request the removal of his or her biometric identifiers from the Central Repository and any other agency where his or her biometric identifiers have been stored.

The proposed regulations would also update the procedure for request by a nonprofit agency for a background check on a volunteer. See NRS 179A.310. The proposed regulation changes are needed to update regulations and ensure regulations are current and in compliance with NRS 179A.075(1), NRS 179A.080(1-12, 16), NRS 179A.080(13), NRS 179A.150, NRS 179A.080(14-15), and NRS 179A.310. Additionally, through the proposed regulation changes, law enforcement agencies will have the capability to utilize modern technology in the more accurate and timely identification of individuals.

2. **Either the terms, or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.**

The proposed regulations, referenced as LCB File No. R019-16, which is available at http://gsd.nv.gov/Resources/Notice_of_Workshop/Notice_of_Workshop_Page/ contain the following additions, amendments, and repeals:

Section 2. provides the definition of “Authorized recipient.” The addition to the regulation provides the definition for reference purposes.

Section 3. provides the definition of “Security Policy.” The addition to the regulation provides the definition for reference purposes.

Section 4. provides that the Director of the Department of Public Safety adopts by reference the Security Policy of the Criminal Justice Information Services Division established by the Federal Bureau of Investigation.

Section 5. provides that the Director of the Department of Public Safety adopts by reference the Administrative Policies of the Nevada Criminal Justice Information System established by the Central Repository within the Nevada Department of Public Safety.

Section 6. provides that the Director of the Department of Public Safety adopts by reference the State Security Policies, Standards and Procedures established by the Nevada State Information Security Committee.

Section 7. provides that the Director of the Department of Public Safety adopts by reference the General Retention Schedule compiled by the Records Management Program of the Division of State Library, Archives and Public Records of the Department of Administration.

Section 8. adds language to NAC 179A.020 to clarify which employment agencies would employ a “custodian of records.”

Section 9. alters the language in NAC 179A.040 to meet the regulation requirements in NRS 179A.075 for the governance of biometric identifiers specific to collecting, using, safeguarding, handling, retaining, storing, disseminating, and destroying its records of criminal history in accordance with the Security Policy, the Administrative Policies, the State Security Policies, Standards and Procedures, and Nevada Revised Statute.

Section 10. adds language to NAC 179A.060 to clarify which agencies must meet the standards established for employment as a custodian of records. It also adds language to specify that the standards are established pursuant to NAC 179A.070 and the Security Policy. In addition, it adds language requiring the agencies to instruct their personnel periodically on policies and procedures for handling records of criminal history.

Section 11. adds language to NAC 179A.070 to clarify which agencies must adhere to this regulation as it relates to the appointment of a custodian of records.

Section 12. adds language to NAC 179A.080 to clarify which agencies must adhere to this regulation as it relates to an audit by the Director of an informational system of Nevada records of criminal history.

Section 13. repeals outdated language in NAC 179A.090 relating to the proper procedure for challenging the accuracy of a record of criminal history.

Section 14. adds language to NAC 179A.150 to clarify that a state background check of a volunteer may be made pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority, language is being repealed to be consistent with the new background check authorities.

Section 15. adds language to NAC 179A.160 to clarify that a state background check is authorized pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority, language is being repealed to be consistent with the new background check authorities.

Section 16. repeals NAC 179A.050 due to the existence of duplicative language in NAC 179A.060.

The proposed regulations, referenced as LCB File No. R011-16, contain the following additions, amendments, and repeals:

Section 1. adds a new section to provide the definitions of a “Record of criminal history” and a “biometric identifier” for reference purposes.

3. **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.**

(a) Both adverse and beneficial effects.

Adverse effects: none.

Beneficial effects:

The amendment to the regulations will clarify that the language governing records of criminal history now allows additional biometric identifiers to be included in the definition of records of criminal history. Through these proposed regulation amendments, the Central Repository affords law enforcement agencies the ability to utilize modern technology in the identification of individuals. Additionally, the proposed regulation amendments will repeal outdated language related to federal and state authorities for background checks on volunteers who work with vulnerable populations, including, without limitation, children, which will ensure compliance with federal and state laws and regulations. The benefits include more accurate identification of individuals working with vulnerable populations and accurate federal and state authorities for background checks on volunteers working with vulnerable populations.

(b) Both immediate and long-term effects.

The effects include affording law enforcement agencies to immediately begin putting in place systems and processes to utilize modern technology in the identification of individuals. Additionally, the proposed regulation amendments will repeal outdated language related to federal and state authorities for background checks on volunteers who work with vulnerable populations, including, without limitation, children, which will ensure immediate compliance with federal and state laws and regulations.

The long-term effects include providing the State of Nevada criminal justice community with the proper governance for collecting, using, safeguarding, handling, retaining, storing, disseminating, and destroying various biometric identifiers as multimodal functionality becomes available to utilize those biometric identifiers in the course of meeting criminal justice agency missions. In other terms, adoption of the proposed regulations are proactive in the preparation for future advancements in technology in line with what the Federal Bureau of Investigation is actively moving toward in their Next Generation Identification system.

4. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.

The General Services Division, Central Repository determined that small business would not be impacted in any way due to the fact that one portion of the revision only impacts law enforcement agencies and the other portion of the revisions clarifies the authorized federal and state authority for submissions of fingerprints for background checks on volunteers who work with children through non-profit entities.

5. The estimated cost to the agency for enforcement of the proposed regulation.

The Central Repository does not project any extra costs for enforcement of the proposed regulations as existing resources will be utilized in current business practices.

6. A description of and citation to any regulations of other states or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulation overlaps or duplicates federal regulations and policies and state policy regulating the same activity. The Federal Bureau of Investigation (FBI) enforces Title 28, Part 20, Code of Federal Regulations and the Criminal Justice Information Services (CJIS) Security Policy specific to records of criminal history. Criminal Justice Information (CJI) is the term used to refer to all of the FBI CJIS provided data necessary for law enforcement and civil agencies to perform their missions including, but not limited to biometric, identity history, biographic, property, and case/incident history data. Criminal History Record Information (CHRI), sometimes informally referred to as "restricted data," is a subset of CJI. Due to its comparatively sensitive nature, additional controls are required for the access, use, and dissemination of CHRI. In addition to the dissemination restrictions, Title 28, Part 20, Code of Federal Regulations (CFR), defines CHRI and provides the regulatory guidance for dissemination of CHRI.

The security of records of criminal history regulated by the FBI as described above is duplicated in the Nevada State Security, Policies, Standards and Procedures enforced by the Nevada Department of Administration, Enterprise Information Technology Services Division as well as the Nevada Criminal Justice Information System administrative policies enforced by the Nevada Department of Public Safety General Services Division. Duplication is necessary to ensure proper State authority and governance to ensure compliance with all related areas of federal and state laws, regulations, and policies.

- 7. If the regulation is required pursuant to federal law, a citation and description of the federal law.**

The proposed regulation is not required by federal law but rather by NRS Chapter 179A.

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

The proposed regulations will not be more stringent than federal regulations but rather will mirror federal regulations.

- 9. Whether the proposed regulation establishes a new fee or increases an existing fee.**

This regulation does not involve or establish fees.

- 10. The date, time, and place where, and the manner in which, interested persons may present their views on the proposed regulation.**

Persons wishing to comment upon the proposed action of the General Services Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to Mindy McKay, Records Bureau Chief, General Services Division, 333 West Nye Lane, Suite 100, Carson City, Nevada 89706. **Written submissions must be received by the General Services Division on or before 5:00 pm on June 3, 2016.** If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the General Services Division may proceed immediately to act upon any written submissions.

- 11. All addresses where the text of the rule may be inspected and copied.**

A copy of this notice and the regulations to be adopted, amended, or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada for inspection by members of the public during business hours. Additional copies of the notice and regulations to be adopted, amended, or repealed will be available at the General Services Division located at, 333 West Nye Lane, Suite 100, Carson City, Nevada 89706 and also located at 215 E. Bonanza Rd, Las Vegas, NV 89101, and at the main public library in all counties in which an office of the agency is not maintained for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://leg.state.nv.us>, the General Services web site at <http://gsd.nv.gov> and at <https://notice.nv.gov>.

Copies of this notice and the proposed regulation will also be mailed to all persons on the General Services Division mailing list who have requested in writing that they be informed of proposed regulations and to members of the public upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption. NRS 233B.064(2).

The Notice of Hearing has been emailed to all Nevada criminal justice agencies on the General Services Division contact list and posted at <http://leg.state.nv.us>, <http://gsd.nv.gov>, <https://notice.nv.gov>, and the following locations:

CARSON CITY

General Services Division, 333 W. Nye Lane
Nevada State Library, 100 Stewart Street

LAS VEGAS

DPS Building, 215 E. Bonanza Rd

COUNTY LIBRARIES (MAIN BRANCHES)

CARSON CITY LIBRARY
900 NORTH ROOP STREET
CARSON CITY, NEVADA 89702

CHURCHILL COUNTY LIBRARY
553 SOUTH MAINE STREET
FALLON, NEVADA 89406

LAS VEGAS-CLARK COUNTY
833 LAS VEGAS BLVD - NORTH
LAS VEGAS, NEVADA 89101

DOUGLAS COUNTY LIBRARY
1625 LIBRARY LANE
MINDEN, NEVADA 89423

ELKO COUNTY LIBRARY
720 COURT STREET
ELKO, NEVADA 89801

ESMERALDA COUNTY LIBRARY
FOURTH AND CROOK STREETS
GOLDFIELD, NEVADA 89013

EUREKA COUNTY LIBRARY
10190 MONROE STREET
EUREKA, NEVADA 89316

HUMBOLDT COUNTY LIBRARY
85 EAST 5TH STREET
WINNEMUCCA, NEVADA 89445

LANDER COUNTY LIBRARY
625 BROAD STREET
BATTLE MOUNTAIN, NEVADA 89820

LINCOLN COUNTY LIBRARY
93 MAIN STREET
PIOCHE, NEVADA 89043

LYON COUNTY LIBRARY
20 NEVIN WAY
YERINGTON NEVADA 89447

MINERAL COUNTY LIBRARY
FIRST AND A STREETS
HAWTHORNE, NEVADA 89415

TONOPAH LIBRARY DISTRICT
167 CENTRAL STREET
TONOPAH, NEVADA 89048

PERSHING COUNTY LIBRARY
1125 CENTRAL STREET
LOVELOCK, NEVADA 89419

STOREY COUNTY LIBRARY
95 SOUTH R STREET
VIRGINIA CITY, NEVADA

WASHOE COUNTY LIBRARY
301 SOUTH CENTER STREET
RENO, NEVADA 89520

WHITE PINE COUNTY LIBRARY
950 CAMPTON STREET
ELY, NEVADA 89301

NOTE: We are pleased to make reasonable accommodations for members of the public with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the General Services Division, in writing, at 333 West Nye Lane, Suite 100, Carson City, Nevada 89706, or call Mindy McKay at (775) 684-6205, no later than five working days prior to the meeting.

**SEE ATTACHED COPIES OF THE PROPOSED
REGULATIONS**

**SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY
NRS 233B.0608**

**LCB File No. R019-16
LCB File No. R011-16**

- 1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response, and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

Comments were solicited through one workshop held on January 8, 2016, and through one public comment hearing to be held on June 10, 2016. No comments were submitted on record during the workshop held on January 8, 2016.

Notices for the public comment hearing were sent to Department of Public Safety, 555 Wright Way, Carson City, NV 89711; Department of Public Safety – General Services Division, 333 West Nye Lane, Carson City, NV 89706; the meeting locations; all criminal justice agencies; the Nevada State Library, Archives and Public Records; to the librarian of the main public library in each county; the Division’s public website: <http://gsd.nv.gov/Resources>; the Nevada Office of the Attorney General’s Public Notice website: <http://notice.nv.gov>; and the Legislative Counsel Bureau’s website: <https://www.leg.state.nv.us/App/Notice/A/>.

A copy of supporting materials for the meeting may be obtained by contacting Mindy McKay at (775) 684-6205, General Services Division at 333 West Nye Lane, Suite 100, Carson City, Nevada 89706.

- 2. The manner in which the analysis was conducted, including the methods used to determine the impacts of the proposed regulation on small business.**

The General Services Division, Central Repository determined that small business would not be impacted in any way due to the fact that one portion of the revision only impacts law enforcement agencies and the other portion of the revisions clarifies the authorized federal and state authority for submissions of fingerprints for background checks on volunteers who work with children through non-profit entities.

- 3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:
(a) Both adverse and beneficial effects; and
(b) Both direct and indirect effects.**

None, it does not apply. See #1 and 2.

- 4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.**

N/A. See #1 and 2.

- 5. The estimated cost to the agency for enforcement of the proposed regulation.**

The General Services Division, Central Repository does not project any extra costs for enforcement of the proposed regulations as existing resources will be utilized in current business practices.

- 6. If the proposed 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.**

N/A. No fees are associated with these regulations.

- 7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.**

The proposed regulation overlaps or duplicates federal regulations and policies and state policy regulating the same activity. The Federal Bureau of Investigation (FBI) enforces Title 28, Part 20, Code of Federal Regulations and the Criminal Justice Information Services (CJIS) Security Policy specific to records of criminal history. Criminal Justice Information (CJI) is the term used to refer to all of the FBI CJIS provided data necessary for law enforcement and civil agencies to perform their missions including, but not limited to biometric, identity history, biographic, property, and case/incident history data. Criminal History Record Information (CHRI), sometimes informally referred to as "restricted data", is a subset of CJI. Due to its comparatively sensitive nature, additional controls are required for the access, use and dissemination of CHRI. In addition to the dissemination restrictions, Title 28, Part 20, Code of Federal Regulations (CFR), defines CHRI and provides the regulatory guidance for dissemination of CHRI.

The security of records of criminal history regulated by the FBI as described above is duplicated in the Nevada State Security, Policies, Standards and Procedures enforced by the Nevada Department of Administration, Enterprise Information Technology Services Division as well as the Nevada Criminal Justice Information System administrative policies enforced by the Nevada Department of Public Safety General Services Division. Duplication is necessary to ensure proper State authority and governance to enforce the requisite provisions and to ensure compliance with all related areas of federal and state laws, regulations, and policies.

8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

The General Services Division, Central Repository determined that small business would not be impacted in any way due to the fact that one portion of the revision only impacts law enforcement agencies and the other portion of the revision clarifies the authorized federal and state authority for submissions of fingerprints for background checks on volunteers who work with children through nonprofit entities.

I hereby certify to the best of my knowledge or belief a concerted effort was made to determine the impact of the proposed regulation on small businesses and that this statement was properly prepared and the information contained herein is accurate.



Mindy McKay, Records Bureau Chief

(Signature of director, executive head or other person who is responsible for the agency certifying that, to the best of his or her knowledge or belief, the information contained in the statement was prepared properly and is accurate.)

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
MICHAEL ROBERSON, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
PAUL ANDERSON, *Assemblyman, Chairman*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

RICK COMBS, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
ROCKY COOPER, *Legislative Auditor* (775) 684-6815
SUSAN E. SCHOLLEY, *Research Director* (775) 684-6825

April 5, 2016

Mindy McKay, Records Bureau Chief
Department of Public Safety
General Services Division
333 West Nye Lane, Suite 100
Carson City, Nevada 89711

Re: LCB File No. R019-16

Dear Ms. McKay:

A revised proposed regulation R019-16 of the Director of the Department of Public Safety has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenda J. Erdoes".

Brenda J. Erdoes
Legislative Counsel

Melissa N. Mundy
Senior Deputy Legislative Counsel

BJE/slj
Enclosure

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

LCB File No. R019-16

April 5, 2016

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

AUTHORITY: §§1-12 and 16, NRS 179A.080; §13, NRS 179A.080 and 179A.150; §§14 and 15, 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 4-7 of this regulation provide that the Director adopts by reference various publications, including the *Security Policy* of the Criminal Justice Information Services Division of the Federal Bureau of Investigation (hereinafter "*Security Policy*"). **Sections 4-7** 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 a 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 9-12 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 9** 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 certain other publications adopted by reference in **sections 5 and 6** of this regulation. **Section 10** 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 10** 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 16** of this regulation repeals provisions now included in **section 10**.

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 14 and 15** of this regulation 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. **Sections 14 and 15** also revise provisions relating to the submission of fingerprint cards.

Section 1. Chapter 179A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, 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. 1. The Director hereby adopts by reference the State Security Policies, Standards and Procedures, established by the Nevada State Information Security Committee, which is available from the Division of Enterprise Information Technology Services of the Department of Administration, free of charge, at the Internet address <http://it.nv.gov/governance/state-policy-procedures/>.

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

Sec. 7. 1. The Director hereby adopts by reference the General Retention Schedule compiled by the Records Management Program of the Division of State Library, Archives and Public Records of the Department of Administration, which is available, free of charge, at the Internet address [http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/State/1 General Schedule/General%20Schedule.pdf](http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/State/1%20General%20Schedule.pdf).

2. The Director or his or her designee will periodically review the standards and requirements in the General Retention Schedule and, not later than 30 days after each review, determine whether any change made to the General Retention Schedule is appropriate for

application. If the Director or his or her designee does not disapprove a change made to the General Retention Schedule within 30 days after a review, the change is deemed to be approved by the Director or his or her designee.

Sec. 8. 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. 9. NAC 179A.040 is hereby amended to read as follows:

179A.040 ~~{1.}~~ 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 these 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, the Administrative Policies of the Nevada Criminal Justice Information System, as adopted by

reference in section 5 of this regulation, and the State Security Policies, Standards and Procedures established by the Nevada State Information Security Committee, as adopted by reference in section 6 of this regulation.

Sec. 10. 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. 11. 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 fingerprint cards 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. 12. 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. 13. 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. 14. 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 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. 15. 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. 16. 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.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600



LEGISLATIVE COMMISSION (775) 684-6800
MICHAEL ROBERSON, *Senator, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
PAUL ANDERSON, *Assemblyman, Chairman*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

RICK COMBS, *Director*
(775) 684-6800

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
ROCKY COOPER, *Legislative Auditor* (775) 684-6815
SUSAN E. SCHOLLEY, *Research Director* (775) 684-6825

February 24, 2016

Mindy McKay, Records Bureau Chief
Department of Public Safety
General Services Division
333 West Nye Lane, Suite 100
Carson City, NV 89711

Re: LCB File No. R011-16

Dear Ms. McKay:

Proposed regulation R011-16 of the Central Repository for Nevada Records of Criminal History has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra L. Corp".

Debra L. Corp
Paralegal Manager

Brenda J. Erdoes
Legislative Counsel

DLC/dtm

Enclosure

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

LCB File No. R011-16

February 24, 2016

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

AUTHORITY: §1, NRS 179A.075, as amended by section 1 of Assembly Bill No. 224, chapter 175, Statutes of Nevada 2015, at page 841.

A REGULATION relating to records of criminal history; providing that records of criminal history include records of biometric identifiers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law establishes the Central Repository for Nevada Records of Criminal History for the collection and maintenance of certain information relating to records of criminal history. Existing law authorizes the General Services Division of the Department of Public Safety to request of and receive from the Federal Bureau of Investigation the background and personal history of a person by submitting, depending upon the purpose of the request, a complete set of fingerprints, one or more fingerprints or other “biometric identifier,” which is defined as a fingerprint, palm print, scar, bodily mark, tattoo, voiceprint, facial image, retina image or iris image of a person, which was received by the Central Repository. Existing law further requires the Central Repository to adopt regulations governing biometric identifiers and the information and data derived therefrom. (NRS 179A.075, as amended by section 1 of Assembly Bill No. 224, chapter 175, Statutes of Nevada 2015, at page 841)

This regulation specifies that the term “record of criminal history” includes a record of a biometric identifier of a person, thereby making provisions concerning records of criminal history, including, without limitation, provisions concerning the collection, use, safeguarding, handling, retention, storage, dissemination and destruction thereof, applicable to records of biometric identifiers.

Section 1. Chapter 179A of NAC is hereby amended by adding thereto a new section to read as follows:

“Record of criminal history” has the meaning ascribed to it in NRS 179A.070 and includes, without limitation, a record of a biometric identifier of a person. As used in this section, “biometric identifier” has the meaning ascribed to it in subsection 9 of NRS 179A.075, as amended by section 1 of Assembly Bill No. 224, chapter 175, Statutes of Nevada 2015, at page 841.