

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the Nebraska State Patrol will hold rulemaking hearings on Friday, August 28, 2020, beginning at 9:00 a.m. at Nebraska State Patrol Headquarters, 1600 Nebraska Highway 2, Lincoln, Nebraska.

The purpose of these hearings is to take testimony and evidence concerning adoption of proposed changes to the following chapters of Title 272, which will be heard at the times listed below:

9:00 a.m.: Chapter 2 Administration of the Security, Privacy, and Dissemination of the Criminal History Information Act

10:00 a.m.: Chapter 3 Carrier Enforcement Division

11:00 a.m.: Chapter 4 Operations

NOTE: Due to the current public health crisis, the agency will enforce any Directed Health Measure Order on the size of gatherings that is in effect at the time of the hearing. In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide comments. Interested persons may provide verbal comments by calling 1-877-399-0501; Participant code: 6366586#. Interested persons may provide written comments by mail or email no later than the day of the hearing to: NSP Legal Office, PO Box 94907, Lincoln, NE 68509-4907 or nsp.regulations@nebraska.gov. Any written comments will be part of the record and will be considered.

FISCAL IMPACT STATEMENT

Agency: Nebraska State Patrol	
Title: 272 NAC	Prepared by: Mark Boyer
Chapter: 2	Date prepared: January 14, 2020
Subject: Security, Privacy, and Dissemination of the Criminal History Information Act	Telephone: 402-480-9312

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

Description of Impact:

State Agency: There is no fiscal impact related to the proposed changes.

Political Subdivision: There is no fiscal impact related to the proposed changes.

Regulated Public: There is no fiscal impact related to the proposed changes.

Title 272 - NEBRASKA STATE PATROL

Chapter 2. ADMINISTRATION OF THE SECURITY, PRIVACY, AND
DISSEMINATION OF THE CRIMINAL HISTORY INFORMATION ACT.

001 - DEFINITIONS

- 001.01 The following words and terms, when used in this Chapter, ~~shall~~ have, ~~unless the context clearly indicates otherwise,~~ the following meanings.
- 001.02 Act - Neb. Rev. Stat., § 29-3501 to 3528.
- 001.03 Administration of criminal justice - ~~The activities directly concerned with the detection, apprehension, detention, pretrial release, pretrial diversion, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.~~ as defined by Neb. Rev. Stat. §29-3504
- 001.04 Commission - ~~Shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.~~ as defined by Neb. Rev. Stat. §29-3505
- 001.05 Criminal history record information - ~~Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall not include intelligence or investigative information.~~ as defined by Neb. Rev. Stat. §29-3508
- 001.06 Complete - With reference to criminal history record information, ~~complete shall mean that arrest records shall show the subsequent disposition of the case as it moves through the various stages of the criminal justice system; and accurate shall mean containing no erroneous information of a material nature.~~ as defined by Neb. Rev. Stat. §29-3507
- 001.07 Criminal history record information system - ~~Shall mean a system including the equipment, facilities, procedures, agreements, and organization thereof for the collection, processing, preservation, or dissemination of criminal history record information.~~ as defined by Neb. Rev. Stat. §29-3508

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- 001.08 Criminal justice agency - ~~Shall mean:~~
- ~~001.08A~~ Courts; and
- ~~001.01B~~ A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice. as defined by Neb. Rev. Stat. §29-3509
- 001.09 Direct access - ~~Having the custodial authority to handle and control the actual documents or automated or computerized documentary record which constitutes the criminal history database. as defined by Neb. Rev. Stat. §29-3510~~
- 001.10 Disposition - ~~Information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, and also information disclosing the nature of the termination of the proceedings at each step of the criminal justice process. as defined by Neb. Rev. Stat. §29-3511~~
- 001.11 Intelligence information - Information concerning practices, characteristics, habits, possessions, associations or financial status, of any person reasonably suspected of criminal activity.
- 001.12 Investigative Information - Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information. As used in these regulations, this term ~~shall~~ includes information concerning internal affairs investigations and disciplinary files of the respective agencies.
- 001.13 Operator - ~~The agency, person, or group of persons designated by the governing body of the jurisdiction served by a criminal history record information coordinate and supervise the system. as defined by Neb. Rev. Stat. §29-3512~~

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001.14

Patrol - ~~Shall~~ Means the Nebraska State Patrol.

001.15

Person - ~~Any natural person, corporation, partnership, firm or association;~~ as defined by Neb. Rev. Stat. §29-3513

001.16

Person in interest - ~~The person who is the primary subject of a criminal justice record or any representative designated by such person, except that if the subject of the record is under legal disability, person in interest shall mean the person's parent or duly appointed legal representative;~~ as defined by Neb. Rev. Stat. §29-3514

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002 - COMPLETENESS AND ACCURACY

- 002.01 As to each written indication, contained in a repository's records that a criminal charge has been brought against an individual, the repository ~~shall~~ will maintain a complete and accurate criminal record as to that charge.
- 002.02 A complete and accurate criminal history record ~~shall~~ includes:
- 002.02A The full name and aliases of the individual charged.
- 002.02B An accurate statement of the crime charged, including the title of the offense.
- 002.02C The final or latest disposition of the charge.
- 002.02D ~~The~~ Any sentence imposed; ~~for a conviction of the charge.~~
- 002.03 The timely recording and reporting of dispositions, the taking and filing of fingerprint impressions, ~~shall~~ will be conducted in the manner set forth in Neb. Rev. Stat. §29-3516, 3517 (Reissue 1979), as amended.

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003 - DISSEMINATION

003.01 For purposes of dissemination, the following are public records:

003.01A Complete criminal history record information;

003.01B Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, photographs taken in conjunction with an arrest for purposes of identification of an arrested person;

003.01C Original records of entry such as police blotters, offense reports, or incident reports;

003.01D Court records of any judicial proceedings;

003.02 Criminal history record information, as used in this regulation, ~~shall~~ will not include intelligence or investigative information.

003.03 Criminal history record information consisting of a notation of an arrest, without subsequent disposition after an interval of one year and no active prosecution is pending, will ~~shall~~ not be disseminated to persons other than criminal justice agencies except when the subject of the record:

003.03A Is currently the subject of prosecution or correctional control as a result of a separate arrest;

003.03B Is currently an announced candidate for or holder of public office; or

003.03C Has made a notarized request for the release of such record to a specific person; or

003.03D Is kept unidentified, and the record is used for purposes of surveying or summarizing individual or collective law enforcement agency activity or practices, or the dissemination is

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requested consisting only of release of criminal history record information showing (a) dates of arrests, (b) reasons for arrests, and (c) the nature of the dispositions, including but not limited to reasons for not prosecuting the case or cases.

003.04 When disseminating criminal history record information to a noncriminal justice agency, organization or individual, the Patrol ~~shall~~ will edit the criminal history record information so that the recipient receives only that data to which he or she is entitled. In no event shall the agency provide the noncriminal justice recipient with an exact copy of the criminal history record.

003.05 When disseminating criminal history record information, a record ~~shall~~ will be kept indicating the agency, organization or individual to whom the information is disseminated, the date of the dissemination, the record subject and the items released.

003.06 State statutes require a search of both state and federal records for certain licenses - e.g. Liquor licenses, private investigator licenses, and charitable gaming licenses. Federal records obtained by the Nebraska State Patrol for this purpose will be disseminated only to the authorized agency for licensing purposes.

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004 - UNIFORM SCHEDULE OF FEES

- 004.01 Individuals and noncriminal justice agencies and organizations requesting Nebraska criminal history record information, whether for individual access and review or for other purposes ~~shall~~ will pay a nonrefundable fee of \$15.00 for each request made. For requests which require a search of both state and federal records, the fee ~~shall~~ will be \$16.00 in addition to the fee charged by the Federal Bureau of Investigation. Fees may be paid by cash, check or money order ~~and shall be payable~~ to the Nebraska State Patrol. With prior approval, fees may also be paid by electronic and wire transfers or by state approved credit and debit cards. The Superintendent, at his or her discretion under appropriate circumstances~~s~~, may waive the fee.
- 004.02 Effective September 1, 2016, the fee ~~shall~~ decreases to \$12.50 for each request for a state record and ~~shall~~ increases to \$35.25 in addition to the fee charged by the Federal Bureau of Investigation for each search requiring both a state and national record.
~~Requests for records received or postmarked prior to September 1, 2016, shall be processed at the old rates.~~ Criminal history record information can also be requested and paid for ~~on-line~~ online with a credit card or electronic check. Convenience fees may apply.

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005- ACCESS AND REVIEW

- 005.01 Complete criminal history record information ~~shall~~ will be a public record open to inspection and copying by any person during normal daylight business hours, excluding weekends and holidays.
- 005.02 Any person in interest, ~~shall~~ will be entitled to review criminal history record information for determining its accuracy and completeness. The applicant ~~shall~~ will provide ~~satisfactory~~ verification of identity which ~~shall~~ includes name, date and place of birth and, when identification is doubtful, a set of fingerprint impressions may be taken by the agency. The review authorized by this chapter ~~shall be is~~ limited to a review of criminal history record information. Upon payment of the fee specified in Section 004 of this chapter, the person in interest may obtain a copy of the criminal history record information.
- 005.03 Any person in interest, who finds that the criminal history information is inaccurate or incomplete, may seek administrative review as provided in Rules and Regulations #1 of the Commission.
- 005.04 If the requested criminal history record or other public record, as defined in this regulation, is not in the custody or control of the person to whom application is made, such person ~~shall~~ will notify the applicant immediately. If requested by the applicant, such notification will be in writing ~~and shall state~~ stating the agency, if known, which has custody or control of the record in question. If the criminal history record or public record is in custody and control of the person to whom application is made but is not available at the time the applicant asks to see it, the custodian ~~shall~~ will notify the applicant and if requested by the applicant, the custodian ~~shall~~ will set a date and hour within three working days at which time the record ~~shall~~ will be available for inspection. A request for criminal history information on more than twenty subjects ~~shall~~ will be completed within 15 working days.
- 005.05 A request by mail for a copy of a complete criminal history record information by a person not the subject of the record, ~~must~~ will be notarized and include a check or money order for the amount specified in Section 004 of this chapter.

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006—SECURITY

006.01 ~~—The Major in charge of Investigative Services for the Patrol shall, in cooperation with the Section Commander of Criminal Identification and the Computer Systems Coordinator, develop and implement a plan to insure:~~

006.01A ~~—The physical security of criminal history record information; and~~

006.01B ~~—The protection of such information from unauthorized access, disclosure or dissemination.~~

006.01C ~~—This section shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of this chapter.~~

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