

TITLE 78 - NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

CHAPTER 1 - PROCEDURES FOR CHALLENGE AND CORRECTION OF CRIMINAL HISTORY RECORD INFORMATION

001 Purpose - To provide procedures for challenge of the completeness or accuracy of criminal history record information and to provide procedures for correcting of such records when found to be incomplete or inaccurate.

002 Scope - Applicable to all criminal justice agencies in the State of Nebraska.

003 Authority - This regulation is adopted in accordance with the provisions of Article 9, Chapter 81, R.R.S. 1943 as amended to date, and pursuant to the authority contained in Section 81-1423 (1), (5), (8), (9), and (14), R.R.S. 1943, as amended by Laws 1978, LB 713, Section 29.

003.01 - These rules are intended and designed to meet the requirements of Title 28 of the Code of Federal Regulations, Chapter 1, Part 20 as amended December 6, 1977.

004 Effective Date - This regulation shall become effective September 6, 1978.

005 Record Review - Any person in interest who asserts that he or she has reason to believe that criminal history information relating to him or her, or another person in whose interest he or she acts, is maintained by any system in the state, shall be entitled to review and receive a copy of such information for the purpose of determining its accuracy and completeness by making application to the agency operating such system. The applicant shall provide satisfactory verification of the subject=s identify, which shall include name, date and place of birth. When identification is doubtful, a set of fingerprint impressions may be taken by the law enforcement agency. The review authorized by this rule and regulation is limited to criminal history record information.

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006 Procedure - When any person in interest, upon review of criminal history information finds what he or she believes to be inaccurate or incomplete information as

defined by this regulation, he or she shall within three days notify the agency maintaining the criminal history information in writing that he or she believes the records to be incomplete or inaccurate.

006.01 Notification must include a specific description of the record entries believed to be inaccurate or incomplete and a description of what the record should accurately contain. Any criminal justice agency receiving notification shall respond to the applicant within five working days. Response by the agency shall include either an indication that correction procedures have been initiated or shall include intent to maintain the record as it exists. Copies of all correspondence regarding correction or refusal to correct shall be retained by the criminal justice agency.

006.02 If the applicant is notified by the criminal justice agency that the record will not be corrected, he or she may seek administrative review by the Nebraska Commission on Law Enforcement and Criminal Justice. Application for administrative review shall include the following:

006.02A Full name, place and date of birth of subject of criminal history record.

006.02B Copy of criminal history record in dispute.

006.02C Description of what record should contain.

006.02D Copies or correspondence between applicant and agency holding disputed information.

006.03 Upon receipt of a full application, Commission staff shall, within three working days, notify both the person in interest and the agency holding the record that an application has been received and that an administrative review will be started. The Commission staff will review records and conduct interviews as may be necessary to reach

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a conclusion of whether the disputed record is inaccurate or incomplete. Commission staff will, within 30 days, report the findings of the administrative review to the Data Processing Committee of the Commission. Commission staff shall notify the applicant and the agency holding the record information of the time and place of the Data Processing Committee meeting in which the

report will be presented. The Data Processing Committee will review the staff report and conclusions and make a finding at that time.

006.04 If it is the finding of the Data Processing Committee that information in the criminal history record is inaccurate or incomplete, the Commission staff will notify both the applicant and the agency holding the record and will direct the agency to begin correction procedures.

006.05 If either the applicant or the agency holding the record desire to contest the decision of the Data Processing Committee, they shall within ten days notify the Commission in writing of their intent to do so. The appeal shall be considered a contested case as defined by Section 84-901, R.R.S., 1943. A hearing before the Commission Data Processing Committee shall be scheduled within 30 days and shall be conducted in a manner consistent with Sections 84-913 through 84-916, R.R.S., 1943.

007 Hearing Procedures - Upon acceptance by the Commission of a contested case, as defined in Section 84-901 (3) Reissued Revised Statutes of Nebraska, the following procedures shall be used for hearing:

007.01 Notice: All parties involved in contested cases shall be notified not less than 20 working days prior to the hearing.

007.02 Request for Hearing/Filing Procedures: The person requesting the hearing shall make the request in writing. The request shall be accompanied with the following documentation.

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007.02A Full name, place of birth and date of birth of subject of criminal history record.

007.02B Copy of criminal history record in dispute.

007.02C Description of disputed point in record and description of what record should contain.

007.02D Copies of correspondence between agency holding disputed information and applicant.

007.02E Listing and description of any supplementary information or evidence to be considered in the hearing.

007.03 Continuances: Any person desiring a continuance shall, immediately upon receipt of notice of hearing or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Director of the Nebraska Commission on Law Enforcement and Criminal Justice by letter or telegram as so desired, stating in detail the reasons why such continuance is necessary. For good cause, the Director may grant such a continuance and may at any time order a continuance on his own motion. Request for continuances, unless justified by exceptional circumstances, must be submitted seven days prior to the hearing date.

007.04 Conduct of Hearings: The hearing will be conducted by the Chairman of the Commission's Data Processing Committee or by hearing officer as the Chairman may designate. The Chairman or hearing officer will open proceedings, rule on motions and objections relating to testimony and evidence, interrogate any witness to ascertain additional facts, and close the proceedings. All parties may make opening and closing statements, if they so desire.

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007.05 Transcripts: At the discretion of the Chairman, hearings may be recorded by a court reporter, recorded by tape recorder or by secretary in shorthand. Any person involved in the proceedings may request and obtain an official record of the proceedings, provided the request is in writing and delivered to the Director of the Commission at least five days prior to the date of hearing. Charge for preparing an official record will be paid by the party requesting it.

007.06 Findings: Upon completion of the hearing, the Data Processing Committee shall take the matter under advisement and shall subsequently make findings and enter an order in accordance with Section 84-915 R.R.S. 1943.

007.07 Appeal: Except as otherwise provided by law, any person may appeal the order given by the Data Processing Committee to the District Court in accordance with the provisions of Section 84-917 R.R.S. 1943, as amended.

007.08 Evidence: the chairman or hearing officer shall receive into record all evidence in accordance with the criteria in Section 84-914 R.R.S. 1943.

008 Correction Procedures - Upon a finding by the Commission that a record is incomplete or inaccurate, the criminal justice agency holding the record shall within 15 working days notify all criminal justice agencies which are known by the agency to be recipients of the incorrect record. The agency shall submit to the Commission in writing either a list of agencies notified of the correction or a certification by the chief executive officer of the agency that the record had not been disseminated to any other criminal justice agencies. The criminal justice agency shall also, within 15 working days, supply to the applicant upon his or her request, the names of all non-criminal justice agencies or individuals to which the record has been given.

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009 Definitions - As used in this regulation:

009.01 ACriminal history record information≡ means information collected by criminal justice agencies on individuals consisting of identifiable descriptions or notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges and any disposition arising from such arrest, charges, sentencing, correctional supervision and release. Criminal history record information does not include intelligence or investigative information.

009.02 APersons in interest≡ means 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.

009.03 AErrors of a material nature≡ means errors that distort information detailing date, time, location, or nature of any criminal justice proceedings which are documented in record.

009.04 AComplete and accurate≡ means that arrest records show the subsequent disposition of the case as it moves through the various stages of the criminal justice system. Accurate shall mean containing no erroneous information of a material nature.

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Effective Date: September 6, 1978