

TITLE 78 - NEBRASKA COMMISSION ON LAW ENFORCEMENT AND CRIMINAL JUSTICE

CHAPTER 3 - PROCEDURES FOR STORAGE AND DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

001 Purpose - To insure that each criminal justice information system maintained in Nebraska shall contain complete and accurate criminal history information and to assure implementation of dissemination guidelines established by Legislative Bill 713, 1978.

002 Scope - This regulation shall apply to all criminal justice agencies in the State of Nebraska as defined by Laws 1978, LB 713.

003 Authority - This regulation is adopted in accordance with the provisions of Article 9, Chapter 84, 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 18.

003.01 These rules are intended and designed to meet the requirements of Laws 1978, LB 713 and 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 April 1, 1979.

005 Public Records - For purposes of dissemination the following are public records:

005.01 Complete criminal history record information;

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

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005.03 Original records of entry such as police blotters, offenses reports, or incident reports;

005.04 Court records of any judicial proceeding;

005.05 Records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers= or the operators= licenses.

006 Dissemination Procedures:

006.01 All criminal justice agencies shall, upon dissemination of criminal history record information:

006.01A Maintain a listing of individuals or agencies in and out of the state to whom criminal history record information was released.

006.01B Retain description of information released.

006.01C Record the date of release.

006.02 Criminal justice agencies shall also establish procedures to monitor delinquent disposition reporting and verify all record entries of criminal history record information.

006.03 Criminal history information may be disseminated without recording 006.01A, 006.01B and 006.01C above if the information is directly related to the offense or offenses for which a person is currently involved in the criminal justice system.

006.04 Routine transfer among users of a stored computerized information system, of computerized stored and generated criminal data is exempt from 006.01A, 006.01B and 006.01C, above where on-line updating and retrieval are present.

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006.05 Criminal justice agencies shall assure that complete criminal history record information is open to inspection and copying by any person during normal business hours and at such other times that may be established by the agency maintaining the record. Criminal justice agencies may adopt such regulations with regard to inspection and copying of records as are reasonably necessary for the physical protection of the records and the prevention of unnecessary interference with the discharge of the duties of the agency.

006.06 If the criminal history information requested is not in the custody or the control of the person to whom the application is made, that person shall immediately notify the applicant of this fact. Notification shall be in writing, if requested by the applicant and shall state the agency, if known, which has custody or control of the record in question. If the requested criminal history information or other public record, as defined by this regulation, is in the custody and control of the person to whom the application is made but is not available at the time the applicant asks to examine it, the applicant shall be immediately notified (in writing, if requested by the applicant) and a date and hour within three working days shall be set for inspection of the record.

006.07 Criminal Justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply.

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

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

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006.09A Is currently the subject of prosecution or correctional control as a result of a separate arrest;

006.09B Is currently an announced candidate for or holder of public office; or

006.09C Has made a notarized request for the release of such record to a specific person.

006.10 Criminal justice agencies releasing information defined in this paragraph shall maintain a record of the information released, the person or agency to whom it was released to, the date of release, and a description of the circumstances fitting the above exemptions.

006.11 Information regarding cases in which the original arrest was made by a federal officer may only be disseminated as follows:

006.11A Criminal justice agencies for criminal justice purposes.

006.11B Federal agencies authorized to receive it pursuant to Federal Statute or Executive Order.

006.11C For use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by federal or state statutes and approved by the U.S. Attorney General. When no active prosecution of the charge is known to be pending, arrest data more than one year old will not be disseminated unless accompanied by information relating to the disposition of that arrest.

006.11D For issuance of press releases and publicity designed to effect the apprehension of wanted person in connection with serious or significant offenses (28 CFR part 20.33)

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006.12 Criminal History Record Information which has been obtained from a jurisdiction outside of the State of Nebraska must be disseminated according to the laws and/or regulations of the State from which the record was obtained.

006.13 Dissemination means transmission of criminal history record information to individuals and agencies other than criminal justice agencies that are jointly maintaining a central repository, where the information is to be used for administration of criminal justice. The reporting of a criminal justice transaction to a State, local or Federal repository or comparison of records for purposes of verification between reporting agencies and repositories, shall not be considered a dissemination of information.

007 Security - Direct access to criminal history record information system facilities, system operating environments, data file contents, and system documentation shall be restricted to authorized organizations and persons.

007.01 Wherever criminal record information is collected, stored, or disseminated, the criminal justice agency or agencies responsible for the operation of the system:

007.01A May determine for legitimate security purposes which personnel may work in a confined area where such information is stored, collected or disseminated;

007.01B Shall select and supervise all personnel authorized to have direct access to such information;

007.01C Shall ensure that an individual or agency authorized direct access is administratively held responsible for:

007.01C1 The physical security of criminal history record information under its control or in its custody;

007.01C2 The protection of such information from unauthorized access, disclosure or dissemination;

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007.01D Shall institute procedures to reasonably protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or any natural or man-made

disasters;

007.01E Shall provide that each employee working with or having access to criminal history record information is made familiar with the security, privacy and dissemination of Criminal History Information Act (Laws 1978, LB 713) and Rules and Regulations adopted in accordance with the Act by the Nebraska Commission on Law Enforcement and Criminal Justice.

007.01F Require that direct access to criminal history record information is made available to only authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system. This section of this regulation shall not be construed to inhibit or limit dissemination of criminal history record information as authorized in other sections of this regulation.

007.02 Criminal justice agencies using computerized record keeping facilities shall assure the following:

007.02A Criminal history record information is to be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals;

007.02B Operation programs are used that will prohibit inquiry, record updates, or destruction of records from any such terminal other than criminal justice system terminals which are so designated;

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007.02C Destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information;

007.02D Operational programs are used to detect and store, for the output of the designated criminal justice agency employees, all unauthorized attempts to penetrate any criminal history record information system, program, or file; and

007.02E That security programs specified in this paragraph are known only to criminal justice agency employees responsible for criminal history record information control, or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and that the programs are kept continuously under maximum security conditions.

008 Unauthorized Access or Dissemination - Any person who:

008.01 Permits unauthorized direct access to criminal history record information, or

008.02 Knowingly fails to disseminate or make public criminal history record information as required by Laws 1978, LB 713, or

008.03 Knowingly disseminates non-discloseable criminal history record information in violation of the before mentioned Act, shall be guilty of a Class IV misdemeanor.

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009 Compliance - Whenever any officer or criminal justice agency in the state fails to comply with the requirements of this regulation, Laws 1978, LB 713, or any other regulations adopted by the Nebraska Commission on Law Enforcement and Criminal Justice pursuant to the Act, any person aggrieved may bring an action, including but not limited to an action for mandamus, to compel compliance. Such action may be brought in the District Court of any district in which the records are located or in the District Court of Lancaster County. The Commission may request the Attorney General to bring such action.

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Effective date: February 14, 1979

