

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Amendment)

502 KAR 30:060. Dissemination of criminal history record information.

RELATES TO: KRS 11.160(1)(e), 11.160(2)(e), 15.540, 17.115, 17.140, 17.147, 17.151, ~~17.152~~~~[17.1522]~~, 17.160, 17.167(4), ~~[154.650,]~~ 237.110(7), 311A.100

STATUTORY AUTHORITY: KRS 15A.150, 15.382, 17.150(6), 17.160(3), 17.165, 17.167, 156.483, 160.151, 160.380, 161.148, 199.462(4), 216.793, 238.525, 281A.040, 281A.300, 324.045, 329.030, 329A.025, 351.090, 351.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.115 ~~authorizes~~~~[provides that]~~ the Justice and Public Safety Cabinet ~~to~~~~[shall]~~ cooperate with the state, county and city law enforcing agencies of other states and of the United States in order to develop and carry on an inter-state and national system of criminal identification. KRS 17.147(6) ~~requires~~~~[provides that]~~ the Department of Kentucky State Police ~~to~~~~[shall]~~ supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs. ~~[Further,]~~ KRS 17.150(6) requires the Secretary of the Justice and Public Safety Cabinet to adopt administrative regulations to carry out the provisions of the criminal history record information system. This administrative regulation establishes the conditions ~~re-~~~~quired for~~~~[under which]~~ the dissemination of data from the criminal history record information system~~[may disseminate data]~~.

Section 1. Dissemination of Criminal History Record Information (CHRI). Use of CHRI disseminated to noncriminal justice agencies shall be limited ~~[to the purpose for which it was given]~~. An agency or individual shall not confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself. ~~[Dissemination of]~~CHRI shall ~~[be regulated by the specific category of criminal history record information. Those categories shall]~~ include:

(1) Nonconviction data. Dissemination of nonconviction data shall ~~not include~~ ~~[, with the exception of the computerized Kentucky State Police]~~ files available for access~~[accessed]~~ by an open records~~[record]~~ request. ~~[directly to]~~ The dissemination~~[Department]~~ of nonconviction data shall ~~[State Police,]~~ be limited, ~~[whether]~~ directly or through an intermediary, to:

(a) Criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment.

(b) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court order, as determined by the General Counsel of the~~[,]~~ Justice and Public Safety Cabinet.

(c) Individuals and agencies pursuant to a specific agreement as outlined in 502 KAR 30:040 with the Department of Kentucky State Police, to provide services required for the administration of criminal justice pursuant to that agreement.

(d) Individuals and agencies for the express purpose of evaluation research, or statistical activities pursuant to an agreement with the Criminal Identification and Records Branch of the Kentucky State Police ~~[(Records)]~~. The agreement shall:

1. Limit the use of data to evaluation, research, or statistical purposes;
2. Insure the confidentiality and security of the data consistent with these administrative regulations; and
3. Provide sanctions for violations of the agreement.

(2) Conviction data. Dissemination of conviction data shall be limited as follows:

(a) Juvenile records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order. This restriction shall not apply to juveniles ~~[who were]~~ tried as an adult.

(b) Criminal history record checks for employment or volunteer purposes. CHRI ~~[Criminal history record information]~~ concerning ~~[of]~~ a conviction ~~[nature]~~ may be disseminated to potential employers of persons. To obtain CHRI ~~[criminal history record information]~~ regarding convictions, a prospective employee or volunteer through the potential employer shall complete the relevant form, located on the Kentucky State Police Web site, ~~[prescribed by this administrative regulation,]~~ which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the potential employer, or other entity requesting the CHRI, signature of the prospective employee or volunteer, and a witness signature. The form shall also include sex, race, date of birth, Social Security number, and previous addresses of the prospective employee or volunteer. The prospective employer shall be responsible for the completion of the appropriate form and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer, with the necessary release form.

(c) Nonemployment criminal records checks. CHRI regarding ~~[Criminal history record information of]~~ a conviction ~~[nature]~~ may be disseminated to individuals, entities, or organizations in regard to emigration or housing. To obtain CHRI ~~[criminal history record information]~~ regarding convictions, an individual shall complete the relevant form, located on the Kentucky State Police Web site, ~~[prescribed by this administrative regulation,]~~ which is appropriate for the request. The form shall include a waiver that releases the Kentucky State Police from liability with regard to the dissemination of conviction data. The form shall also include the name of the recipient individual, entity or organization, signature of the person about whom the CHRI is being requested ~~[individual requester]~~, and a witness signature. The form shall also include sex, race, date of birth, Social Security number and previous addresses of the person about whom the CHRI is being requested ~~[individual applicant]~~. The applicable forms shall be as follows:

1. Request for KSP Conviction Records/Housing, 10/03 edition; and
2. Request for Conviction Records/Emigration, 10/03 edition. The applicant shall be responsible for the completion of the form and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer. [

~~(d) In regard to employment criminal records checks, the prospective employer shall be responsible for the completion of the appropriate form as indicated in paragraph (b) of this subsection and shall submit a check or money order for twenty (20) dollars, made payable to the Kentucky State Treasurer.~~

~~(e) If the criminal records check is nonemployment in nature, the applicant shall be responsible for the completion of the form as listed in paragraph (c) of this subsection and shall submit a check or money order in the amount of twenty (20) dollars, made payable to the Kentucky State Treasurer.]~~

~~(d)[(f)] Pursuant to KRS 17.167(4), employees and members of fire departments, ambulance services, and rescue squads shall be exempted from a [the] fee [required in this section].~~

~~(e)[(g)] The fee in this section shall not apply to applications for a license, or a renewal of a license, to carry a concealed deadly weapon. The fees for this license are provided in KRS 237.110(7).~~

Section 2. Electronic Log. As outlined in 502 KAR 30:040, the computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRI from the computerized criminal history record information system shall electronically log all disseminations of CHRI. The log shall contain [at least] the following information: the name

of the agency and individual receiving CHRI, the date of release, the individual to whom the CHRI relates, the items of CHRI released, and, in the case of secondary dissemination, the agency which provided the CHRI. Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHRI dissemination.[]

~~Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:~~

- ~~(a) "Request for Conviction Records – Employment/Professional License", 10/08 edition;~~
 - ~~(b) "Request for Conviction Records/Child Care", 9/08 edition;~~
 - ~~(c) "Request for Conviction Records/Adoptions and Foster Homes", 9/08 edition;~~
 - ~~(d) "Request for Conviction Records/Lottery", 10/08 edition;~~
 - ~~(e) "Request for Conviction Records/Long-Term Care Facility", 10/08 edition;~~
 - ~~(f) "Request for Conviction Records/Kentucky Department of Mines and Minerals", 10/08 edition;~~
 - ~~(g) "Request for Conviction Records/Fire Department, Ambulance Service and Rescue Squad", 10/03 edition;~~
 - ~~(h) "Request for Conviction Records/Minors", 10/08 edition;~~
 - ~~(i) "Request for Conviction Records/Nonpublic Schools", 9/08 edition;~~
 - ~~(j) "Request for Conviction Records/Department of Education", 9/08 edition;~~
 - ~~(k) "Request for Conviction Records/Legislative Research Commission", 10/08 edition;~~
 - ~~(l) "Request for Conviction Records/Housing", 10/08 edition;~~
 - ~~(m) "Request for Conviction Records/Emigration", 9/08 edition; and~~
 - ~~(n) "Request for Conviction Records/Public Schools", 10/08 edition.~~
- ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Post 12 at 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-2221, Monday through Friday, 8 a.m. until 4:30 p.m.]~~

COL. PHILLIP BURNETT JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 22, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email amy.barker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which the criminal history record information system may disseminate data.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to both the Department and agencies (both criminal and non-criminal) on the requirements that must be met before criminal history record information (CHRI) can be disseminated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by ensuring that the CHRI system is efficient in supplying the appropriate data to requesting agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation outlines the procedure that an agency must comply with in order to access CHRI that is stored and maintained pursuant to KRS 17.115.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the language of the existing regulation by more appropriately defining the language used.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to more clearly establish how the Department manages requests for CHRI, and what might be supplied.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment more accurately reflects the necessary materials that an agency must provide before receiving information contained within the CHRI system.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will result in the clarification of the necessary requirements that must be met prior to the dissemination of CHRI.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Kentucky State Police, and agencies requesting CHRI from the Department.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No additional action is required on the part of the agency in order to effectively comply with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The Department and requesting agencies will benefit from a regulation that more clearly defines the process of requesting CHRI, which will result in more efficient administration of the statute.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Nothing.

(b) On a continuing basis: Nothing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No. This amended regulation does not establish any fees, nor does it directly or indirectly increase fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Kentucky State Police, and agencies requesting CHRI from the Department.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.150, 15.382, 17.150(6), 17.160(3), 17.165, 17.167, 156.483, 160.151, 160.380, 161.148, 199.462(4), 216.793, 238.525, 281A.040, 281A.300, 324.045, 329.030, 329A.025, 351.090, 351.315

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.