

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

502 KAR 30:070. Inspection of criminal history record information by record subject.

RELATES TO: KRS 17.140, 17.150, 61.872, 61.878, 61.884

STATUTORY AUTHORITY: KRS 15A.150, ~~[47.080,]~~17.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.150(5) makes that portion of KRS Chapter 61 which deals with administrative and judicial remedies for the inspection of public records and penalties appealable. KRS 61.884 allows the individual record subject to access their personal CHRI ~~[relating to him]~~ or other data in which the record subject is mentioned by name. This administrative regulation establishes guidelines by which CHRI may be accessed by the individual record subject.

Section 1. This administrative regulation ~~[These administrative regulations]~~ shall provide for the initiation of access and review~~[access/review]~~ procedures ~~[at each]~~ of CHRI maintained by the Kentucky State Police.~~[Posts throughout]~~ The ~~[Commonwealth with the exception of Frankfort, Post 12. The]~~Records Section shall serve as the location for record access and review ~~[access/review]~~ for individuals near Frankfort.~~[Access/review procedure shall be uniform throughout the various designated sites.]~~

Section 2. Access and Review Procedures~~[Access/Review Procedure]~~. The record subject shall complete the "Request for Review" form provided by Records~~[at the respective access/review site]~~. A duplicate copy of the~~[said]~~ form shall be provided to the requester, or requester's legal counsel. The requester shall be required to provide one (1) set of rolled fingerprints.~~[from]~~ The ~~[requester on a completed KSP Form 22, will be forwarded to Records where]~~submitted fingerprints will be used to verify the record subject's identity. The Records staff shall note the date of the request as indicated on the "Request for Review" form and shall schedule the record review within three (3) working days of the receipt of the request, unless a detailed explanation of the cause is given for further delay along with the place, time and earliest date on which the CHRI will be available for inspection. The requester shall be notified ~~[forthwith]~~ by Records of the scheduled date of review.~~[All record reviews will be conducted from 8 a.m. through 4 p.m., Monday through Friday with the exception of legal holidays, at the designated State Police Post or the Records Section. Records shall returned to the post of the respective access/review request, the "Request for Review" form, the fingerprints taken from the individual for identity verification, a copy of the letter to the record subject scheduling the review date, and a certified copy of the individual's criminal history record.]~~

~~Section 3. Record Reviewing Procedures. In order to insure that the subject appearing at the Post for the scheduled review of the CHRI supplied from Records is in fact the same person the submitted set of fingerprints were obtained from, visual recognition is required by Post personnel before allowing the individual to actually access the CHRI. The individual, and his attorney (if written approval is submitted by the record subject) shall be allowed to inspect the copy of the CHRI. Reasonable assistance shall be provided by Post personnel to insure understanding of the CHRI. After the record subject has inspected the CHRI, Post personnel should ascertain if a challenge of the content of the records will be initiated. Basis for challenge shall stem from erroneous information, misinformation, or fictitious information. The individual shall be informed that a challenge must be initiated within thirty (30) working days of the actual~~

~~review. If a challenge is not initiated at the time of review, a copy of the individual's record will be retained at the Post and will be filed with the individual's "Request for Review" form in a manner convenient to the Post. Information regarding the "Request for Review" shall remain at the Post not less than thirty (30) working days from the actual date of review to allow the individual ample time to challenge the record content. If, after thirty (30) working days a challenge has not been initiated, all material regarding the review shall be returned to Records where a permanent record of the review shall be maintained.~~

~~Section 4. Challenge of Record Contents. If the record subject desires to challenge the contents of the record, the individual shall complete the "Challenge of Record" form (bottom portion of the original form). A duplicate copy should be provided to the individual. It should be noted on the form if the individual requests a copy of the record for purposes of challenge. A copy of the individual's record furnished through the Post by Records shall be given to the individual if a challenge is initiated and the individual states a need for a copy of the record for purposes of pursuing a challenge. The copy provided by Records shall be permanently marked or stamped to indicate that the copy is for the purpose of challenge and that any other use thereof would be in violation of federal and state law. The Post shall forward to Records a "Challenge of Record" form and any documents submitted by the individual in support of the challenge.~~

~~Section 5. Processing of Challenge by Records. Records shall conduct a comparison of the information under challenge with the original input documents and information contained in the repository files. Any errors or omissions discovered in the repository files shall be corrected. If no error is found, Records shall forward a copy of the original challenge form, a copy of the record as contained in the files, and any other relevant information to the agency or agencies which the Record Section's records indicate as contributing the information under challenge and shall request them to examine in an expeditious manner all relevant files to determine the validity of the challenge. Records shall notify the individual or his legal counsel in writing of the status of said challenge within thirty (30) working days of the challenge date. Status of challenge includes, but is not limited to, notice of clarification of record, expungement of erroneous data, substantiating record or ongoing research process.~~

~~Section 6. Administrative Review. If the record subject is dissatisfied with the action taken by Records, the individual may request an Administrative Review. This request shall be submitted in writing and directed to the attention of the Commander of the Records Section. The Commander of the Records Section shall notify in written form the Administrative Review Officer of the request for Administrative Review upon receipt of such request. An individual within the Department of State Police and designated by the Commissioner as the Administrative Review Officer shall review the individual's record in the same manner as performed by Records. The Administrative Review Officer shall notify the individual, in writing, of the decision of the Administrative Review. This notification shall be within thirty (30) days of submission of the written request for the Administrative Review. Any further appeal by the individual will be directed to the court for judicial review.~~

~~Section 7. Action Taken if Error or Omission Found Within Record. Records shall correct necessary documents maintained in custody. Notification of all known criminal justice recipients of the erroneous information within the past year and corrections shall be effected in written form. Records shall furnish the individual, upon request, a written list of known noncriminal justice recipients within the past year and of corrections to be made. Records will require that~~

~~the agency originating the erroneous information notify all known criminal justice recipients within the past year and of corrections to be made. Further, the originating agency will be requested to furnish the individual, upon request, a written list of all known noncriminal justice recipients of erroneous information within the past year.]~~

COL. PHILLIP J. 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 regulation provides the procedure for access and review of the criminal history record information (CHRI) maintained by the Records Section of the Kentucky State Police.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with the accepted standards regarding CHRI, particularly in regard to who might access and review same.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the method by which the Records Sections is to permit review and inspection of CHRI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear and reasonable procedures that allow for the inspection of CHRI, in addition to providing the record subject information on how to access his protected information.

(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 amendments clarify the existing language of the regulation, most specifically in regard to the fact that the Records Section is not responsible for remedying alleged errors found in the CHRI.

(b) The necessity of the amendment to this administrative regulation: The previous language relating to the methods of challenging CHRI was unclear and did not effectively represent the current procedures employed by the Records Section.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment allows the Records Section to more effectively allow access to the CHRI.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes the ambiguity that was present in the prior language regarding the procedure for challenging alleged errors in the CHRI.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, the Department of Criminal Justice Training, and all persons attempting to access or inspect CHRI.

(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: The regulated entities will continue to inform the requesting individuals that any challenges to be made regarding their CHRI should be directed to the AOC.

(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 amendment allows the Records Section to adhere to the accepted standards already in place.

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

(a) Initially: None.

(b) On a continuing basis: None.

(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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this regulation does not establish any new fees, nor does it increase fees directly or indirectly.

(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 Kentucky State Police, the Department of Criminal Justice Training, and all persons attempting to access or inspect CHRI.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.150, 17.140, 17.150, 61.872, 61.878, 61.884

(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.