

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

502 KAR 30:010. Criminal History Record Information System.

RELATES TO: KRS 15A.160, 17.140

STATUTORY AUTHORITY: KRS 15A.160, 17.140~~[17.080]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 provides and ~~[17.080 provide]~~ that the Secretary of the Justice and Public Safety Cabinet may adopt ~~[such]~~ administrative regulations as ~~[are]~~ necessary to properly administer the cabinet. KRS 17.140 requires the Justice and Public Safety Cabinet to establish~~[establishes]~~ the Centralized Criminal History Record Information System, under the direction, control and supervision of the Commissioner of the Department of the Kentucky State Police. This administrative regulation establishes the definitions to be used in the administration of the Centralized Criminal History Record Information System.

Section 1. ~~[As employed in 502 KAR 30:010 through 502 KAR 30:070, unless the context requires otherwise:]~~

(1) "Administration of criminal justice" means performance of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and dissemination of CHRI. ~~["Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.]~~

(2) "Criminal history record information," or "CHRI,"~~[hereinafter referred to as CHRI,]~~ means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrest, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including, but not limited to, sentencing, correctional supervision and release. ~~[CHRI shall not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system, or the evaluative information, such as statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. CHRI shall be limited to information concerning persons who have attained the age of eighteen (18) and shall not include any information concerning criminal offenses of acts of delinquency committed by any person before that person has attained the age of eighteen (18); provided, however, that if a person under the age of eighteen (18) is adjudicated as an adult and found guilty in a circuit court, information relating to such criminal offense shall be deemed CHRI. CHRI shall not include any information concerning any offense which is not punishable by incarceration.]~~

(3) "Criminal History Record Information System" means a system including equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information. ~~["Criminal justice agency" means:]~~

~~[(a)] [Courts for purposes agreed upon between the secretary and Chief Justice;]~~

~~[(b)] [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. The term criminal justice agency shall be inclusive of but not limited to: the Attorney General,~~

~~sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution of the retarded, state police, State Fire Marshal, Board of Alcoholic Beverage Control, Justice Cabinet, Cabinet for Human Resources, Transportation Cabinet, Corrections Cabinet, and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents.]~~

(4) "Criminal justice agency" means:

(a) Courts for purposes agreed upon between the secretary and Chief Justice;

(b) A government agency or any subunit that 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; or

(c) Any other agency as agreed upon by the secretary.

(d) The term criminal justice agency shall be inclusive of but not limited to: the Attorney General, sheriff departments, law enforcement agencies of a county or municipality, coroner, jailer, prosecuting attorney, probation officer, parole officer, warden of a prison, mental hospital or institution, state police, State Fire Marshal, Department of Alcoholic Beverage Control, Justice and Public Safety Cabinet, Department of Corrections; and every other person or criminal justice agency, except the court of justice, public or private, dealing with crimes or criminals or with delinquency or delinquents. ["Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial 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 CHRI.]

(5) "Disposition" means 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 disclosing the nature of the termination of proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include~~], but not be limited to~~: acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, conviction~~[convicted]~~, youthful offender determination, death~~[deceased]~~, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled or released from correctional supervision, or any other disposition deemed appropriate by the court.

(6) "Nonconviction data" means ~~[arrest]~~ information obtained~~[without disposition if an interval of one (1) year has elapsed]~~ from the date of arrest to~~[and no active prosecution of]~~ the date of disposition, in matters that do not result in a conviction, including~~[charges is pending; all]~~ 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, or that proceedings have been indefinitely postponed, including~~[as well as]~~ all acquittals and ~~[all]~~ dismissals.

(7) "NLETS" means the National Law Enforcement Telecommunication System.
~~["Uniform offense report", hereinafter "UOR-1," means the report form developed~~

~~pursuant to KRS 15A.190 and 17.150 on which every felony case, every misdemeanor case of theft by unlawful taking or disposition, every case of unauthorized use of a motor vehicle, and every other instance where there is an allegation that a criminal offense has been committed against a victim's person or property and a uniform citation will not suffice, shall be recorded and reported by forwarding a completed UOR-1 form to the Kentucky State Police, Records Section, hereinafter Records.}]~~

~~[(8)] ["Court disposition uniform offense report," hereinafter "UOR-3," means that report form developed pursuant to KRS 15A.190 and 17.150 on which either preliminary or final court dispositions on all criminal offenses involving arrest(s) other than those reported on a uniform citation shall be recorded with final dispositions on all cases reported by forwarding a completed UOR-3 to Records.}]~~

~~[(9)] ["NLETS" means the National Law Enforcement Telecommunication System.}]~~

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 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 Justice.RegContact@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 establishes the definitions to be used in the administration of the Centralized Criminal History Record Information (CHRI) System.

(b) The necessity of this administrative regulation:

This regulation is required in order to properly understand 502 KAR 30:010 through 502 KAR 30:070, as this regulation provides the requisite definitions.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This regulation establishes the definitions for the centralized CHRI system, which is required pursuant to KRS 17.140.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation is necessary to assist in the comprehension, understanding, and implementation of 502 KAR 30:010 through 502 KAR 30:070.

(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 existing language of the regulation, particularly in regard to what CHRI encompasses.

(b) The necessity of the amendment to this administrative regulation:

The amendment is necessary in order to more clearly define the regulation, and to provide guidance to the Department regarding the current procedures in place.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment more clearly defines CHRI, and provides a more uniform and efficient centralized CHRI system.

(d) How the amendment will assist in the effective administration of the statutes:

The Department can more effectively ascertain the procedures involved in maintaining the CHRI system now the regulation is more clearly defined. Outdated procedures, rules, and forms have been deleted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Kentucky State Police, criminal justice agencies, individuals with sensitive information contained in the CHRI system.

(4) Provide an analysis of how the entities identified in question (3) 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 that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No additional actions are required on the part of the regulated entities in order to effectuate compliance with the updated regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulated entities will benefit from current procedures and definitions being added to the regulation, with CHRI more clearly defined.

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

(a) Initially:

No additional costs are anticipated.

(b) On a continuing basis:

No additional costs are anticipated.

(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 fees or funding is anticipated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

The existing regulation established fees for testing. The amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied?

No. Tiering was not applied 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?

No answer provided.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 15A.160, 17.140

(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.

(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?

This amendment is not anticipated to increase costs.

(d) How much will it cost to administer this program for subsequent years?

This amendment is not anticipated to increase costs.

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: