

TITL: Compendium of State Privacy and Security Legislation: 1997
Overview - KENTUCKY ; CH. 17 Revised Statutes Annotated

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privacy and security of criminal justice information.

KENTUCKY

Kentucky Revised Statutes (Baldwin)

Chapter 17 Public Safety

17.110. Report of offense under penal code to cabinet. — (1) All city and county law enforcement agencies shall cause a photograph, a set of fingerprints, and a general description report of all persons arrested on a felony charge to be made and two (2) copies of each item forwarded within thirty (30) days after the arrest to the Department of State Police of the Justice Cabinet, in accordance with regulations of the Justice Cabinet. Unless the charges are dismissed or withdrawn at that appearance, the judge shall require any adult person appearing before any Circuit Court in the Commonwealth on a felony charge, who has not been arrested, to, if this has not already been done in the case before the court, be photographed and fingerprinted, and have a general description made following his arraignment. Agencies specified above shall furnish any other information involving offenses or in their possession relative to law enforcement upon request by the Justice Cabinet.

(2) Each city and county law enforcement agency shall advise the Department of State Police of the disposition made of all cases wherein a person has been charged with an offense. (Enact. Acts 1958, ch. 129, §§ 1, 2; 1976, ch. 191, § 1; 1992, ch. 427, § 2, effective July 14, 1992.)

17.115. Criminal identification activities — State institutions and peace officers to cooperate with cabinet. — (1) The Justice Cabinet shall:

- (a) Receive and file fingerprints, photographs, and other records pertaining to the investigation of crime and the apprehension of criminals; and
- (b) 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 interstate and national system of criminal identification.

(2) Persons in charge of any penal or correctional institution in the state, and all state law enforcement and peace officers operating identification facilities shall cooperate in providing the cabinet with fingerprints and descriptions of all persons lawfully committed to their custody or detained by them in cases where fingerprints and descriptions are taken, together

with a report
of the disposition of all cases of such persons.

KENTUCKY

17.120 Forwarding reports to federal government

The department of justice shall forward one copy of each photograph, set of fingerprints and general description report received by it to the federal bureau of investigation.

17.130 Repealed

17.140 Centralized criminal history record information system

(1) A centralized criminal history record information system shall be established in the department of justice under the direction, control and supervision of the commissioner of the bureau of state police.

(2) A centralized criminal history records information system means the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation or dissemination of criminal history records maintained by the department of justice.

17.142. Segregation of criminal records.

- (1) Each law enforcement or other public agency in possession of arrest records, fingerprints, photographs, or other data whether in documentary or electronic form shall upon written request of the arrestee as provided herein segregate all records relating to the arrestee in its files in a file separate and apart from those of convicted persons, if the person who is the subject of the records:
 - (a) Is found innocent of the offense for which the records were made;
 - or
 - (b) Has had all charges relating to the offense dismissed; or
 - (c) Has had all charges relating to the offense withdrawn.
- (2) A person who has been arrested and then has come within the purview of subsection (1) of this section may apply to the court in which the case was tried, or in which it would have been tried in the event of a dismissal or withdrawal of charges, for segregation of the records in the case. Upon receipt of such application the court shall forthwith issue an order to all law enforcement agencies in possession of such records to segregate the records in accordance with the provisions of this section.
- (3) Each law enforcement agency receiving an order to segregate records shall forthwith:
 - (a) Segregate the records in its possession in a file separate and apart from records of convicted persons;
 - (b) Notify all agencies with which it has shared the records or to which it has provided copies of the records to segregate records; and
 - (c) All records segregated pursuant to this section shall show disposition of the case.
- (4) Records subject to the provisions of KRS 431.076 or 431.078 shall be sealed as provided in those statutes.
(Enact. Acts 1980, ch. 127, § 1, effective July 15, 1980; 1996, ch. 374, § 2, effective July 15, 1996.)

17.143 Qualified person to administer system; personnel

The commissioner shall appoint a qualified person to administer the centralized criminal history record information system. He shall have statistical training and experience and possess a knowledge of criminal law enforcement and administration and of penal and correctional institutions and methods. He shall be furnished with the necessary facilities and equipment and shall appoint clerical and other assistants necessary for the operation of the centralized criminal history record information system.

17.150. Reports by law enforcement officers and criminal justice agencies — Public inspection exemptions — Regulations — Information from the Court of Justice. — (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; State Police, state fire marshal, Board of Alcoholic Beverage Control; Cabinet for Human Resources; Transportation 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, when requested by the cabinet, shall:

(a) Install and maintain records needed for reporting data required by the cabinet;

(b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal his or his parents' identity;

(c) Give the cabinet or its accredited agent access for purpose of inspection; and

(d) Cooperate with the cabinet to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:

(a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law enforcement personnel; or

(d) Information contained in the records to be used in a prospective law enforcement action.

(3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the

source of information collected by the Justice Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of State Police.

(7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice. (Enact. Acts 1968, ch. 128, § 4; 1974, ch. 74, Art. VI, § 31; 1976, ch. 191, § 5; 1976 (Ex. Sess.), ch. 14, § 5, effective January 2, 1978; 1978, ch. 61, § 1, effective June 17, 1978; 1986, ch. 331, § 11, effective July 15, 1986; 1986, ch. 389, § 27, effective July 15, 1986; 1992, ch. 211, § 5, effective July 14, 1992.)

17.151. Centralized criminal history record information system to be developed by state police, in cooperation with administrative office of the courts and department of corrections — Contents — Access — Identification numbers. — The Kentucky State Police shall, in cooperation with the Administrative Office of the Courts and the Department of Corrections, be responsible for the recording of those data elements

that are needed for development of the centralized criminal history record information system:

(1) The database shall at a minimum contain the information required in KRS 27A.310 to 27A.440;

(2) The Kentucky State Police shall provide access to the Administrative Office of the Courts and the Department of Corrections to its database; and

(3) The Kentucky State Police and the department of corrections shall assign the same identification number or other variable to each person whose name appears in the database. (Enact. Acts 1986, ch. 389, § 1, effective July 15, 1986; 1992, ch. 211, § 6, effective July 14, 1992.)

17.152. Citation and personal identification numbers to be supplied by State Police. — All data supplied to the centralized criminal history record information system by the Kentucky State Police, Administrative Office of the Courts, and the Department of Corrections shall be compatible with the system and shall contain both citation and personal identification numbers. (Enact. Acts 1986, ch. 389, § 5, effective July 15, 1986; 1992, ch. 211, § 7, effective July 14, 1992.)

17.1521. Uniform citation number to be supplied by Administrative Office of courts. — All data supplied to the centralized criminal history record information system by the Administrative Office of the Courts shall include the uniform citation number applicable to the information reported. (Enact. Acts 1986, ch. 389, § 6, effective July 15, 1986.)

17.1522. State Police to update database within thirty days of receipt of information from certain levels. — The Kentucky State Police shall update the centralized criminal history record information system within thirty (30) days of receipt of information. The update shall include information from the:

- (1) Offender level;
- (2) Arrest level; and
- (3) Informational and evaluational level. (Enact. Acts 1986, ch. 389, § 25, effective July 15, 1986.)

17.153 Annual report

(1) The annual report of the bureau shall contain statistics showing:

(a) the number and type of offenses known to public authorities;

(b) the personal and social characteristics of criminals and delinquents; and

(c) the administrative action taken by law enforcement, judicial, penal and correctional agencies in dealing with criminals and delinquents.

(2) The bureau shall also interpret such statistics and so present the information that it may be of value in guiding the legislature and those in charge of the apprehension, prosecution and treatment of criminals and delinquents, or those concerned with the prevention of crime and delinquency. The report shall include statistics that are comparable with national criminal statistics published by federal agencies heretofore mentioned.

17.157 Funds withheld for failure to comply

If any public official or employe, except justices, judges, circuit clerks, and employes of the Court of Justice, required to report to the bureau neglects or refuses to comply with the requests of the bureau, or its rules governing record systems and their maintenance, the bureau chief shall give written notice thereof to the person or persons authorized by law to disburse funds of the governmental agency to the public official or employe involved. No funds of the governmental agency shall thereafter be paid to the public official or employe, whether in the form of salary, fees, expenses, compensation, or otherwise, until the bureau chief notifies the disbursing authority that performance of the required duty has been completed.

17.160. Furnishing potential employer with person's record of convictions, guilty pleas, and Alford pleas involving specified crimes.

- (1) Notwithstanding any other provision of law, an employer may request from the Justice Cabinet or the Administrative Office of the Courts, or both, records of all available convictions involving any felony offense, any misdemeanor offense in KRS Chapter 531 or KRS Chapter 510, any misdemeanor offense under KRS Chapter 218A committed within the five (5) years immediately preceding the application, or any conviction for violating KRS Chapter 189A committed within the five (5) years

immediately preceding the application of a person who applies for employment or volunteers for a position in which he or she would have supervisory or disciplinary power over a minor. The cabinet or the Administrative Office of the Courts, as appropriate, shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

- (2) Any request for records under subsection (1) of this section shall be on a form approved by the cabinet and the Administrative Office of the Courts. No fee shall be charged to the employer or to the person whose records were requested if funding for the record checks provided for in this section is provided through some other mechanism; otherwise the cabinet or the Administrative Office of the Courts may charge a fee to be paid by the organization making the request, not to exceed the actual cost of processing the request.
- (3) The cabinet and the Administrative Office of the Courts shall adopt administrative regulations to implement the provisions of this section. No administrative regulation shall be adopted requiring or authorizing the fingerprinting of applicants.
- (4) As used in this section "employer" means any organization chartered by the Congress of the United States or specified by the Attorney General which employs or uses the services of volunteers or paid employees in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children. An organization which has an administrative office with paid personnel which has jurisdiction over suborganizations in one (1) or more counties shall make application for record checks through the administrative office of the organization and not through each individual suborganization.

- (5) Offenses which may be searched for under this section are ones involving any conviction, plea of guilty, or Alford plea, to any offense specified in subsection (1) of this section or the attempted violation of any offense specified in subsection (1) of this section. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a crime if such offense would have been a crime in Kentucky under subsection (1) of this section if committed in Kentucky.
 (Enact. Acts 1984, ch. 382, § 10, effective July 13, 1984; 1996, ch. 290, § 1, effective July 15, 1996.)

17.165. Definitions — Criminal record check for job applicants at child-care centers — Restrictions on employing violent offenders or persons convicted of sex crimes. — (1) As used in this section, "sex crime" means a conviction or a plea of guilty for a violation or attempted violation of KRS 510.040 to 510.140, 529.020 to 529.050, 530.020, 530.065, 531.310, 531.320, and 531.340 to 531.370. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky.

(2) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(4) No child-care center as defined in KRS 199.894 shall employ, in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime classified as a felony. Operators of child-care centers may employ persons convicted of sex crimes classified as a misdemeanor at their discretion. Each child-care center shall request all conviction information for any applicant for employment from the justice cabinet prior to employing the applicant.

(5) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(6) Any request for records under subsection (4) of this section shall be on a form approved by the justice cabinet, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(7) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988. (Repealed, reenact. and amend. Acts 1988, ch. 345, § 1, effective July 15, 1988.)

17.167. Felony-offender record check for employees and members of fire departments, ambulance services, and rescue squads.

- (1) As used in this section, "felony offender" means any person who has been convicted of, entered an Alford plea to, or pleaded guilty to the commission of a capital offense or a felony.
- (2) Any paid or volunteer fire department certified by the Commission on Fire Protection Personnel Standards and Education, ambulance service licensed by the Commonwealth of Kentucky, or rescue squad officially affiliated with a local disaster and emergency services organization or with the Division of Disaster and Emergency Services may apply to the

Justice Cabinet or the Administrative Office of the Courts for a felony offender record check on applicants for employment or membership with the fire department, ambulance service, or rescue squad.

- (3) Each application form, provided by a fire department, ambulance service, or rescue squad to an applicant for employment or membership, shall conspicuously state the following: "FOR EMPLOYMENT WITH OR MEMBERSHIP WITH A FIRE DEPARTMENT, AMBULANCE SERVICE, OR RESCUE SQUAD, STATE LAW PERMITS A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT OR MEMBERSHIP."
 - (4) Any request for records under this section shall be on a form approved by the Justice Cabinet or the Administrative Office of the Courts. The Justice Cabinet and the Administrative Office of the Courts shall not charge a fee for making record checks.
- (Enact. Acts 1996, ch. 373, § 1, effective July 15, 1996.)

OPEN RECORDS

CROSS REFERENCES

Access to public records, 200 KAR 1:020

P.L. 93-579, The Privacy Act of 1974, Sec. 7, reads as follows:

“(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to—

- (A) any disclosure which is required by Federal statute, or
- (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.”

OAG 79-413. A notation of “Do Not Publish” on a public record has no effect on the right to inspect, copy and publish the information in the record.

OAG 76-443. Under the open records act public records are subject to public inspection without the showing of a legitimate private interest or a wholesome public interest. The open records act applies to police courts and to all other courts trying penal cases. Unless a particular record is covered by a particular exception set forth in the statutes, the record is subject to public inspection without the necessity of showing a reason for the inspection.

OAG 76-424. Records kept by local police departments are subject to public inspection unless they come under one of the exceptions stated in KRS 17.150(2).

OAG 76-423. Records of county and circuit court clerks are subject to the open records act, KRS 61.870 to 61.884, and are open to public inspection unless a particular record is expressly made confidential by state statute or court order.

OAG 76-420. Regional comprehensive care centers are "public agencies" under the definition in the open records act, KRS 61.870(1), and such records are therefore public unless the nature of the record makes them confidential. However, personal mental health records of comprehensive care centers which directly or indirectly identify a patient are exempt from public inspection.

OAG 76-419. It is legally permissible for the oral history commission of the department of library and archives to make and keep an agreement with interviewees that tapes will be handled in a certain manner including refusing access to the public for a certain number of years. The tape record is preliminary in nature and will not be a final public record until such time as is provided in the agreement. The agreement comes under exception (g) of KRS 61.878(1).

OAG 76-384. The Kentucky board of ophthalmic dispensers is required under the open records law to furnish a list of all persons licensed by said board upon the request of the president of the Kentucky board of optometric examiners. An agency is not required under the open records act to compile and deliver a list it does not already have prepared but any person may inspect public records and make his own list from said records. In the spirit of cooperation and the statutory policy of comity one state agency should furnish the requested list to another state agency.

OAG 76-375. The open records act does not charge state agencies with the duty to provide records upon a request made by mail.

OAG 76-375. Blanket requests for information on a particular subject without specifying certain documents need not be honored. State employes may not be requested to make compilations of records, but the public has the right to inspect compilations which have been made in the course of business unless the subject matter is confidential by law.

OAG 76-375. The right to have copies of records is ancillary to the right of inspection and does not stand by itself. If a person has not inspected the records he desires to copy and cannot describe them with specificity, there is no requirement that copies of any records must be delivered to him. A citizen may make a fishing expedition through public records on his own time and under the restrictions and safeguards of the public agency, but a willingness to pay for copies of records is not sufficient to put the state agency under obligation to furnish broad categories of records.

OAG 76-375. A person does not have a right to require a list to be made from public records if the list described does not already exist. If the list exists and is not otherwise confidential by law, a person may inspect the list and obtain a copy of it.

OAG 76-366. The Kentucky heritage commission is legally authorized to adopt regulations which will prevent public inspection of specific portions of its files. The open records act provides that each public agency shall adopt rules and regulations in conformity with the provisions of the act.

Public Records

Chapter 61

61.870. Definitions. — As used in KRS 61.872 to 61.884, unless the context requires otherwise:

- (1) "Public agency" means:
 - (a) Every state or local government officer;
 - (b) Every state or local government department, division, bureau, board, commission, and authority;
 - (c) Every state or local legislative board, commission, committee, and officer;
 - (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;

- (e) Every state or local court or judicial agency;
- (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
- (g) Any body created by state or local authority in any branch of government;
- (h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds;
- (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof.
- (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
- (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

(3) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control; and

(4) "Custodian" means the official custodian or any authorized person having personal custody and control of public records. (Enact. Acts 1976, ch. 273, § 1; 1986, ch. 150, § 2, effective July 15, 1986; 1992, ch. 163, § 2, effective July 14, 1992.)

61.871. Policy of KRS 61.870 to 61.884 — Strict construction of exceptions of KRS 61.878. — The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others. (Enact. Acts 1992, ch. 163, § 1, effective July 14, 1992.)

61.872. Right to inspection — Limitation. — (1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.

(3) A person may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, such person shall so notify the applicant and shall furnish the name and location of the custodian of the public record, if such facts are known to him.

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately so notify the applicant and shall designate a place, time and date, for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a de-

tailed explanation of the cause is given for further delay and the place, time and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence. (Enact. Acts 1976, ch. 273, § 2; 1992, ch. 163, § 3, effective July 14, 1992.)

61.874. Abstracts, memoranda, copies — Agency may prescribe fee. — (1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all written public records. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall permit the applicant to duplicate the records; however, the custodian may ensure that such duplication will not damage or alter the records.

(2) The public agency may prescribe a reasonable fee for making copies of public records which shall not exceed the actual cost not including the cost of staff required. (Enact. Acts 1976, ch. 273, § 3; 1992, ch. 163, § 4, effective July 14, 1992.)

61.876. Agency to adopt rules and regulations. — (1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;
(b) The title and address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

(3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies. (Enact. Acts 1976, ch. 273, § 4.)

61.878. Certain public records exempted from inspection except on order of court — Restriction of state employees to inspect personnel files prohibited. — (1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

(c)1. Records confidentially disclosed to an agency, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records, and which are compiled and maintained:

a. In conjunction with an application for a loan;

b. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

c. For the grant or review of a license to do business.

2. The exemptions provided for in subparagraph 1. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(f) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again;

(g) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(h) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(i) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(j) All public records or information the disclosure of which is prohibited by federal law or regulation; and

(k) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores and preliminary and other supporting documentation. A public agency employee, including university employees, applicant or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function. (Enact. Acts 1976, ch. 273, § 5; 1986, ch. 494, § 24, effective July 15, 1986; 1992, ch. 163, § 5, effective July 14, 1992.)

61.880. Denial of inspection — Role of Attorney General. — (1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within ten (10) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884. On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884.

(4) In the event a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5)(a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained. (Enact. Acts 1976, ch. 273, § 6; 1992, ch. 163, § 6, effective July 14, 1992.)

61.882. Jurisdiction of Circuit Court in action seeking right of inspection — Burden of proof — Costs — Attorney fees. — (1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were wilfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars (\$25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation. (Enact. Acts 1976, ch. 273, § 7; 1992, ch. 163, § 7, effective July 14, 1992.)

61.884 Person's access to record relating to him

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

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Regulations

JUSTICE CABINET
Department of State Police
Records and Communications Division
Information Systems Section

Criminal History Record Information System

502 KAR 30:010

RELATES TO: KRS 17.140

PURSUANT TO: KRS 13.082, 15A.160, 17.080

NECESSITY AND FUNCTION: KRS 15A.160 and KRS 17.080 provide that the Secretary of Justice may adopt such regulations as are necessary to properly administer the Cabinet. KRS 17.140 establishes the Centralized Criminal History Record Information System. This regulation establishes the definitions to be used in the administration of the Centralized Criminal History Record Information Systems.

Section 1. As employed in 502 KAR 30:010 - 502 KAR 30:070, unless the context requires otherwise:

(1) "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", 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 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 18; provided, however, that if a person under the age of 18 is adjudicated as an adult and found guilty in a circuit court, and 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 justice agency" means: (1) courts; (2) 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 marshall, board of alcoholic beverage control; department for human resources; department of transportation; 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.

(4) "Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pre-trial release, post-trial 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, convicted, youthful offender determination, 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) "Non-conviction data" means arrest information without disposition if an interval of one (1) year has elapsed from the date of arrest and no active prosecution of the 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, as well as all acquittals and all dismissals.

(7) "Uniform offense report, hereinafter "UOR-1", means the report form developed pursuant to KRS 15A.190 and KRS 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, Information Systems Section, hereinafter KSP, ISS.

(8) "Court disposition uniform offense report, hereinafter "UOR-3", means that report form developed pursuant to KRS 15A.190 and KRS 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 the KSP, ISS.

(9) "NLETS" means The National Law Enforcement Telecommunication System.

502 KAR 30:020. Arrest and Disposition Reporting Procedure.

RELATES TO: KRS 17.110; 17.115

PURSUANT TO: KRS 13.082, 15A.160, 17.080, 17.150

NECESSITY AND FUNCTION: KRS 17.110 mandates that all city and county law enforcement agencies shall submit to the Department of State Police, Justice Cabinet, photographs, and a description report of the offense on all persons arrested on a felony charge. KRS 17.115(2) requires persons in charge of any penal or correctional institution to provide the Cabinet with fingerprints and descriptions on all persons committed to their custody or detained by them on cases where fingerprints and descriptions are taken, together with a report of the disposition. KRS 17.150(6) authorizes the Secretary of Justice to adopt regulations that are necessary to insure the accuracy of said criminal history record information. This regulation establishes arrest and disposition reporting procedures.

Section 1. Offense Reporting Procedure. Within thirty (30) days of the arrest for an offense covered by KRS 17.110, two (2) sets of fingerprint cards, a mug shot or the negative of the mug shot, and a general description report (UOR-1) of the offense shall be submitted to KSP, ISS. Further, law enforcement and criminal justice agencies shall cooperate with KSP, ISS by complying with a "unique numbering system" to allow court disposition tracing. The "unique numbering system" shall be accomplished by the issuance of a Uniform Citation with every felony arrest as relates to 502 KAR 30:020.

Section 2. Disposition Reporting Procedure. (1) Dispositions, as defined in 502 KAR 30:010, dispositions shall be submitted from each city and county law enforcement agency to KSP, ISS within ten (10) days after adjudication has been completed, or the law enforcement agency, or prosecutor's office have collectively or individually elected against processing the charge through the criminal justice system. Said dispositions shall be provided to KSP, ISS in the form of the Uniform Offense Report (UOR-3), or any subsequent disposition reporting instrument required by the KSP.

(2) Upon suitable written agreement with the Chief Justice of the Kentucky Supreme Court and the Secretary of the Justice Cabinet, a unique tracking number will be assigned to each offender at the time of arrest. This unique number will be utilized throughout the movement of the offender through the criminal justice system, thereby enabling the Administrative Office of the Courts to provide a system compatible computer tape to the ISS for automatic update of court dispositions in the CHRI files.

RELATES TO: KRS 17.150

PURSUANT TO: KRS 13.082, 15A.160, 17.080, 17.150

NECESSITY AND FUNCTION: KRS 17.140 establishes a centralized criminal history record information system in the Justice Cabinet under the direction of the Commissioner of the Department of State Police. KRS 17.150(6) provides that the Secretary of Justice shall adopt regulations that are necessary to insure the accuracy of criminal history record information being reported to the centralized criminal history record information system. This regulation establishes the requirements for audits of the centralized criminal history record information system and law enforcement and criminal justice agencies which submit or receive criminal history record information to or from the centralized criminal history record information system.

Section 1. The Information Systems Section shall conduct annually an in-house audit of a random representative sample of hard copy data contained in the centralized criminal history record information system. The scope of the audit shall include but is not limited to: (1) adherence to federal and state regulations; (2) completeness and accuracy of CHRI; (3) CHRI dissemination procedures; (4) security; (5) compliance with mandated access and review procedures. Said audit shall be conducted in accordance with guidelines set out in 28 C.F.R.; 20.21(e), utilizing the standard audit instrument as prescribed by KSP, ISS. A report of the audit findings shall be submitted by the administrative head of ISS to the Commissioner, Department of State Police and the Secretary of the Justice Cabinet on or before January 10th of each year.

Section 2. KSP, ISS shall conduct, on an annual basis, audits of at least four (4) law enforcement or criminal justice agencies, submitting or receiving data from or to the centralized criminal history record information system. Said agencies shall be picked at random. Such audits shall be conducted in accordance with guidelines set out in 28 C.F.R.; 20.21(e), utilizing the standard audit instrument. A report of the audit findings shall be submitted to the administrative head of the respective law enforcement or criminal justice agency within thirty (30) working days after the audit has been completed. The scope of the audit shall include but not be limited to: (1) adherence to federal and state regulations; (2) completeness and accuracy of CHRI; (3) CHRI dissemination procedures; (4) security; (5) compliance with mandated access and review procedures.

502 KAR 30:040. Criminal History Record Information User Agreement.

RELATES TO: KRS 17.140, 17.147, 17.150

PURSUANT TO: KRS 13.082, 15A.160, 17.080, 17.150

NECESSITY AND FUNCTION: KRS 17.147 assigns the Department of State Police the responsibility of instruction of persons and agencies using the centralized criminal history record information system in the use of criminal history record information. KRS 17.150(6) mandates that the Secretary of the Justice Cabinet shall adopt such rules and regulations as are necessary to carry out the provisions of the criminal history record information system. To insure compliance with KRS Chapter 17 and 28 C.F.R.; 20.21(b), both statutes dealing with criminal history record information, this regulation establishes criteria for participation in the centralized criminal history record information system by means of a criminal history record information user agreement contract.

Section 1. All criminal justice agencies shall enter into a User Agreement with the Department of State Police as prescribed by the Secretary of Justice.

502 KAR 30:050. Security of Centralized Criminal History Record Information.

RELATES TO: KRS 17.140

PURSUANT TO: KRS 13.082, 15A.060, 17.080, 17.140

NECESSITY AND FUNCTION: KRS 17.080 authorizes the Secretary of Justice to institute rules and regulations and direct proceedings and actions for administration of laws and functions that are invested in the Justice Cabinet. KRS 17.140 establishes, in the Justice Cabinet under the direction, control, and supervision of the Commissioner of the Department of State Police, a centralized criminal history record information system. KRS 17.140 defines a centralized criminal history record information system as the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation, or dissemination of criminal history records maintained by the Justice Cabinet. This regulation sets specific security standards to preserve the CHRI in an acceptable state.

Section 1. Procedures shall be implemented in the centralized criminal history record information system to insure that access to criminal history record information is restricted to authorized persons. The ability to access, modify, change, update, purge, or destroy such information shall be limited to authorized criminal justice personnel, or other authorized persons who provide operational support, such as programming or maintenance. Technologically advanced software and/or hardware designs shall be implemented to prevent unauthorized access to criminal history record information.

Section 2. Procedures shall be implemented in the centralized criminal history information system to determine what persons have authority to enter in areas where criminal history information is stored and implement access control measures to insure entry is limited to specific areas where authorization is valid. Further, access control measures shall be implemented to insure unauthorized persons are totally denied access to areas where criminal history record information is stored. Said access constraints shall include, but not be limited to, the system facilities, systems operating environments, data file contents, whether while in use or when stored in media library, and system documentation.

Section 3. Procedures shall be implemented in the centralized criminal history information system to insure that computer operations which support the ISS data base, whether dedicated or shared, operate in accordance with procedures developed or approved by the Justice Cabinet, and further insure that:

(a) CHRI is stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by unauthorized persons.

(b) Operational programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than designated terminals within the KSP, ISS.

(c) The destruction, partial deletion, total deletion, or record correction is limited to designated terminals under the direct control of KSP, ISS.

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

(e) The programs specified in paragraphs (b) and (d) of this section are known only to criminal justice agency employees responsible for criminal history record information system control or individuals in agencies pursuant to a specific agreement with the Justice Cabinet to provide such programs and the program(s) are kept continuously under maximum security conditions.

(f) Procedures are instituted to assure that any individual or agency authorized direct access is responsible for: (1) the physical security of criminal history record information under its control or in its custody, and (2) the protections of such information from unauthorized access, disclosure or dissemination.

Section 4. Procedures shall be implemented in the centralized criminal history record information system to protect CHRI from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

Section 5. Emergency Plans Required. Written plans and instructions dealing with emergencies described in Section (4), shall be developed in manual form and cover all foreseeable incidents ranging from minor accidents to major disasters causing the destruction of computer facilities, entire data bases, and/or CHRI contained in manual files. Employees of the centralized criminal history record information system shall be trained in procedures and specifically assigned responsibilities in case of an emergency. Plans and instructions should be inclusive of, but not limited to, emergency shutdown and evacuation procedures, disaster recovery plan to restart critical system functions, procedures for backup files for critical data such as fingerprint cards, and duplicate system designs. The Commissioner of the Department of State Police shall make available needed personnel to reinstitute the centralized criminal history record information system as soon as feasible after accident or disaster.

Section 6. The Commander of the ISS shall institute procedures for the screening, supervising, and disciplining of agency personnel in order to minimize the risk of compromising internal security. A background investigation of all prospective employees for the ISS shall be conducted. The scope of the background investigation shall be inclusive of, but not limited to:

- (1) Verification of all items as listed on the employment application;
- (2) Moral character;
- (3) Financial history;
- (4) Individual as well as spouse arrest history inclusive of juvenile files;
- (5) Agency personnel records.

All KSP, ISS employees will agree to and sign non-disclosure statements and notice of security breach forms. The Commander of ISS shall so notify the Commissioner of the State Police as to any violation of security policy within the KSP, ISS. A violation of said security policy shall include, but not be limited to; the intentional violation or wanton disregard of any or all security policies with regard to criminal history record information as set forth by section policy; the compromising of an employee's security by committing, facilitating, or being a party to a crime. Upon notification by the Commander of KSP, ISS of a security compromise, the Commissioner shall take immediate appropriate administrative action.

502 KAR 30:060. Dissemination of Criminal History Record Information.

RELATES TO: KRS 17.115, 17.140, 17.147, 17.150

PURSUANT TO: KRS 13.082, 15A.150, 17.080

NECESSITY AND FUNCTION: KRS 17.115 provides that the Justice Cabinet 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 interstate and national system of criminal identification. KRS 17.147(6) provides that the Department of State Police 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) authorizes the Secretary of Justice to adopt regulations to carry out the provisions of the criminal history record information system.

Section 1. Dissemination of Criminal History Record Information. -- Use of CHRI disseminated to non-criminal justice agencies shall be limited to the purpose for which it was given. No agency or individual shall confirm the existence or non-existence of CHRI to any person or agency that would not be eligible to receive the information itself. Policies on dissemination of CHRI shall be regulated by the specific category of criminal history record information. Those categories shall be inclusive of, but not limited to:

(1) "Non-conviction Data", as defined by 502 KAR 30:010(6) shall with the exception of the computerized Kentucky State Police files, accessed by an open record request directly to the Department of State Police, be limited, whether directly or through an intermediary, only 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, Justice Cabinet.

(c) Individuals and agencies pursuant to a specific agreement as outlined in 502 KAR 30:040 with the Department of 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 research, evaluative, or statistical activities pursuant to an agreement with the ISS. Said agreement shall limit the use of data to research, evaluative or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and provide sanctions for violations of the agreement. This dissemination limitation does not apply to conviction data.

(2) "Non-conviction Data", from the computerized Kentucky State Police files shall be disseminated, by the Department of State Police only, pursuant to Chapter 61.

(3) Juvenile Records. Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall be conducted pursuant to KRS 208A.080. In essence, juvenile records meeting criteria set forth in KRS 208A.020, (38)(39) and 502 KAR 03:010(2) shall be made available only to the family, guardian, or legal representative of the child involved. Further juvenile records shall be made available to the court, probation officers, representatives of the Department

for Human Resources, or to a representative in a public or private social agency, institution, hospital or church having a direct interest in the record or social history of the child. CHRI on an individual under the age of eighteen (18) years of age meeting circuit court conviction criteria as set forth in KAR 30:010(2) shall be treated as standard CHRI; therefore, dissemination policies as outlined in this section shall apply.

Section 2. As outlined in 502 KAR 30:040(e), 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 log all disseminations of CHRI. Said 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 record subject accessible state for at least twelve (12) months from the date of CHRI dissemination.

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

PURSUANT TO: KRS 13.082, 15A.150, 17.080, 17.150

NECESSITY AND FUNCTION: 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 to KRS 17.150. KRS 61.884 allows the individual record subject to access CHRI relating to him or other data in which the record subject is mentioned by name. This regulation establishes guidelines by which CHRI may be accessed by the individual record subject.

Section 1. These regulations shall provide for the initiation of access/review procedures at each of the Kentucky State Police Posts throughout the Commonwealth (with the exception of Frankfort, Post 12). The Information Systems Section shall serve as the location for record access/review for individuals near Frankfort. Access/review procedure shall be uniform throughout the various designated sites.

Section 2. Access/review procedure. The record subject shall complete the "Request for Review" form provided at the respective access/review site. A duplicate copy of said form shall be provided to the requestor, or requestor's legal counsel. One set of rolled fingerprints from the requestor on a completed KSP Form 22, will be forwarded to the KSP, ISS where submitted fingerprints will be used to verify the record subject's identity. Staff of the ISS 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 public record will be available for inspection. The requestor shall be notified forthwith by the KSP, ISS of the scheduled date of review. All record reviews will be conducted from 8:00 a.m. through 4:00 p.m., Monday through Friday with the exception of legal holidays, at the designated State Police Post or the ISS. The ISS shall return 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 the ISS 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 furnished by the ISS. 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 must 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 the ISS 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 the ISS 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 the ISS 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 the ISS a "Challenge of Record" form and any documents submitted by the individual in support of the challenge.

Section 5. Processing of challenge by ISS. The ISS shall conduct a comparison of the information under challenge with the original input forms and information contained in the repository files. Any errors or omissions discovered in the repository files shall be corrected. If no error is found, the ISS shall forward a copy of the original challenge form, a copy of the record as contained in the files of the ISS, and any other relevant information to the agency or agencies which the ISS 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. The ISS 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 the ISS, the individual may request an Administrative Review. This request will be submitted in writing and directed to the attention of the Commander of the ISS. Said request for Administrative Review must be made not later than fifteen (15) working days following the date of notification to the individual of the decision of the initial challenge. The Commander of the ISS 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 the ISS. The Administrative Review Officer shall notify the individual, in writing, of the decision of the Administrative Review. This notification shall be within thirty (30) working days of submission of

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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. The ISS will 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. The ISS will furnish the individual, upon request, a written list of known non-criminal justice recipients within the past year and of corrections to be made. The ISS will require that the agency originating the erroneous information notify all known criminal justice recipients within the past year and of corrections to