

# SOUTH DAKOTA

## South Dakota Codified Laws Annotated

### Chapter 23-5

#### CRIMINAL IDENTIFICATION

- Section
- 23-5-1. Criminal identifying information—Procurement and filing by attorney general.
- 23-5-2. Co-operation of attorney general with law enforcement officers to establish complete state system.
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- 23-5-6. Identification records made by wardens and superintendents of penal institutions.
- 23-5-7. Records for identification of prisoners—Filing and preserving in department or institution—Restrictions as to use.
- 23-5-8. Warden of penitentiary—Furnishing of identification of inmates, transmission to division of criminal investigation.
- 23-5-9. Conviction of felony or misdemeanor—Report by county clerk to division of criminal investigation.

23-5-1. Criminal identifying information—Procurement and filing by attorney general.—The attorney general shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent of all persons who may hereafter be taken into custody for offenses other than those arising solely out of the violation of the fish, game, conservation, or traffic laws of this state with the exception of those persons charged with driving a motor vehicle while under the influence of alcoholic beverages, and also of all criminals wheresoever the same may be procured. It shall be the duty of the person in charge of any state institution to furnish any such information to the attorney general upon his request.

23-5-2. Co-operation of attorney general with law enforcement officers to establish complete state system.—The attorney general shall also co-operate with, and assist sheriffs, chiefs of police, and other law enforcement officers to the end that a complete state system of criminal identification, investigation, and statistical information may be established.

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**23-5-3. Criminal records of inmates of penal institutions—Procuring and filing.**—The attorney general shall procure and file for record the fingerprint impressions and other means of identification and statistical information of all persons contained in any workhouse, jail, reformatory, penitentiary, or other penal institutions, together with such other information as he may require from the law enforcement officers of the state and its subdivisions.

**23-5-4. Fingerprints to be taken and forwarded on arrests — Failure of officer to take and report as misdemeanor.** The sheriffs, chiefs of police, marshals of the municipalities, and any other law enforcement officers and peace officers of the state, immediately upon the arrest of any person for a felony or misdemeanor, exclusive of those exceptions set forth in § 23-5-1, shall take such person's fingerprints according to the fingerprint system of identification established by the Division of Criminal Investigation, on forms furnished by the division and shall forward the fingerprints together with other descriptions as may be required with a history of the offense alleged to have been committed, to the division for classification and filing. However, in the case of a Class 2 misdemeanor, exclusive of those exceptions set forth in § 23-5-1, if the arresting officer reasonably believes that the person arrested does not present a danger to self or others and will appear in response to a summons, the arresting officer may, without complying with the provisions of this section, release the person arrested with a summons to appear; and the person arrested shall present himself or herself to the law enforcement agency issuing the summons for fingerprinting prior to the initial court appearance. Any person who fails to appear for fingerprinting in compliance with this section shall be proceeded against by warrant. A copy of the fingerprints of the person arrested, shall be transmitted forthwith by the arresting officer to the Federal Bureau of Investigation in Washington, D.C.

Any officer required by this section to take and report fingerprint records, who fails to take and report the records required by this section, is guilty of a Class 2 misdemeanor.

**23-5-5. Fingerprints taken on arrest—Comparison with files—Information on previous criminal record.**—The attorney general shall compare the description received pursuant to § 23-5-4 with those already on file in the division of criminal investigation and if he finds the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact.

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**23-5-6. Identification records made by wardens and superintendents of penal institutions.—**The warden or superintendent of any penal or reformatory institution in this state, the attorney general or his authorized assistants or agents, the sheriff of any county in this state, or the chief of police of any municipality in the state is hereby authorized and empowered, when in his judgment such proceeding shall be necessary for the purpose of identifying any person accused or convicted of crime, or for the purpose of preventing the escape or of facilitating the recapture of any such person, to cause to be taken or made and preserved such photographs, impressions, measurements, descriptions, and records as may in the judgment of any of said officials be deemed necessary.

**23-5-7. Records for identification of prisoners—Filing and preserving in department or institution—Restrictions as to use.—**All photographs, impressions, measurements, descriptions, or records taken or made as provided for in § 23-5-6 shall be filed and preserved in the department or institution where made or taken and shall not be published, transferred, or circulated outside such department or institutions, nor exhibited to the public or any person or persons except duly authorized peace officers unless the subject of such photograph, measurement, description, or other record shall have become a fugitive from justice, or shall have escaped from a penal or reformatory institution.

**23-5-8. Warden of penitentiary — Furnishing of identification of inmates, transmission to division of criminal investigation.** The warden of the penitentiary shall furnish photographs, fingerprints, and other identifying information of all inmates received at such institution and shall transmit the same to the division of criminal investigation.

**23-5-9. Conviction of felony or misdemeanor — Report by county clerk to division of criminal investigation.** Repealed by SL 1974, ch 55, § 50.

**23-5-10. Definition of terms.** Terms used in §§ 23-5-10 to 23-5-13, inclusive, mean:

- (1) "Confidential criminal justice information," criminal identification information compiled pursuant to chapter 23-5, criminal intelligence information, criminal investigative information, criminal statistics information made confidential pursuant to § 23-6-14, and criminal justice information otherwise made confidential by law;
- (2) "Criminal history information," arrest information, conviction information, disposition information and correction information compiled by the attorney general pursuant to chapter 23-5, commonly referred to as a "rap sheet";
- (3) "Criminal intelligence information," information associated with an identifiable individual, group, organization or event compiled by a law enforcement agency: in the course of conducting an investigation into a criminal conspiracy, projecting a potential criminal operation, or producing an estimate of future criminal activities; or in relation to the reliability of information derived from reports of informants or investigators or from any type of surveillance;
- (4) "Criminal investigative information," information associated with an individual, group, organization, or event compiled by a law enforcement agency in the course of conducting an investigation of a crime or crimes. This includes information about a crime or crimes derived from reports of officers, deputies, agents, informants or investigators or from any type of surveillance.

**23-5-11. Confidential criminal justice information not subject to inspection.** Section 1-27-1 does not apply to confidential criminal justice information.

**23-5-12. Examination of own criminal history information — Written request — Authorization of release to others — Waiver of liability.** Any person may examine criminal history information filed with the attorney general that refers to that person. The person requesting such information shall supply the attorney general with a written request together with fingerprint identification. The person may also authorize the attorney general to release his criminal history information to other individuals or organizations. The attorney general may require the person to sign a waiver releasing the state, its employees or agents from any liability before releasing criminal history information.

**23-5-12.1. Criminal record check by schools or child welfare agencies on prospective employee.** The superintendent of any public school or nonpublic school or the owner or operator of any child welfare agency as defined in § 26-6-1 may submit the name of any person being considered for employment by the school or agency, either directly or by contract, to the Division of Criminal Investigation for a criminal record check. If the division determines the person has a record of criminal convictions, the division shall notify the superintendent, owner, or operator of the criminal offenses.

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### CHAPTER 23-6

#### CRIMINAL STATISTICS

**23-6-1. Bureau of criminal statistics — Establishment in office of attorney general.** There is hereby established, in the office of the attorney general a bureau of criminal statistics, hereinafter called the bureau.

**23-6-2. Attorney general as director of bureau — Seal — No salary.** The bureau shall function through a director. The attorney general shall, by virtue of his office, be the director. The director shall have a seal of office in such form as he shall prescribe. The attorney general shall not receive a salary as such director.

**23-6-3. Work of bureau — Assignment of deputies and clerks — Expenses paid from department appropriation.** The attorney general shall assign for the work of the bureau such deputies and clerical assistants in his department as he may from time to time find necessary. The compensation of the clerical assistants assigned to the bureau and all other expenses of the bureau shall be paid out of the appropriation for the department of the attorney general when approved by him.

**23-6-4. Statistical information — Compilation by director — Misdemeanor.** The director shall collect and compile information, statistical and otherwise, which will, as far as practicable, present an accurate survey of the number and character of crimes committed in the state, the extent and character of delinquency, the operations of the police, prosecuting attorneys, courts and other public agencies of criminal justice, and the operations of penal and reformatory institutions, probation, parole, and other public agencies concerned with the punishment or treatment of criminal offenders. He shall include such information as may be useful in the study of crime and delinquency and the causes thereof, for the administration of criminal justice, and for the apprehension, punishment and treatment of criminal offenders. A violation of this section is a Class 2 misdemeanor.

**23-6-5. Information as to particular offenders — Gathering by director — Misdemeanor.** The director shall also gather such information concerning particular criminal offenders as in his judgment may be helpful to other public officials or agencies dealing with them. A violation of this section is a Class 2 misdemeanor.

**23-6-6. Classification of crimes and offenders — Promulgation by director — Misdemeanor.** The director shall promulgate classifications and shall prepare forms for the statistical classification of crimes, of offenders, of their punishment and treatment and of all other pertinent information, to conform, as far as practicable, with those promulgated by the appropriate agency in the United States department of justice, and by the federal bureau of the census. A violation of this section is a Class 2 misdemeanor.

**23-6-7. Authority of director to enter prisons and penal institutions — Misdemeanor.** The director, or any person deputized by the director, upon exhibiting specific written authorization by the director, is empowered to enter any prison, jail, penal or reformatory institution in this state, and to take or cause to be taken fingerprints or photographs, or both, and to make investigation relative to any person, confined therein, who has been accused or convicted of a crime, for the purpose of obtaining information which may lead to the identification of criminals. The officials in charge of all such institutions are hereby required to render the director, and all persons so deputized by him, the needed assistance to that end. A violation of this section is a Class 2 misdemeanor.

**23-6-8. Information received by bureau — Filing by director — Form and classification of records, preservation.** The director shall file, or cause to be filed, all information received by the bureau and shall make, or cause to be made, a complete and systematic record and index thereof, to provide a convenient method of reference and consultation. As far as practicable all such records shall coincide in form and classification with those of the appropriate agency in the United States department of justice, and with those of similar bureaus in other states, in order to permit easy interchange of information and records. Information and records received by the bureau may not be destroyed except as provided by § 23-6-8.1.

**23-6-8.1. Destruction of records of certain persons, incidents, and offenses.** The director of the bureau of criminal statistics may authorize the destruction of information and records of:

- (1) Persons who are dead;
- (2) Persons seventy-five years of age or older unless a violation has occurred within the last ten years;
- (3) Incidents that are no longer considered crimes under the laws of the state of South Dakota;
- (4) Misdemeanor offenses whose final date of disposition occurred at least ten years prior to authorized destruction date.

**23-6-9. Copy of available information — Furnishing to law enforcement agencies — Misdemeanor.** Upon request therefor and payment of the reasonable cost, the director shall furnish a copy of all available information and of records pertaining to the identification and history of any person or persons of whom the bureau has a record, to any similar governmental bureau, sheriff, chief of police, prosecuting attorney, attorney general, or any officer of similar rank and description of the federal government, or of any state or territory of the United States or of any insular possession thereof, or of the District of Columbia, or of any foreign country, or to the judge of any court, before whom such person is being prosecuted, or has been tried and convicted, or by whom such person may have been paroled. A violation of this section is a Class 2 misdemeanor.

**23-6-10. Reports by director — Contents — Distribution — Misdemeanor.** Annually, and at such other times as he may determine, the director shall prepare and publish reports reflecting the crime situation in this state, the operation of public agencies engaged in the administration of criminal justice and in the conduct of the punishment or treatment of criminals. The director shall point out what he considers to be significant features regarding crime, the administration of criminal justice and the punishment or treatment of criminals, and may recommend such measures as he may consider desirable or constructive with reference thereto. Upon request therefor and payment of the reasonable cost, the director shall furnish copies of such reports to officers of the United States, and to any public police, prosecution, judicial, punishment, or treatment official or agency of this or any other state, or territory, or country. A violation of this section is a Class 2 misdemeanor.

**23-6-11. Access of director to public records — Misdemeanor.** Every person having custody or charge of public or official records or documents, from which information is sought for the purposes of this chapter, shall grant to the director, or to any person deputized by him, access thereto, for the purpose of obtaining such information. A violation of this section is a Class 2 misdemeanor.

**23-6-12. Co-operation of bureau with federal government and other states — Development of international system of criminal identification — Misdemeanor.** The bureau shall co-operate with the appropriate agency of the federal government and with similar agencies in other states, territories and countries, toward the end of developing and carrying on a complete and uniform interstate, national and international system of criminal identification. A violation of this section is a Class 2 misdemeanor.

**23-6-13. Superseded.**

**23-6-14. Access to files and records of bureau.** The Governor, and persons specifically authorized by the director, shall have access to the files and records of the bureau. No such file or record of information shall be given out or made public except as provided in this chapter, or except by order of court, or except as may be necessary in connection with any criminal investigation in the judgment of the Governor or director, for the apprehension, identification or trial of a person, or persons, accused of crime, or for the identification of deceased persons, or for the identification of property.

**23-6-15. Acceptance of rewards by director or employees prohibited.** No rewards for the apprehension or conviction of any person or for the recovery of any property may be accepted by the director, or by any employee of the bureau, but any such reward, if paid to the director or an employee of the bureau shall be paid into the state treasury and credited to the general fund of the state.

**23-6-16. Officials dealing with persons charged with crime — Reports required by director — Misdemeanor.** It shall be the duty of the clerk of every court, of the chief or head of every police department, or other police agency, of every sheriff and constable, of every prosecuting attorney, of every probation or parole officer, and of the head of every department or institution, state, county or local, which deals with criminals, or persons charged with crime, and it shall be the duty of every other official who, by reason of his office, is qualified to furnish information and reports, to prepare and send in writing to the director quarterly, semiannually, or annually, as the director may designate all reports and information requested by the director, to enable him to perform the duties provided in this chapter; but nothing herein shall preclude the gathering, by any public official, of information in addition to that required by the director. A violation of this section is a Class 2 misdemeanor.



**23A-27-13.1. Copy of suspension order forwarded to criminal investigation division.** Within fifteen days of the filing of a written order suspending imposition of sentence pursuant to § 23A-27-13 the court shall forward a nonpublic record of the sentence to the division of criminal investigation pursuant to chapters 23-5 and 23-6 which shall be retained until discharged pursuant to § 23A-27-14.

**23A-27-14. Discharge and dismissal of probationer on completion of conditions — No judgment entered — Limitation to one time.** Upon completion of the observance of all conditions imposed pursuant to § 23A-27-13, the court service worker assigned to defendant's case shall bring the matter to the attention of the court, whereupon the defendant shall be discharged by the court. A formal entry of such discharge shall be entered by the clerk of courts. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

**23A-27-14.1. Revocation or refusal of teacher certificate.** Notwithstanding §§ 23A-27-14 and 23A-27-17, a person who has received an order pursuant to § 23A-27-13 for a conviction of subdivision (4) of § 22-22-1, subdivision (5) of § 22-22-1 or § 22-22-7 who is licensed or seeks to be licensed as a certified teacher may have his application refused or license revoked as provided in § 13-42-10.

**23A-27-15. Suspension of sentence as conviction for purposes of habitual offender law.** For the sole purposes of consideration of the sentence of a defendant for subsequent offenses or the determination of whether the defendant is an habitual offender under chapter 22-7, the fact of suspension of imposition of sentence under § 23A-27-13, whether or not discharge and dismissal have occurred, shall be considered a prior conviction.

**23A-27-16. Report to criminal investigation division of discharge and dismissal of probationer — Limited purpose of record.** Any discharge and dismissal under § 23A-27-14 shall be reported to the division of criminal investigation pursuant to chapters 23-5 and 23-6. The court shall forward a nonpublic record of disposition to the division of criminal investigation which shall be retained solely for use by law enforcement agencies, prosecuting attorneys, and courts in sentencing such person for subsequent offenses

**23A-27-17. Sealing of records on discharge of probationer — Effect of order — Future statements by defendant as to conviction.** Upon the discharge and dismissal of a person pursuant to § 23A-27-14, a court shall order that all official records, other than the nonpublic records to be retained by the division of criminal investigation, be sealed along with all records relating to the person's arrest, indictment or information, trial, finding of guilt, and dismissal and discharge. The effect of such order is to restore such person, in the contemplation of the law, to the status he occupied before his arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or of giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment or information, or trial in response to any inquiry made of him for any purpose.

**23A-27-18. Suspension of execution of sentence — Conditions imposed.** Upon conviction, the court having jurisdiction to try the offense may suspend the execution of any sentence imposed during good behavior, subject to such conditions or restitutions as the court may impose. The suspension order or judgment can be made only by the court in which the conviction occurred.

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**23-6-20. Citation of chapter.**—This chapter may be cited as the Uniform Criminal Statistics Act.

### Chapter 1-11

#### Attorney General

**1-11-13. Costs of providing information — Reimbursement of attorney general.** The attorney general may require persons requesting information to reimburse him for the actual costs of providing such information, other than proposed rules. The reimbursable costs include, but are not limited to, the cost of published documents, clerical time and document reproduction.

### Chapter 127

#### Public Records and Files

**1-27-1. Records open to inspection — Sale of lists.** If the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, the officer or public servant shall keep the record, document, or other instrument available and open to inspection by any person during normal business hours. Any employment examination or performance appraisal record maintained by the bureau of personnel is excluded from this requirement.

Any subscription or license holder list maintained by the Department of Game, Fish and Parks may be made available to the public for a reasonable fee. State agencies are exempt from payment of this fee for approved state use. The Game, Fish and Parks Commission may promulgate rules pursuant to chapter 1-26 to establish criteria for the sale and to establish the fee for the sale of such lists.

Any automobile liability insurer licensed in the state, or its certified authorized agent, may have access to the name and address of any person licensed or permitted to drive a motor vehicle solely for the purpose of verifying insurance applicant and policyholder information. An insurer requesting any such name and address shall pay a reasonable fee to cover the costs of producing such name and address. The Department of Commerce and Regulation shall set such fee by rules promulgated pursuant to chapter 1-26.

Any list released or distributed under this section may not be resold or redistributed. Violation of this section by the resale or redistribution of any such list is a Class 2 misdemeanor.

**1-27-2. Criminal records not open to inspection.**—

**1-27-2. Repealed by SL 1977, ch 16, § 3.**

**1-27-3. Records declared confidential or secret.**—Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept.

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## Regulations

### ARTICLE 2:02

#### BUREAU OF CRIMINAL STATISTICS

#### CHAPTER

2:02:01	Definitions
2:02:02	Completeness and Accuracy of Records
2:02:03	Access and Review
2:02:04	General Reporting Requirements
2:02:05	General Administrative Procedures

#### CHAPTER 2:02:01

#### DEFINITIONS

2:02:01:01. Definitions. Words used in Chapter 2:02, unless the context plainly requires otherwise, means:

(1) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does 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;

(2) "Criminal Justice Agency" means a governmental agency or subunit which performs any of the following activities: collection and dissemination of criminal history records information, detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of persons accused of or convicted of a criminal offense.

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(3) "Director" means the director of the bureau of criminal statistics as defined in SDCL 23-6-2;

(4) "State registry" means the registry of criminal history record information maintained pursuant to Section 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

2:02:01:02. Scope of Applicability. The rules in Article 2:02 apply only to the criminal history record information kept in the state registry by the division of criminal investigation pursuant to Section 23-3-16 and Chapters 23-5 and 23-6 of the South Dakota Codified Laws.

### CHAPTER 2:02:02

#### COMPLETENESS AND ACCURACY OF RECORDS

Section	
2:02:02:01	Completeness and Accuracy of Records
2:02:02:02	Retroactive Applicability
2:02:02:03	External Audit Procedure
2:02:02:04	Internal Audit Procedures
2:02:02:05	Records Required to Facilitate Audit

2:02:02:01 Completeness and Accuracy of Records. Criminal history record information maintained in the state registry shall be complete and accurate and if the registry contains information that an individual has been arrested, the registry shall also include information of any disposition in South Dakota which has occurred in regard to the particular case and individual, within ninety (90) days after the disposition has occurred.

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## CHAPTER 2:02:02:03

### ACCESS AND REVIEW

Section	
2:02:03:01	Access and Review
2:02:03:02	Requests for Corrections in Record
2:02:03:03	Request for Dissemination of Information
2:02:03:04	Notification of Agencies Receiving Information
2:02:03:05	Limitation on Access and Review of Criminal Record Information
2:02:03:06	Specific Agencies Authorized Access to Registry Information

2:02:03:01. Access and Review. Any individual shall have the right to review his or her criminal history record information file maintained in the state registry and to obtain a copy of the same at his or her expense. Review of criminal history record information under this rule shall be available only upon verification of the identity of the individual and at times which do not place an undue burden on the state registry.

2:02:03:02. Requests for corrections in record. If an individual finds material in his criminal record history information file in the state registry which he believes to be inaccurate or incomplete, he may request that the necessary corrections be made in his record file. If the state registry refuses to make the requested changes, individuals shall be entitled to appeal the decision under the provisions of SDCL 1-26-30.

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2:02:03:03. Request for Dissemination of Information. Upon request, an individual whose record has been corrected pursuant to rule 2:02:03:02, shall be given the names of all non-criminal justice agencies, if any, to whom the data has been given.

2:02:03:04. Notification of Agencies Receiving Information. If an individual's record is corrected under the provisions of rule 2:02:03:02, the state registry will notify all criminal justice agencies of the corrected information.

2:02:03:05. Limitation on Access and Review of Criminal Record Information. An individual's right to access and review of his or her criminal history record information, shall not extend to data contained in intelligence, investigatory or other related files, and shall not be construed to include any other information than criminal history record information as defined in rule 2:02:01:01.

2:02:03:06. Specific Agencies Authorized Access to Registry Information. Pursuant to SDCL 23-6-14, and without being limited to the following, the director specifically authorizes access to information in the state registry to the following, for official purposes to:

- L. The Governor of the State of South Dakota.

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2. Criminal Justice Agencies for the Administration of Criminal Justice.
3. Criminal Justice Agencies for the purpose of criminal justice agency employment.
4. Federal agencies where required by federal statute or federal executive order for security clearance, employment or international travel.
5. Pursuant to court orders.

## CHAPTER 2:02:04

### GENERAL REPORTING REQUIREMENTS

Section	
2:02:04:01	Reporting Deadline for Criminal History Records Information
2:02:04:02	Reporting Deadline for Criminal Records History Information on Repeat Offenders
2:02:04:03	Consequences of Noncompliance

#### 2:02:04:01. Reporting Deadline for Criminal History Records Information.

All agencies required to report criminal history record information to the state registry shall submit the information to the state registry within ten working days of the availability of the information to them.

2:02:04:02. Reporting Deadline for Criminal Records History Information on Repeat Offenders. All agencies required to report criminal history records information to the state registry shall report all information relating to persons having their fourth felony arrest or second felony conviction within forty-eight hours of the information being available to them.



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2:02:04:03. Consequences of Noncompliance. Failure to comply with rules 2:02:04:01 and 2:02:04:02 will make an agency requesting information from the state registry ineligible to receive any information from the state registry or assistance from the firector until the submission of all required criminal history records information is completed according to the rules in ARSD Article 2:02.

### CHAPTER 2:02:05

#### GENERAL ADMINISTRATIVE PROCEDURES

Section  
2:02:05:01      Requests for Declaratory Rulings

2:02:05:01 Requests for Declaratory Rulings. Petitions may be filed with the director for the purpose of requesting a declaratory ruling as to the applicability of any statutory provision or rule included within the scope of Article 2:02 or any final order of the director to a given set of facts included under Article 2:02. The petition shall be in writing and contain all pertinent facts necessary to inform the director of the nature of the problem on which a ruling is requested. The director may request more facts where necessary upon which to make his ruling.