

SENATE BILL NO. 19—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE RECORDS, COMMUNICATIONS
AND COMPLIANCE DIVISION OF THE
DEPARTMENT OF PUBLIC SAFETY)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Establishes provisions authorizing certain entities to obtain information relating to the records of criminal history of certain persons responsible for the safety and well-being of children, elderly persons or persons with disabilities. (BDR 14-336)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to records of criminal history; establishing provisions authorizing certain entities to obtain information relating to the records of criminal history of certain persons responsible for the safety and well-being of children, elderly persons or persons with disabilities; providing a fee; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing federal law authorizes a state to establish by statute or regulation
2 procedures that require designated qualified entities, which are businesses or
3 organizations that provide care or care placement services to children, elderly
4 persons or persons with disabilities, to contact an authorized state agency to request
5 a nationwide background check to determine whether certain persons have been
6 convicted of a crime that bears upon the person’s fitness to have responsibility for
7 the safety and well-being of children, elderly persons or persons with disabilities.
8 (34 U.S.C. §§ 40102(a)(1), 40104(9), 40104(10)) Existing federal law also provides
9 that such procedures include certain requirements. (34 U.S.C. § 40102(b))
10 Accordingly, this bill establishes provisions that authorize a qualified entity to
11 obtain information relating to the records of criminal history of employees,
12 volunteers, persons applying to be an employee or volunteer and covered



13 individuals of the qualified entity who have access to children, elderly persons or
14 persons with disabilities.

15 This bill requires a qualified entity to: (1) before submitting a request for
16 screening an employee, volunteer, person applying to be an employee or volunteer
17 or covered individual of the qualified entity, establish an account with the Central
18 Repository for Nevada Records of Criminal History, provide certain written
19 notification to the person regarding his or her rights and obtain from the person a
20 signed waiver that allows the release of information relating to the records of
21 criminal history of the person to the qualified entity; and (2) submit any request for
22 screening a person to the Central Repository by submitting the fingerprints of the
23 person to the Central Repository for its criminal history report and for forwarding
24 to the Federal Bureau of Investigation (FBI) for its criminal history report. Such a
25 request must be accompanied by the payment of a fee for information relating to
26 records of criminal history and the amount required by the FBI for its report.

27 This bill also requires a qualified entity to determine, after receiving
28 information relating to the records of criminal history of a person, whether the
29 person is fit to have responsibility for the safety and well-being of children, elderly
30 persons or persons with disabilities. Additionally, this bill provides that a qualified
31 entity is not liable for damages solely arising out of the accuracy of any information
32 included in or omitted from the records of criminal history of a person and that this
33 State, any political subdivision of this State or any agency, officer or employee
34 thereof is not liable for damages for providing any requested information. Finally,
35 this bill authorizes the Central Repository to audit any qualified entity that submits
36 a request for screening to ensure compliance with all applicable state and federal
37 laws.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 179A of NRS is hereby amended by
2 adding thereto a new section to read as follows:

3 ***1. Before submitting a request for screening pursuant to***
4 ***subsection 2, a qualified entity must:***

5 ***(a) Establish an account with the Central Repository and, as***
6 ***part of the establishment of such an account, agree to comply with***
7 ***all applicable state and federal laws by signing an agreement***
8 ***approved by the Central Repository.***

9 ***(b) Provide written notification to any person being screened***
10 ***regarding the right of the person to obtain a copy of his or her***
11 ***background screening report, including, without limitation, any***
12 ***records of criminal history contained in the report, to appeal the***
13 ***results of the background screening report to challenge the***
14 ***accuracy and completeness of any information contained therein,***
15 ***and to obtain a determination as to the validity of such a challenge***
16 ***before the qualified entity makes a final determination as to the***
17 ***fitness of the person to have responsibility for the safety and well-***
18 ***being of children, elderly persons or persons with disabilities. The***
19 ***notification must also include instructions on how to complete the***
20 ***appeals process.***



1 (c) Obtain a signed waiver from any person being screened, on
2 a form approved by the Division, that allows the release of
3 information relating to the records of criminal history of the
4 person to the qualified entity and contains the information
5 required by 34 U.S.C. § 40102(b)(1).

6 2. A qualified entity shall submit to the Central Repository
7 any request for screening an employee, volunteer, person applying
8 to be an employee or volunteer or covered individual of the
9 qualified entity who has supervised or unsupervised access to
10 children, elderly persons or persons with disabilities by submitting
11 the fingerprints of the person to the Central Repository for its
12 report on the criminal history of the person and for forwarding to
13 the Federal Bureau of Investigation for its report on the criminal
14 history of the person. Each request must be voluntary and
15 conform to the requirements established in the National Child
16 Protection Act of 1993, Public Law 103-209, as amended by the
17 Volunteers for Children Act, Public Law 105-251, 34 U.S.C. §§
18 40101 et seq.

19 3. A request submitted pursuant to subsection 2 must be
20 accompanied by the payment of a fee to the Central Repository as
21 authorized by NRS 179A.140, plus the amount prescribed by the
22 Federal Bureau of Investigation for its report on the criminal
23 history of the person, in accordance with the provisions of 34
24 U.S.C. § 40102(e).

25 4. After a request is submitted pursuant to subsection 2, the
26 Central Repository shall provide directly to the qualified entity, as
27 authorized by the signed waiver obtained by the qualified entity
28 pursuant to subsection 1:

29 (a) Any records of criminal history of the person being
30 screened that are not otherwise confidential pursuant to statute or
31 law. Such a person may challenge the accuracy of such records of
32 criminal history only as provided in this chapter.

33 (b) Any records of criminal history of the person being
34 screened that were received from the Federal Bureau of
35 Investigation. Any records of criminal history obtained are
36 available for qualified entities to use only for the purpose of
37 screening employees, volunteers, persons applying to be an
38 employee or volunteer or covered individuals of the qualified
39 entity who have supervised or unsupervised access to children,
40 elderly persons or persons with disabilities.

41 5. The making of a determination as to the fitness of a person
42 to have responsibility for the safety and well-being of children,
43 elderly persons or persons with disabilities is the sole responsibility
44 of the qualified entity that submitted the request for screening.
45 The qualified entity shall make such a determination pursuant to



1 *the procedures set forth in the VECHS program based on whether*
2 *the information relating to the records of criminal history of the*
3 *person indicates that the person has been convicted of or is subject*
4 *to pending criminal charges or a pending indictment for any crime*
5 *that bears upon his or her fitness to have responsibility for the*
6 *safety and well-being of children, elderly persons or persons with*
7 *disabilities. The provisions of this section must not be construed to*
8 *require the Central Repository to make such a determination on*
9 *behalf of any qualified entity.*

10 6. *A qualified entity that is required by law to apply screening*
11 *criteria, including, without limitation, any right to contest or*
12 *request an exemption from disqualification, shall apply such*
13 *screening criteria to any information relating to records of*
14 *criminal history received from the Central Repository.*

15 7. *If a person chooses to appeal the results of a background*
16 *screening report, the appeals process must meet the requirements*
17 *established in 34 U.S.C. § 40102(b)(2)(C).*

18 8. *A qualified entity is not liable for damages solely arising*
19 *out of the accuracy of any information included in or omitted*
20 *from records of criminal history authorized to be obtained*
21 *pursuant to this section, and the State of Nevada, any political*
22 *subdivision of the State or any agency, officer or employee thereof*
23 *is not liable for damages for providing any information relating to*
24 *records of criminal history requested pursuant to this section.*

25 9. *The Central Repository may audit any qualified entity that*
26 *submits a request for screening pursuant to this section to ensure*
27 *compliance with all applicable state and federal laws. Each*
28 *qualified entity shall maintain all signed waivers obtained*
29 *pursuant to subsection 1 for the purpose of such an audit for one*
30 *audit cycle as determined by the Department.*

31 10. *In addition to complying with the provisions of this*
32 *section, each qualified entity and the Central Repository shall*
33 *comply with all applicable provisions of 34 U.S.C. § 40102.*

34 *II. As used in this section:*

35 (a) *“Children” has the meaning ascribed to “child” in*
36 *NRS 432B.040.*

37 (b) *“Covered individual” has the meaning ascribed to it in 34*
38 *U.S.C. § 40104(9).*

39 (c) *“Disability” has the meaning ascribed to it in*
40 *NRS 426.068.*

41 (d) *“Division” means the Records, Communications and*
42 *Compliance Division of the Department.*

43 (e) *“Elderly persons” means any persons who are 60 years of*
44 *age or older.*



1 (f) *“Record of criminal history” has the meaning ascribed to it*
2 *in NRS 179A.070 and also includes, unless the context otherwise*
3 *requires, records of criminal history obtained from the Federal*
4 *Bureau of Investigation.*

5 (g) *“Qualified entity” has the meaning ascribed to it in 34*
6 *U.S.C. § 40104(10).*

7 (h) *“VECHS program” means the Volunteer and Employee*
8 *Criminal History System program of the Division through which*
9 *information relating to the records of criminal history of a person*
10 *may be requested and obtained by a qualified entity.*

11 **Sec. 2.** NRS 179A.070 is hereby amended to read as follows:

12 179A.070 1. “Record of criminal history” means information
13 contained in records collected and maintained by agencies of
14 criminal justice, the subject of which is a natural person, consisting
15 of descriptions which identify the subject and notations of summons
16 in a criminal action, warrants, arrests, citations for misdemeanors
17 issued pursuant to NRS 171.1773, citations issued for violations of
18 NRS 484C.110, 484C.120, 484C.130 and 484C.430, detentions,
19 decisions of a district attorney or the Attorney General not to
20 prosecute the subject, indictments, informations or other formal
21 criminal charges and dispositions of charges, including, without
22 limitation, dismissals, acquittals, convictions, sentences, information
23 set forth in NRS 209.353 concerning an offender in prison, any
24 postconviction relief, correctional supervision occurring in Nevada,
25 information concerning the status of an offender on parole or
26 probation, and information concerning a convicted person who has
27 registered as such pursuant to chapter 179C of NRS. The term
28 includes only information contained in a record, maintained in
29 written or electronic form, of a formal transaction between a person
30 and an agency of criminal justice in this State, including, without
31 limitation, the fingerprints and other biometric identifiers of a
32 person who is arrested and taken into custody and of a person who is
33 placed on parole or probation and supervised by the Division of
34 Parole and Probation of the Department.

35 2. “Record of criminal history” does not include:

36 (a) Investigative or intelligence information, reports of crime or
37 other information concerning specific persons collected in the
38 course of the enforcement of criminal laws;

39 (b) Information concerning juveniles;

40 (c) Posters, announcements or lists intended to identify fugitives
41 or wanted persons and aid in their apprehension;

42 (d) Original records of entry maintained by agencies of criminal
43 justice if the records are chronological and not cross-indexed;



1 (e) Records of application for and issuance, suspension,
2 revocation or renewal of occupational licenses, including, without
3 limitation, permits to work in the gaming industry;

4 (f) Except as otherwise provided in subsection 1, court indexes
5 and records of public judicial proceedings, court decisions and
6 opinions, and information disclosed during public judicial
7 proceedings;

8 (g) Except as otherwise provided in subsection 1, records of
9 traffic violations constituting misdemeanors;

10 (h) Records of traffic offenses maintained by the Department to
11 regulate the issuance, suspension, revocation or renewal of drivers'
12 or other operators' licenses;

13 (i) Announcements of actions by the State Board of Pardons
14 Commissioners and the State Board of Parole Commissioners,
15 except information concerning the status of an offender on parole or
16 probation; or

17 (j) ~~Records~~ *Except as otherwise provided in section 1 of this*
18 *act, records* which originated in an agency other than an agency of
19 criminal justice in this State.

20 **Sec. 3.** This act becomes effective upon passage and approval.



