

Amendment No. 1134

Senate Amendment to Assembly Bill No. 425 Third Reprint (BDR 14-945)

Proposed by: Senators Seevers Gansert and Cancela

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

BAW



Date: 6/3/2019

A.B. No. 425—Revises provisions governing fingerprinting services.
(BDR 14-945)



ASSEMBLY BILL NO. 425—COMMITTEE
ON GOVERNMENT AFFAIRS

MARCH 25, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing ~~fingerprinting services;~~ public safety. (BDR 14-945)FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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 public ~~affairs; requiring the Director to provide for audits to ensure compliance with applicable laws, regulations and standards; requiring persons who wish to establish or own certain fingerprint facilities to enter into certain contracts;~~ safety; requiring the Central Repository for Nevada Records of Criminal History to prepare an annual report relating to the transmission of certain information and records concerning public safety; providing for coordination between the Central Repository and the courts relating to such information and records; enacting provisions relating to the authority of the Central Repository to conduct a background check on certain persons who provide care for children, elderly persons or persons with disabilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires ~~the Director of the Department of Public Safety to adopt certain regulations and provide for certain audits. (NRS 179A.080) Section 5.5 of this bill requires the Director to provide for certain audits to ensure compliance with all applicable laws, regulations and standards;~~ a court, within 5 business days, to transmit to the Central Repository for Nevada Records of Criminal History a record concerning the appointment of a guardian for a person with a mental defect, a plea or finding of guilty but mentally ill, a verdict acquitting a person by reason of insanity, a finding that a person is incompetent to stand trial or the involuntary admission of a person to a mental health facility, along with a statement that the record is being transmitted for inclusion in all appropriate databases of the National Instant Criminal Background Check System. (NRS 159.0593, 174.035, 175.533, 175.539, 178.425, 433A.310) Existing law also provides that, upon receiving such a record, the Central Repository: (1) must take reasonable steps to ensure that the information reported in the record is included in each appropriate database of the National Instant Criminal Background Check System; and (2) may take reasonable steps to ensure that the information reported in the record is

16 included in each appropriate database of the National Crime Information Center. (NRS
17 179A.163)

18 Existing law further requires a person to transmit certain information to the
19 Central Repository any time a court issues a temporary or extended order for protection
20 against domestic violence and any time that a person serves such an order, registers such
21 an order, registers a Canadian domestic-violence protection order or receives certain
22 information or takes certain other actions relating to such orders. (NRS 33.095) Finally,
23 existing law requires each agency of criminal justice to submit information to the
24 Central Repository relating to records of criminal history that it creates, issues or
25 collects, and certain information in the agency's possession relating to the DNA profile of
26 certain persons. (NRS 179A.075)

27 Section 1.3 of this bill requires the Central Repository to prepare an annual report
28 to be submitted to the Governor, the Nevada Supreme Court and the Director of the
29 Legislative Counsel Bureau for transmittal to the Legislature regarding each instance in
30 which certain information relating to orders for protection against domestic violence,
31 records of criminal history, information relating to DNA profiles and mental health
32 records were not timely submitted during the previous fiscal year. Section 1.3 also
33 requires the Central Repository to coordinate its efforts with the courts to ensure that
34 such information and records are timely submitted to the Central Repository.

35 Existing law creates the Central Repository for the Nevada Records of Criminal History
36 within the Records, Communications and Compliance Division of the Department of Public
37 Safety. Existing law authorizes the Records, Communications and Compliance Division to
38 request of and receive from the Federal Bureau of Investigation information on the
39 background and personal history of certain persons whose fingerprints the Central Repository
40 submits to the Federal Bureau of Investigation. (NRS 179A.075)

41 The National Child Protection Act/Volunteers for Children Act (NCPA/VCA)
42 authorizes states to enact provisions that require qualified entities to contact an
43 authorized agency to request a national background check for the purpose of
44 determining whether a covered individual has been convicted of a crime that bears upon
45 the fitness of the covered individual to care for children, elderly persons or individuals
46 with disabilities. (34 U.S.C. 40102, et seq.) Section {5} 1.7 of this bill {requires a person
47 wishing to establish or own a fingerprint facility that transmits or forwards fingerprints to the
48 Central Repository to enter into a contract with the Central Repository.} requires the Central
49 Repository to act as the authorized agency of this State for the purpose of conducting
50 such background checks. Section 1.7 also provides the duties of qualifying entities and
51 the Central Repository, as applicable, and the rights afforded to a covered individual.
52 Finally, section 1.7: (1) requires the Director of the Department of Public Safety to adopt
53 certain regulations; and (2) provides that certain persons and entities are not liable for
54 certain acts or omissions relating to such background checks under certain
55 circumstances.

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 adding thereto the
2 provisions set forth as sections ~~{2 to 5, inclusive,}~~ **1.3 and 1.7** of this act.

3 **Sec. 1.3.** 1. On or before September 1 of each year, the Central
4 Repository shall prepare and submit to the Governor, the Nevada Supreme Court
5 and the Director of the Legislative Counsel Bureau for transmittal to the
6 Legislature a report identifying each instance in which information or a record is
7 required to be transmitted to the Central Repository pursuant to NRS 33.095,
8 159.0593, 174.035, 175.533, 175.539, 178.425, subsection 3 of NRS 179A.075 or
9 NRS 433A.310 and such information or record was not timely submitted during
10 the previous fiscal year. The report must include the reason, if known, for the
11 untimely submission of the information or record.

1 2. The Central Repository shall, according to a schedule established by the
2 Director of the Department, contact the courts in this State to coordinate efforts
3 to ensure the timely submission of information or records transmitted pursuant to
4 NRS 33.095, 159.0593, 174.035, 175.533, 175.539, 178.425, subsection 3 of NRS
5 179A.075 or NRS 433A.310.

6 Sec. 1.7. 1. The Central Repository shall act as the authorized agency of
7 this State for any request by a qualifying agency for a national background check
8 where the purpose of the national background check is to determine whether a
9 covered individual has been convicted of a crime that bears upon the fitness of
10 the covered individual to have responsibility for the safety and well-being of
11 children, elderly persons or individuals with disabilities. A qualified entity shall
12 submit a request for any such background check to the Central Repository.

13 2. Before a qualified entity may submit a request for a background check
14 pursuant to this section, the qualified entity must:

15 (a) Register with the Central Repository via a signed written agreement.

16 (b) Obtain from the covered individual for whom the request will be
17 submitted:

18 (1) A set of fingerprints;

19 (2) A completed and signed statement that complies with the
20 requirements of 34 U.S.C. § 40102(b)(1); and

21 (3) A signed waiver authorizing the Central Repository to release the
22 background check to the qualified entity.

23 3. The Central Repository shall:

24 (a) Access and review state and federal records of criminal history through
25 the national criminal history background check system and shall make
26 reasonable efforts to respond to a request by a qualified entity within 15 days.

27 (b) Determine whether a covered individual has been convicted of, or is
28 under pending indictment for, a crime that bears upon the covered individual's
29 fitness to have responsibility for the safety and well-being of children, the elderly
30 or individuals with disabilities and shall convey that determination to the
31 qualified entity.

32 (c) Upon receipt of a background check lacking disposition data, conduct
33 research in available state and local recordkeeping systems to obtain complete
34 data.

35 (d) Charge a fee for the background check that complies with the
36 requirements of 34 U.S.C. § 40102(e).

37 (e) Provide qualified entities with information concerning the required
38 procedures for submitting a request pursuant to this section, including, without
39 limitation, information concerning:

40 (1) The waiver and statement required pursuant to subsection 2;

41 (2) The rights of the covered individuals; and

42 (3) The amount of fees required for each background check.

43 4. The Director of the Department shall adopt regulations to ensure that the
44 covered individual has the rights described in 34 U.S.C. § 40102(b)(2) and may
45 adopt any other regulations as necessary to comply with the requirements of 34
46 U.S.C. § 40102.

47 5. The background check and the results thereof must be handled in
48 accordance with the requirements of the Department of State, Justice, and
49 Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public
50 Law 92-544) and, as applicable to the use and release of state or federal records,
51 chapter 179A of NRS and 34 U.S.C. § 40102.

6. A qualified entity is not liable in an action for damages solely for failure to conduct a criminal background check on a covered individual pursuant to this section.

7. The State, any political subdivision of the State and any agency, officer or employee of this State or any political subdivision of the State are not liable in an action for damages for the failure of a qualified entity to take action adverse to a covered individual who was the subject of a background check.

8. As used in this section:

(a) "Child" means a person who is less than 18 years of age.

(b) "Covered individual" has the meaning ascribed to it in 34 U.S.C. § 40104(9).

(c) "Elderly person" means a person who is 60 years of age or older.

(d) "Individuals with disabilities" has the meaning ascribed to it in 34 U.S.C. § 40104(7).

(e) "National criminal history background check system" has the meaning ascribed to it in 34 U.S.C. § 40104(8).

(f) "Qualified entity" has the meaning ascribed to it in 34 U.S.C. § 40104(10).

Sec. 2. ~~[As used in NRS 179A.075 to 179A.160, inclusive, and sections 2 to 5, inclusive of this act, unless the context otherwise requires, the words and terms defined in sections 2.5 and 3 of this act have the meanings ascribed to them in those sections.] (Deleted by amendment.)~~

Sec. 2.3. (Deleted by amendment.)

Sec. 2.5. ~~[1. "Fingerprint facility" means a facility located in this State which uses fingerprinting and network equipment to provide fingerprinting services. The term includes, without limitation, such a facility that provides mobile fingerprinting services.~~

~~2. The term does not include:~~

~~(a) Any local, state or federal agency, including, without limitation, any law enforcement agency; or~~

~~(b) A facility where fingerprinting services are rendered that does not transmit or forward the biometric data in the form of fingerprints to the Central Repository.] (Deleted by amendment.)~~

Sec. 2.7. (Deleted by amendment.)

Sec. 3. ~~["Fingerprinting service" means the act of collecting, including, without limitation, collecting electronically, biometric data in the form of fingerprints.] (Deleted by amendment.)~~

Sec. 4. (Deleted by amendment.)

Sec. 4.5. (Deleted by amendment.)

Sec. 5. ~~[A person who wishes to establish or own a fingerprint facility that transmits or forwards to the Central Repository the biometric data in the form of fingerprints must enter into a contract with the Central Repository.] (Deleted by amendment.)~~

Sec. 5.5. ~~[NRS 179A.080 is hereby amended to read as follows:~~

~~179A.080 The Director of the Department is responsible for administering this chapter and may adopt regulations for that purpose. The Director shall:~~

~~1. Adopt regulations for the security of the Central Repository so that it is adequately protected from fire, theft, loss, destruction, other hazards and unauthorized access;~~

~~2. Adopt regulations and standards for personnel employed by agencies of criminal justice in positions of responsibility for maintenance and dissemination of information relating to records of criminal history and information disseminated pursuant to federal laws and regulations;~~

~~3. Provide for audits of informational systems by qualified public or private agencies, organizations or persons.~~

~~4. Provide for preliminary and periodic audits of fingerprinting and network equipment to ensure compliance with all applicable laws, regulations and standards.~~ (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

Sec. 22. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

Sec. 24. (Deleted by amendment.)

Sec. 25. (Deleted by amendment.)

Sec. 26. (Deleted by amendment.)

Sec. 27. (Deleted by amendment.)

Sec. 27.5. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 28. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any preliminary and administrative tasks necessary to carry out the provisions of this act and on ~~January 1, 2020,~~ July 1, 2019, for all other purposes.