

CHAPTER 11
IDENTIFICATION SECTION OF THE DIVISION OF CRIMINAL INVESTIGATION

[Rules 11.1 to 11.7 appeared as 4.3 prior to 6/27/79]
[Prior to 4/20/88, see Public Safety Department[680] Ch 11]

661—11.1(17A,690,692) Identification section. The identification section maintains information necessary to identify persons with criminal histories. It collects, files and disseminates criminal history data to authorized criminal justice agencies and the public upon request and updates criminal history records as a continual process.

661—11.2(17A,690,692) Definitions.

“Authorized agency” means a division or office of the state of Iowa designated by a state to report, receive, or disseminate information under Iowa state law, administrative rule or Public Law 103-209.

“Criminal identification records” shall mean either of the following records, the forms for which are provided by the department to law enforcement agencies:

1. Department of public safety arrest fingerprint cards.
2. State of Iowa final disposition reports.

“Dependent adult abuse registry” means the official registry kept by the department of human services, established pursuant to Iowa Code chapter 235B.

“Employee” means a person who provides services to a qualified entity and is compensated for those services.

“Fee” means any cost associated with conducting a state or national criminal history record check.

“Felony” and *“misdemeanor”* shall have the same meaning and classifications as described in Iowa Code sections 701.7 and 701.8.

“Fitness determination” means an analysis of criminal history information to determine whether or not it disqualifies an individual from holding a particular position either as an employee or a volunteer.

“National record check” means a criminal history record check from the FBI that is fingerprint-based and is transmitted through the state central repository.

“Nonlaw enforcement agency” means an agency authorized by law to receive criminal history data from the department which is not a “criminal justice agency” as defined in Iowa Code section 692.1, subsection 10, or which is not an institution which trains law enforcement officers for certification under Iowa Code chapter 80B.

“Qualified entity” means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services. This definition also applies to organizations which provide care to the elderly or the disabled.

The *“taking of fingerprints”* shall mean the obtaining of a fully rolled set of inked fingerprint impressions having suitable quality for fingerprint classification and identification.

“Volunteer” means a person who provides services to a qualified entity without compensation.

This rule implements Iowa Code chapters 690 and 692.

“Working day” means any day except any of the following:

1. Saturday.
2. Sunday.
3. State holiday.
4. Federal holiday during which the administrative office of the submitting agency is closed.
5. Any day during which the administrative office of the agency is closed or relocated due to weather or road conditions or any condition related to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

661—11.3(690,692) Release of information. Records maintained by the identification section are public records and are released to criminal justice agencies and the public as authorized by statute. Only the department of public safety may release criminal history information maintained by the department to non-criminal justice agencies or persons.

661—11.4(690,692) Right of review. Any person who has a criminal history record on file with the division of criminal investigation has the right to review and obtain a copy of the record. This right may be exercised by an attorney acting on behalf of the person with the criminal history record with written authorization and fingerprint identification of the person with the criminal history record. A copy of a criminal history record provided pursuant to this rule is subject to the fee provided in rule 661—11.15(692).

661—11.5(690,692) Review of record. Any individual or that individual's attorney, acting with written authorization from the individual, may review or obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division in the Wallace State Office Building in Des Moines or by submitting a request on a form provided by the department of public safety. A copy of this request form may be obtained by writing to Identification Section, Division of Criminal Investigation, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by telephoning the identification section at (515)281-8706 or by sending a request by electronic mail to cchinfo@dps.state.ia.us. The request form may also be downloaded from the division's Web site at <http://www.state.ia.us/government/dps/dci/>. The completed request form must be notarized, if submitted by mail, and accompanied by a set of the fingerprints of the individual whose criminal history record is being requested, along with submission of the fee established in rule 661—11.15(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.

661—11.6(17A,690,692) Inaccuracies in criminal history. If an individual believes inaccuracies exist in the individual's criminal history, notice may be filed with the division outlining the alleged inaccuracies accompanied by any available supporting data. In all instances where a notice is so filed, the division contacts the arresting agencies, court of record and institutions to verify record accuracy. Any necessary changes shall be made to the individual's record. Any agency previously receiving a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who has so filed a notice of correction within 20 days of said filing. If, after notice is filed and the division makes its final report, the individual is still of the opinion that inaccuracies exist within the records, an appeal of the final decision of the division to the Polk county district court may be made.

661—11.7(17A,690,692) Fingerprint files and crime reports. This section also maintains all fingerprint files and has personnel for the entry of crime reports to the criminal system.

661—11.8(690) Taking of fingerprints. The taking of fingerprints shall be in compliance with Iowa Code sections 232.148(2), 690.2 and 690.4. Fingerprints taken pursuant to these sections shall be submitted to the identification section of the division of criminal investigation, within two working days and to the Federal Bureau of Investigation.

661—11.9(17A,690,692) Arresting agency portion of final disposition form. The sheriff of each county and the chief of police of each city shall complete the arresting agency portion of the final disposition form with the arrest information on all persons whose fingerprints are taken in accordance with the rules or Iowa Code section 690.2, and thereafter forward the form to the appropriate county attorney or to the juvenile court officer who received the referral if the case remains in juvenile court.

661—11.10(690,692) Final disposition form. The county attorney of each county or juvenile court officer who received the referral shall complete a final disposition report and submit it to the division of criminal investigation within 30 days when a preliminary information or citation is dismissed without new charges being filed, or when a case is ignored by a grand jury. When an indictment is returned or a county attorney's information filed, the final disposition form shall be forwarded by the county attorney to the clerk of the court having jurisdiction. The clerk of court shall forward a copy to the division of criminal investigation within 30 days after judgment. If a juvenile is processed through juvenile court, the juvenile court officer shall forward the disposition form to the division of criminal investigation.

661—11.11(692) Destruction of fingerprints. Rescinded IAB 11/22/95, effective 1/1/96.

661—11.12(692) Release of information to the public. The department may release criminal history information to any person, or public or private agency, upon written application. Non-criminal justice agencies may not receive information regarding arrests older than 18 months that do not have dispositions or deferred judgments where the department has received official notice of successful completion of probation, unless a waiver has been given to the requestor from the person who is the subject of the criminal history information and is presented to the department at the time the request for the information is made.

Each record released to a non-criminal justice agency shall prominently display the statement: “AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT.”

661—11.13(692) Redissemination of criminal history information by youth service agencies. Rescinded IAB 7/3/96, effective 7/1/96.

661—11.14(692) Scope of record checks for non-criminal justice agencies and individuals. Record checks made for non-criminal justice agencies and individuals pursuant to these rules will be based upon name, including maiden name and aliases, if any, and birth date. This information is not sufficient to effect a precise identification of a subject. Persons may have the same name and birth date. Persons may use several names. The records of the department are based upon reports from other agencies. The department, therefore, cannot warrant the completeness or accuracy of the information provided. Agencies and individuals receiving criminal history information are therefore advised to verify all information received from the department to the extent possible (e.g., by contacting the reported arresting agency or court).

661—11.15(692) Fees. All individuals, their attorneys, and other non-criminal justice agencies applying for receipt of criminal history information may be assessed a fee. The department may accept cash, money orders, or checks. Other arrangements may be made, such as a prepaid retainer or credit card. The fee for receipt of criminal history information from the department shall be not more than \$13 for each surname for which information is requested and not more than \$15 per surname for fax service. The fee shall be prominently posted at the headquarters of the division of criminal investigation. Each alias or maiden name submitted shall be considered a separate name for purposes of computing this fee. Employers must pay the cost of the criminal history fee of a potential employee.

661—11.16(692) Subpoenas and civil process. Rescinded IAB 7/3/96, effective 7/1/96.

661—11.17(17A,22,692) Requests for criminal history data.

11.17(1) Requests for criminal history data. Persons or agencies requesting criminal history data should direct requests in writing using forms or methods approved by the commissioner of public safety. Requests for forms to use in requesting criminal history information may be addressed by mail to the Identification Section, Division of Criminal Investigation, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or by electronic mail via the Internet to cchinfo@dps.state.ia.us.

The commissioner may authorize other methods of requesting criminal history information besides mail. These other methods may include fax transmission, electronic mail, or computer access. This authorization by the commissioner of public safety shall be based on the ability to efficiently and accurately receive and disseminate criminal history information.

11.17(2) Public complaints. Public complaints concerning the operation of criminal history or intelligence data systems should be directed in writing to the commissioner of public safety. Complaints should be specific in spelling out the time, date and place of the alleged violation and any action requested of the commissioner.

11.17(3) Approval of agreements. All agreements, arrangements and systems for the transmission and exchange of criminal history data required to be approved by the commissioner shall be submitted in writing at least 30 days before their proposed effective date.

This rule is intended to implement Iowa Code section 692.19.

661—11.18(690) Administrative sanctions. The commissioner of public safety shall deny or restrict access to criminal history records maintained by the identification section of the division of criminal investigation to any agency which fails to comply with the requirements of Iowa Code chapters 690 and 692 for submission of fingerprints and disposition reports to the department of public safety. The commissioner shall notify the affected agency in writing prior to denying or restricting access, giving details of the requirements and the nature of the failure to comply.

Any agency which has received notification from the commissioner that their access to criminal history records is to be denied or restricted may protest this action. Protests must be filed with the administrative services division within 30 days of the date of the notification from the commissioner in accordance with rule 661—10.101(17A).

This rule is intended to implement Iowa Code section 690.5.

661—11.19(232) Juvenile fingerprints and criminal histories.

11.19(1) Authority to fingerprint. A law enforcement agency may fingerprint and photograph any juvenile who has been taken into custody and charged with the commission of an offense which would be a serious misdemeanor or above if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

11.19(2) Fingerprints of juveniles waived to adult court. If jurisdiction over a juvenile suspect has been transferred from juvenile court to adult court, then fingerprints of that suspect taken pursuant to Iowa Code section 232.148 and transmitted to the division of criminal investigation shall be handled by the division in the same manner as fingerprints of adult suspects are handled and are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

11.19(3) Fingerprints entered into Automated Fingerprint Identification System (AFIS). Fingerprints of juveniles shall be entered into the AFIS maintained by the department of public safety.

11.19(4) Juvenile criminal histories.

a. A fingerprint card received for a juvenile suspect shall be used to establish a criminal history record for the suspect.

b. Criminal histories of juveniles over whom jurisdiction has been transferred from juvenile court to adult court shall be handled in the same manner as criminal histories of adults.

c. Criminal histories of juveniles who remain under the jurisdiction of the juvenile court shall be maintained only if the juvenile is adjudicated delinquent based upon an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult. The criminal history record established in response to receiving a fingerprint card shall be expunged if the delinquency petition is dismissed. Juvenile court judges shall order that juveniles be fingerprinted and the prints submitted to the division of criminal investigation if the juvenile has been adjudicated delinquent for an offense of serious misdemeanor or above if committed by an adult.

d. Criminal history records of juveniles over whom jurisdiction has not been transferred from juvenile to adult court shall be expunged when the subject reaches the age of 21 unless the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21. If the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21, the criminal history record shall be maintained in the same manner as adult criminal history records.

11.19(5) *Tracking criminal history records.* The division of criminal investigation shall establish an internal procedure for tracking criminal history records expunged from the files of the division for audit purposes only.

This rule is intended to implement Iowa Code section 232.148 as amended by 1999 Iowa Acts, House File 403.

661—11.20(135C) Release of dependent adult abuse records. Effective July 1, 1997, the department of public safety, division of criminal investigation, may release to health care facilities licensed under Iowa Code chapter 135C dependent adult abuse registry information received from the department of human services. The department of public safety and the department of human services shall enter into a 28E agreement to carry out this rule.

661—11.21(692) Criminal history checks for qualified entities.

11.21(1) The department of public safety may process requests for national criminal history record checks for a qualified entity.

11.21(2) All qualified entities requesting criminal history record checks shall be required to pay any applicable state and federal fees associated with non-criminal justice record checks. The qualified entity is responsible for such fees whether the qualified entity requests or receives the information directly or through an agency authorized to make fitness determinations as provided in subrule 11.21(3).

11.21(3) Any public entity which has been duly authorized by statute or administrative rule to conduct fitness determinations of volunteers or employees of a qualified entity may receive state and national criminal history checks in order to do so.

11.21(4) A school district considering an applicant for a teaching position is a qualified entity pursuant to 2007 Iowa Acts, Senate File 601, section 102. A school district may submit a request for a national criminal history check of an applicant for employment as a teacher. The request shall be submitted on a form designated by the division of criminal investigation and shall be accompanied by completed fingerprint cards for the applicant and the applicable fee. The district may contact the division of criminal investigation by telephone at (515)725-6066 or by electronic mail at cchinfo@dps.state.ia.us, prior to submitting the request, to obtain instructions on the submission or may consult the Web site of the division for this information.

These rules are intended to implement Iowa Code chapter 692.

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