

CHAPTER 82
CRIMINAL HISTORY AND FINGERPRINT RECORDS

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

661—82.1(690,692) Records and identification section. The records and identification section of the division of criminal investigation of the department of public safety maintains information necessary to identify persons with criminal histories. The section collects, files and disseminates criminal history data to authorized criminal justice agencies and to the public upon request and updates criminal history data on a continuing basis.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

661—82.2(690,692) Definitions. The following definitions apply to rules 661—82.1(690,692) through 661—82.301(232):

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

“Criminal identification records” means 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.

“Department” means the Iowa department of public safety.

“Division” means the division of criminal investigation of the department of public safety.

“Employee” means a person who provides services 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 meanings 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 the criminal history information disqualifies an individual from holding a particular position or license 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.

“Non-criminal justice agency” means an agency that is authorized by law to receive criminal history data from the department; that is not a “criminal or juvenile justice agency” as defined in Iowa Code section 692.1, subsection 7; and that 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 care or care placement services, including a business or organization that licenses or certifies persons or entities to provide care or care placement services, treatment, education, training, instruction, supervision or recreation to children, the elderly or individuals with disabilities.

“Taking of fingerprints” means obtaining a fully rolled set of inked fingerprint or electronically scanned fingerprint impressions of suitable quality for fingerprint classification and identification.

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

“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 submitting 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.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

661—82.3(690,692) Tracking criminal history data. For audit purposes only, the division of criminal investigation shall establish an internal procedure for tracking criminal history data expunged from the files of the division.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

661—82.4 to 82.100 Reserved.

DIVISION I
CRIMINAL HISTORY DATA

661—82.101(690,692) Release of information. Criminal history data maintained by the records and 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.

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661—82.102(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 examine and obtain a copy of the record. This right may be exercised by an attorney acting on behalf of a person with a criminal history record only with written authorization and fingerprint identification of the person with the criminal history record. Providing a copy of a criminal history record pursuant to this rule is subject to the fee provided in rule 661—82.109(692).

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661—82.103(690,692) Review of record. An individual or an individual's attorney, acting with written authorization from the individual, may obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division 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 Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by telephoning the records and identification section at (515)725-6066; 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. The completed request form must be notarized, if submitted by mail; be accompanied by a set of the fingerprints of the individual whose criminal history record is being requested; and include submission of the fee established in rule 661—82.109(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.

NOTE: The Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

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661—82.104(17A,690,692) Inaccuracies in criminal history record. If an individual believes inaccuracies exist in the individual's criminal history record, notice may be filed with the division outlining the alleged inaccuracies and should be accompanied by any available supporting data. In all instances where a notice is so filed, the division shall contact the appropriate arresting agencies, courts of record or institutions to verify accuracy of the criminal history record. Any necessary changes shall be made to the individual's criminal history record. Any agency that previously received a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who 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 record, an appeal of the final decision of the division to the Polk County district court may be made.

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661—82.105(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 forms with the arrest information for all persons whose fingerprints are taken in accordance

with these rules or Iowa Code section 690.2, and thereafter forward the form to the appropriate county attorney or, at the discretion of the county attorney, to the clerk of district court, or if the case remains in juvenile court, to the juvenile court officer who received the referral.

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661—82.106(690,692) Final disposition form. When a preliminary information or citation is dismissed without new charges being filed or when a case is ignored by a grand jury, the county attorney or juvenile court officer who received the referral shall complete a final disposition form and submit it to the division of criminal investigation within 30 days. When an indictment is returned or a county attorney's information is 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.

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661—82.107(692) Release of information to the public.

82.107(1) The department may release criminal history information to any person or public or private agency upon request by any method approved by the department. Requesters may not receive information regarding arrests older than 18 months that do not have dispositions or deferred judgments when the department has received official notice of successful completion of probation, unless a waiver has been provided to the requester from the person who is the subject of the criminal history information and the waiver is presented to the department at the time the request for the information is made.

82.107(2) Each record released to a non-criminal justice agency shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT."

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661—82.108(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 are based upon name, including maiden name and aliases, if any, and birth date. This information may not be sufficient to effect a precise identification of a subject. A record check based solely upon name and birth date may refer to multiple subjects or may not result in positive identification of the subject of the request. 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 that receive 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).

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661—82.109(692) Fees. All individuals, their attorneys, and other non-criminal justice agencies requesting criminal history information shall be assessed a fee. The department may accept cash, money orders, checks, or credit cards. Other arrangements may be made, such as a prepaid account. The fee for receipt of criminal history information from the department shall be not more than \$15 for each name for which information is requested. 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. The employer must pay the cost of the criminal history fee of a potential employee, if the employer requires receipt of criminal history information as a condition of employment.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

661—82.110(17A,22,692) Requests for criminal history data.

82.110(1) *Requests for criminal history data.*

a. Persons or agencies requesting criminal history data should direct requests in writing using forms or methods approved by the commissioner of public safety. Forms to use in requesting criminal history information may be requested by mail to the Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by

electronic mail to cchinfo@dps.state.ia.us; by telephone at (515)725-6066, or from the Web site of the division.

NOTE: The Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

b. The commissioner may authorize additional methods of requesting criminal history information. These other methods may include fax transmission or computer access. Authorization by the commissioner of public safety shall be based on the ability to securely, efficiently and accurately receive and disseminate criminal history information.

82.110(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 specify clearly the date, time and place of the alleged violation and any action requested of the commissioner.

82.110(3) *Required approvals.* Any agreement, arrangement or system 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 its proposed effective date.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

661—82.111(690) Administrative sanctions.

82.111(1) The commissioner of public safety may deny or restrict access to criminal history data maintained by the records and identification section of the division of criminal investigation to any agency that 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 and shall provide details of the requirements and the nature of the failure to comply.

82.111(2) Any agency that has received notification from the commissioner that the agency's access to criminal history data 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).

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661—82.112(692) Criminal history record checks for qualified entities or authorized agencies.

82.112(1) The department of public safety may process requests for national criminal history record checks for a qualified entity or authorized agency.

82.112(2) All qualified entities or authorized agencies requesting criminal history record checks shall be required to pay any applicable state and federal fees associated with noncriminal justice record checks. The qualified entity or authorized agency 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 82.112(3).

82.112(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 criminal history record checks in order to do so. Any public entity which has been duly authorized by statute to conduct fitness examinations of volunteers or employees, including national criminal history checks, may receive national criminal history record checks in order to conduct such examinations.

82.112(4) A school district considering an applicant for a teaching position is a qualified entity pursuant to Iowa Code section 279.13. A school district may submit a request for a national criminal history record 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. Prior to submitting the request, 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 to obtain instructions on the submission or may consult the Web site of the division for such information.

NOTE: The Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

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661—82.113 to 82.200 Reserved.

DIVISION II
FINGERPRINT RECORDS

661—82.201(17A,690,692) Fingerprint files and crime reports. The department maintains all fingerprint files.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

661—82.202(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 records and identification section of the division of criminal investigation within two working days, and the department shall submit the fingerprints to the Federal Bureau of Investigation.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

661—82.203 to 82.300 Reserved.

DIVISION III
JUVENILE RECORDS

661—82.301(232) Juvenile fingerprints and criminal histories.

82.301(1) Authority to fingerprint. A law enforcement agency shall 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, aggravated misdemeanor or felony if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

82.301(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 the fingerprints are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

82.301(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.

82.301(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 the division's receiving a fingerprint card shall be expunged if the delinquency petition is dismissed. Juvenile court judges shall order that a juvenile be fingerprinted and the prints submitted to the division of criminal investigation if the juvenile has been adjudicated delinquent for an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult.

d. Criminal history data of juveniles over whom jurisdiction has not been transferred from juvenile court 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 when the subject was between the ages of 18 and 21 or unless the retention of the records is necessary for the purpose of administering Iowa Code chapter 692A. If the subject has been convicted of a serious or aggravated misdemeanor or a felony when the subject was between the ages of 18 and 21, the criminal history record shall be maintained in the same manner as adult criminal history data.

[ARC 8936B, IAB 7/14/10, effective 9/1/10]

These rules are intended to implement Iowa Code chapters 690, 692, and 692B.

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