

WSR 21-01-033

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed December 7, 2020, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-136.

Title of Rule and Other Identifying Information: Chapter 446-20 WAC, Employment—Conviction records.

Hearing Location(s): On February 9, 2021, at 9:00 a.m. Call-in: 1-253-215-8782. Passcode: 859247.

Date of Intended Adoption: February 10, 2020 [2021].

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by December 4, 2020 [February 4, 2021].

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email wsprules@wsp.wa.gov, by December 4, 2020 [February 4, 2021].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will provide clean up and clarification to the existing language to ensure the rules reference and comply with current laws in the state of Washington.

Reasons Supporting Proposal: Updates are to provide clarity and clean up existing language.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Statute Being Implemented: Chapters 10.97 and 43.43 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation: Becky Miner, Olympia, Washington, 360-534-2111; Enforcement: Washington State Patrol, Olympia, Washington, 360-596-4017.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5) (b) (v).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

December 7, 2020

John R. Batiste

Chief

OTS-2663.1

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-020 Definitions. For the purpose of this section the following apply:

(1) The definitions in RCW 10.97.030 will apply to these regulations.

(2) The definitions as enumerated in RCW 43.43.830 through 43.43.845, and as amended by chapter 9A.44 RCW, "An act relating to child and adult abuse information," will apply whenever applicable in these regulations.

(3) "Nonconviction data" has the meaning set forth in RCW 10.97.030 (2) (~~(, but will not include dismissals following a period of probation, or suspension, or deferral of sentence)~~) and (8).

(4) "~~(Section)~~ Division" means the (~~identification and criminal history section~~) criminal records division of the Washington state patrol.

(5) "The administration of criminal justice" has the meaning set forth in RCW 10.97.030 (~~(+6)~~) (1), but does not include crime prevention activities (if that is the sole function of the program or agency) or criminal defense activities.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-020, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-020, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-020, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. WSR 88-07-066 (Order 88-03-A), § 446-20-020, filed 3/17/88. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-020, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 15-22-078, filed 11/3/15, effective 12/4/15)

WAC 446-20-040 Deferred prosecutions. (1) A deferred prosecution under chapter 10.05 RCW of an alleged offender does not become nonconviction data until more than one year has elapsed since arrest, citation, charge, or service of warrant, or there is a final decision to dismiss charges or not to prosecute, whichever occurs first.

(2) A deferred prosecution under this section will not be subject to deletion under RCW 10.97.060 (~~(until)~~) unless there is a final decision (~~(to dismiss charges or)~~) not to prosecute.

(3) Notwithstanding subsection (2) (~~(if)~~) of this section, the (~~(section)~~) division retains the discretion to refuse to delete nonconviction data as provided in RCW 10.97.060.

[Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 15-22-078, § 446-20-040, filed 11/3/15, effective 12/4/15; WSR 80-08-057 (Order 80-2), § 446-20-040, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-050 Criminal justice agencies. (1) The following agencies will be considered criminal justice agencies for the purpose of chapter 10.97 RCW and these regulations.

(a) The Washington state patrol;

(b) Foreign, federal, state, and local governmental law enforcement agencies;

(c) State, county, or municipal agencies that have responsibility for the detention, pretrial release, post-trial release, correctional supervision, or rehabilitation of accused persons or criminal offenders;

(d) Indeterminate sentence review board;

(e) Courts at any level for the administration of criminal justice.

(2) An agency or portion thereof that has been certified as a criminal justice agency pursuant to WAC 446-20-060.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-050, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-050, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-050, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-060 Certification of agencies. (1) An agency or portion of an agency that asserts a right to receive criminal history record information based on its status as a criminal justice agency must show satisfactory evidence of its certification as a criminal justice agency prior to receiving such information. The ~~((section))~~ division will certify such an agency or portion of an agency, based on a showing that the agency or portion of an agency, meets the definition of a criminal justice agency in RCW 10.97.030. Agencies or portions of agencies which assert the right to be certified as a criminal justice agency must submit a written request for certification to the ~~((section on the form provided under WAC 446-20-430))~~ division.

(2) An agency or portion of an agency that asserts a right to receive nonconviction criminal history record information must show satisfactory evidence of certification to receive such information. Certification by the ~~((section))~~ division will be granted based upon statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to nonconviction criminal history record information, and which authorizes or directs that it be available or accessible for a specific purpose.

(3) The application must include documentary evidence which establishes eligibility for access to criminal history record information.

(4) The ~~((section))~~ division will make a determination in writing on the eligibility or noneligibility of the applicant. The written determination, together with reasons for the decisions, will be sent to the applicant.

(5) The ~~((section))~~ division must keep a current list of all agencies that have been certified to receive criminal history record information.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-060, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-060, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-090 Inspection of record by the subject of record.

(1) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol (~~(identification and criminal history section)~~) criminal records division, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee must first permit his or her fingerprints to be taken by the criminal justice agency for identification purposes (~~(, if requested to do so)~~). The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, will be allowed each individual to visually examine criminal history record information pertaining to himself or herself.

(4) If any person who desires to examine his or her criminal history record information is unable to read or is otherwise unable to examine same because of a physical disability, he or she may designate another person of their own choice to assist him or her. The person about whom the information pertains must execute, with his or her mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself or herself by another person for the purpose of it being read or otherwise described to him or her. Such designated person will then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

(5) Each criminal justice agency will develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-090, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-090, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-090, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-090, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-100 Inspection—Timeliness and manner of agency response. (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection will not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection must respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the ~~((section))~~ division, the agency must respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the ~~((section))~~ division, the agency upon request of the subject of the record, must forward the request to the ~~((section))~~ division for processing.

(c) The ~~((section))~~ division will copy all Washington state criminal history record information in the files of the ~~((section))~~ division relating to the individual requester and forward it to the criminal justice agency submitting the request. The ~~((section))~~ division may provide a copy of the individual's nonconviction data directly to the subject of record upon written request from the individual for a reasonable fee.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information, the agency will notify the requester at his or her designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-100, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-100, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-100, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-100, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-130 Challenge—Forms to be made available. Every criminal justice agency which authorizes individuals to use its facilities for the purpose of inspecting their criminal history record information ~~((must))~~ shall provide an appropriate challenge form and the ~~((address))~~ contact information of the agency whose record entry is being challenged. Such forms ~~((must))~~ shall be substantially equivalent to that set forth in WAC 446-20-450.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-130, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-130, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 20-01-100, filed 12/13/19, effective 1/13/20)

WAC 446-20-160 Review of refusal to alter record. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, com-

plete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review must be in writing (~~(, and must be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410)~~). If review is requested in the time allowed, the head of the agency whose record or submission has been challenged must complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he or she must state his or her reasons in a written decision, a copy of which must be provided to the subject of the record. Denial by the agency head will constitute a final decision under RCW 34.05.570. Notwithstanding this section, RCW 43.43.730 governs an individual's request to the Washington state patrol (~~(identification and eriminal history section)~~) criminal records division to purge, modify, or supplement that individual's criminal history record information on file with the Washington state patrol (~~(identification and eriminal history section)~~) criminal records division.

[Statutory Authority: RCW 10.97.080. WSR 20-01-100, § 446-20-160, filed 12/13/19, effective 1/13/20. Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-160, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-160, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-170 Secondary dissemination. (1) Criminal justice agencies that receive state criminal history record information from the (~~(section)~~) division may disseminate them further, "but only to the same extent to which the (~~(section)~~) division itself would be authorized to make dissemination in the first instance." Nonconviction data based on an incident that arose in the jurisdiction of that agency about to make the dissemination is not subject to this restriction, if the agency is otherwise authorized to disseminate such information.

(2) Noncriminal justice agencies authorized to receive criminal history record information from whatever source may use it only for the specific purpose for which the agency is certified and shall not disseminate it further.

(3) Use of criminal history record information contrary to chapter 10.97 RCW or chapter 446-20 WAC may result in suspension or cancellation of authorization.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-170, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-170, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-170, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-190 Dissemination—Research purposes. Criminal history record information which includes nonconviction data may be disseminated for research, evaluative, or statistical purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section must be substantially similar to that set forth in WAC 446-20-420 (model transfer provisions).

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-190, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-190, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-220 Protection against unauthorized access. Criminal history record systems, whether dedicated to criminal justice purposes, or shared, will be designed and operated in accordance with procedures which will assure that:

(1) Access to criminal history record information facilities and system operating areas (whether for computerized or manual systems) and the content of data files and systems documentation, will be restricted to authorized personnel. These procedures may include use of guards, keys, badges, passwords, sign-in logs, or similar safeguards.

(2) All facilities which house criminal history record information must be designed and constructed so as to reduce the possibility of physical damage to the information resulting from unauthorized access.

(3) Criminal history record information is stored in such a manner that will prevent modification, destruction, access, change, purging, or overlay of criminal history record information by unauthorized personnel.

(4) Operational programs are used in computerized systems that will prohibit inquiry, record updates, or destruction of records from any terminal other than those authorized to perform criminal history record information functions.

(5) The purging or destruction of records is limited to personnel authorized by the criminal justice agency or through contract (~~with the noncriminal justice agency~~) as required under WAC 446-20-180, and consistent with WAC 446-20-230.

(6) Refuse from the criminal history record information system installations is transferred and destroyed under such reasonably secure conditions as will effectively guard against unauthorized availability.

(7) Operational procedures are used in computerized systems to detect and store unauthorized attempts to penetrate any criminal history record information system, program or file, and that such information is made available only to criminal justice agency employees with responsibility for system security, or as authorized by WAC 446-20-180.

(8) The procedures developed to meet standards of subsections (4) and (7) of this section, are known only to authorized employees responsible for criminal history records information system control.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-220, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-220, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-230 Personnel security. (~~((1) Agencies and contractors which collect and retrieve, or are authorized to maintain or modify, criminal history record information must: Identify those positions which are of such a sensitive nature that fingerprints of employees will be required and used to conduct a criminal record background investigation. Such background investigations will be the responsibility of the criminal justice agency and may consider the date, the disposition, number, and seriousness of any previous arrests or convictions. Decisions concerning employment will be the responsibility of the employing agency or contractor.~~

~~(2) When agency or contractor personnel violate the provisions of chapter 10.97 RCW or other security requirements established through administrative code for the collection, storage and dissemination of such information, agencies or contractors, as defined by subsection (1) of this section, must initiate, or cause to be initiated, action that will ensure the integrity of records containing criminal history record information.)) Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.~~

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-230, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-230, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-240 Personnel training. (~~((1) Criminal justice agencies will be required directly, or in cooperation with the criminal justice training commission to familiarize their employees and those of the contractors, with all federal, state, and local legislation, executive orders, rules, and regulations, applicable to such a system.~~

~~(2) Training to be provided must include not only initial training, but continuing training, designed to maintain among criminal history record information system personnel current knowledge and operational proficiency with respect to security and privacy law and regulations.)) Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information~~

must meet the training standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-240, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-240, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-250 Contractor personnel clearances. (~~((1) No personnel of a noncriminal justice agency will be granted access to criminal history record information without appropriate security clearance by the contracting agency or agencies.~~

~~(2) To provide evidence of the person's security clearance, the grantor of such clearance may provide an authenticated card or certificate. Responsibility for control of the issuance, or revocation of such clearances must rest with the grantor.)~~ Any personnel with unescorted access to unencrypted criminal justice information including criminal history record information must meet the standards established by the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-250, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-250, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-280 Employment—Conviction records. (1) A conviction record will be furnished consistent with the provisions of RCW 43.43.815, upon the submission of a written or electronic request of any employer, accompanied by fingerprints and other identifying data of the employee or prospective employee.

(2) Fingerprints must be submitted on cards of the type specified by the ~~((section))~~ division, and must contain a certification by the employer that the information is being disseminated to and will be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated, that the record will be used only as necessary for the purposes enumerated in this section, and that the request for conviction data is for one of the following purposes:

- (a) Securing a bond required for any employment;
- (b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or

(c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-280, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-280, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-280, filed 12/4/91, effective 1/4/92. Statutory Authority: 1982 c 202 § 1(7). WSR 82-22-006 (Order 82-5), § 446-20-280, filed 10/22/82.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-285 Employment—Conviction records. Conviction information will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes; and

(2) Criminal history information will be furnished from the ~~((section))~~ division, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The ~~((section))~~ division will also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request will not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the ~~((section))~~ division, and must contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, or equivalent response from a federal law enforcement agency shows no evidence of crimes, an identification declaring the showing of no evidence will be issued to the business or

organization by the (~~section~~) division within fourteen working days of receipt of the request. Possession of such identification will satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization must notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer must provide a copy of the response to the applicant and must notify the applicant of such availability.

(f) The business or organization will be immune from civil liability for failure to request background information on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-285, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-285, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.030 and 43.830-845 [43.43.830-43.43.845]. WSR 03-05-007, § 446-20-285, filed 2/7/03, effective 3/10/03. Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 97-05-048, § 446-20-285, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. WSR 92-15-015, § 446-20-285, filed 7/6/92, effective 8/6/92. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-285, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-285, filed 9/20/90, effective 10/21/90. Statutory Authority: RCW 43.43.838. WSR 89-23-017, § 446-20-285, filed 11/6/89, effective 12/7/89. Statutory Authority: RCW 43.43.838 and 1987 c 486 § 5. WSR 88-07-066 (Order 88-03-A), § 446-20-285, filed 3/17/88.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-400 Form of request to inspect record.

INSPECTION OF RECORD REQUEST
(RCW 10.97.080/WAC 446-20-070)

Agency
Agency No
Date
Time

I,, do hereby request to inspect my criminal history record information maintained in the files of the above named agency. In order to ensure positive identification as the person in question, I am submitting my fingerprints in the space below.

~~((I was born (Date of Birth), in (Place of Birth), and to ensure positive identification as the person in question, I am willing to submit my fingerprints in the space provided below, if required or requested.))~~

(Fill in ~~((and check))~~ where applicable box)

Because I am unable to read ; (() do not understand English ; ((~~otherwise need assistance in reviewing my record~~) other reason ; I hereby designate and consent that (Print Name), whose address is, ((~~assist me in examining~~) read or otherwise described or translated to me the criminal history record information concerning myself.

Prints of right four fingers taken simultaneously (Signature or mark of Applicant) (Address) (Signature of Designee)

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-400, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-400, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 80-08-057, filed 7/1/80)

WAC 446-20-450 CHRI challenge form.

CHRI CHALLENGE FORM
(REQUEST FOR MODIFICATION OF CHRI)
RCW 10.97.080/WAC 446-20-120

AGENCY AGENCY CASE NO.
ADDRESS DATE
.

I, (Print Name) , Date of Birth hereby acknowledge ((~~review~~) receipt this date,, of a copy of a ((~~CHRI rap sheet~~) Washington State Patrol Criminal Records Division RAPsheet bearing ((~~agency number, or~~) SID number, consisting of page(s) and identified as a history of criminal offenses charged to me.

I challenge the following specific portion(s) of the CHRI as being inaccurate or incomplete:

<u>Agency</u>	<u>Case No.</u>	<u>Date</u>	<u>Charge</u>
.
.
.

and request modification to read:

I further request((~~if such modifications are determined to be valid, that all~~) that the following designated persons or agencies who have received ((prior)) copies of the ((CHRI)) record be advised of the modifications.

.....
(Signature of ((Challenger))
Requestor)
Prints of right four fingers taken
simultaneously together

[Statutory Authority: RCW 10.97.080 and 10.97.090. WSR 80-08-057 (Order 80-2), § 446-20-450, filed 7/1/80.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-500 Sex offender and kidnapping offender registration. RCW 9A.44.130 requires any adult or juvenile residing in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense to register with the county sheriff for the county of that person's residence. The sheriff is required to forward the registration information to the ((~~section~~)) division within five working days. The Washington state patrol is mandated to maintain a central registry of sex offenders and kidnapping offenders consistent with chapters 10.97, 10.98, and 43.43 RCW.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-500, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 4.24.550, 9A.44.130, [9A.44.]140, 10.02.200, 43.43.540 and 70.48.470. WSR 98-01-021, § 446-20-500, filed 12/8/97, effective 1/8/98. Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 97-05-048, § 446-20-500, filed 2/18/97, effective 3/21/97. Statutory Authority: 1991 c 274. WSR 91-20-045 (Order 91-005), § 446-20-500, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-500, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-515 Photograph/fingerprint requirement. Registration requires the offender be fingerprinted and photographed and also provide the sheriff with the following information which must be forwarded to the Washington state patrol ((~~identification and criminal history section~~)) criminal records division within five working days:

- Name;
- Address;
- Date of birth;
- Place of birth;
- Social Security number;
- Institution of higher education enrolled, attending;
- Place of employment;
- Crime for which convicted;
- Date/place of conviction; and
- Aliases used.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-515, filed 12/17/09, effective 1/17/10. Statutory Authority: 1991 c 274. WSR 91-20-045 (Order 91-005), § 446-20-515, filed 9/24/91, effective 10/25/91. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-515, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-520 Photographs. Photographs must be in color. These are not to be file photographs. A new photograph is required.

For paper submissions, write full name, date of birth, and state identification number (SID). Paperclip (no staples please) the photograph to the fingerprint card with the registration information completed and forward to Washington state patrol, (~~identification and eriminal history section~~) criminal records division. For electronic submissions, current color photographs (~~may be~~) added to Offender-Watch can be electronically (~~mailed to a designated email address at the section. Identifying information (full name, date of birth, and SID) must accompany the photograph~~) uploaded to the Washington state patrol database.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-520, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-520, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 43.43.760, 43.43.815 and 43.43.838. WSR 92-15-015, § 446-20-520, filed 7/6/92, effective 8/6/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-520, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-525 Change of address form. Registered sex and kidnapping offenders who change residence within the same county are required to submit change of address information to the county sheriff (~~at least fourteen days before moving~~) within three days.

Registered sex and kidnapping offenders who change residence from one county to another are required to (~~send~~) register with the new county of residence within three days of moving and must provide written notice (fourteen days before moving to the county sheriff in the new county residence and must register with that county sheriff within twenty-four hours of moving. The offender must send "change of address" information within ten days of moving in the new county) of the change of address or in person to the county sheriff with whom the offender last registered.

(~~Registered sex and kidnapping offenders who move to another state or county must submit "change of address" information ten days before moving to the new state or county to the county sheriff with whom the offender last registered in Washington state.~~)

County sheriffs must forward "change of address" information to the Washington state patrol (~~identification and criminal history sec-~~

~~tion~~) criminal records division within five working days upon receipt.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-525, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 4.24.550, 9A.44.130, [9A.44.]140, 10.02.200, 43.43.540 and 70.48.470. WSR 98-01-021, § 446-20-525, filed 12/8/97, effective 1/8/98. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-525, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-530 Refundable fee. The (~~section~~) division will reimburse sheriffs' offices for the actual registration cost, not to exceed thirty-two dollars for each registration, which must include photographs and fingerprints submitted pursuant to RCW 9A.44.130. This fee will further ensure that direct and indirect costs at the county level associated with the provisions of this chapter are refunded by the (~~section~~) division on a monthly basis based upon the number of registrations submitted.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-530, filed 12/17/09, effective 1/17/10; WSR 97-05-048, § 446-20-530, filed 2/18/97, effective 3/21/97. Statutory Authority: RCW 10.97.090. WSR 91-24-099 (Order 91-004), § 446-20-530, filed 12/4/91, effective 1/4/92. Statutory Authority: 1990 c 3. WSR 90-20-003 (Order 90-003), § 446-20-530, filed 9/20/90, effective 10/21/90.]

AMENDATORY SECTION (Amending WSR 12-17-114, filed 8/21/12, effective 9/21/12)

WAC 446-20-600 Fees. (1) A nonrefundable fee must accompany each request for conviction records submitted for a name and date of birth background check or a background check requested by fingerprint search at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee will be charged for fingerprint cards submitted for federal searches. It will be the responsibility of the (~~section~~) division to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee will be charged for taking fingerprint impressions by the (~~section~~) division. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) A reasonable fee will be charged for a request for nonconviction data in lieu of a record review pursuant to RCW 10.97.080.

(5) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The (~~section~~) division must adjust the fee

schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(6) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 12-17-114, § 446-20-600, filed 8/21/12, effective 9/21/12; WSR 10-01-109, § 446-20-600, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 10.97.100, 43.43.742. WSR 05-03-034, § 446-20-600, filed 1/10/05, effective 2/10/05. Statutory Authority: RCW 43.43.742 through 43.43.845 and chapter 10.97 RCW. WSR 99-07-050, § 446-20-600, filed 3/15/99, effective 4/15/99. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. WSR 96-18-017, § 446-20-600, filed 8/26/96, effective 9/26/96.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. One fingerprint card is required to be submitted to the Washington state patrol (~~identification and criminal history section~~) criminal records division.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW.

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors must pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-610, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 43.43.830 - 43.43.845. WSR 05-07-141, § 446-20-610, filed 3/23/05, effective 4/23/05. Statutory Authority: RCW 43.43.830 - [43.43.]845 and 1998 c 346. WSR 98-19-039, § 446-20-610, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. WSR 96-18-017, § 446-20-610, filed 8/26/96, effective 9/26/96.]

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-630 Department of social and health services—Child care licensing—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 74.15 RCW. One fingerprint card is required to be submitted to the Washington state

patrol (~~(identification and criminal history section)~~) criminal records division.

(2) Department of social and health services (DSHS) will process fingerprint background checks under chapter 74.15 RCW, RCW 43.43.837 and 43.20A.710.

(3) All nonrefundable fees collected will be deposited into the Washington state patrol fingerprint identification account.

(4) A nonrefundable state and FBI fee will be charged on fingerprint cards clearly designated as "volunteer" pursuant to the provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

"RCW 43.43.837" and "volunteer" must be entered in the "reason fingerprinted" box on (~~both~~) the (~~(state and FBI)~~) fingerprint card(~~s~~) submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.

[Statutory Authority: Chapters 10.97 and 43.43 RCW. WSR 10-01-109, § 446-20-630, filed 12/17/09, effective 1/17/10. Statutory Authority: RCW 43.43.830 - 43.43.845. WSR 05-07-157, § 446-20-630, filed 3/23/05, effective 4/23/05. Statutory Authority: RCW 43.43.830 - [43.43.]845, chapters 10.97, 28A.400 and 74.15 RCW. WSR 96-18-017, § 446-20-630, filed 8/26/96, effective 9/26/96.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 446-20-410	Form of request to review refusal to modify record.
WAC 446-20-430	Certification request.
WAC 446-20-440	Contract for support services model agreement under WAC 446-20-180.