

Missouri State Highway Patrol  
Criminal Records and Identification Division  
General Headquarters, Jefferson City, Missouri

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## Criminal History Background Check Symposium Reference Manual



June 2008

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## I. INTRODUCTION

Criminal history record information has a variety of uses in today's society. Criminal justice agencies have access to both state and national databases for investigations, prosecutorial decisions, sentencing, release decisions, etc. In addition to law enforcement use, requests for criminal history record checks by the non-criminal justice community have become more prevalent than ever within our society. However, because of state and/or federal regulations, the receipt of national criminal history record information is limited to specific authorized entities.

In addition to criminal history record requests currently conducted for licensing and employment, requests are also being sought by day care providers, adoption agencies and, generally, any agency having access to, or working with children, elderly or disabled individuals. In response to the growing desire and need to obtain national criminal history record information for agencies not currently authorized, the Missouri Volunteer and Employee Criminal History Service (MoVECHS) program was developed.

Based on a decision by the Federal Bureau of Investigation (FBI), and under the authority of the National Child Protection Act (NCPA), as amended by the Volunteers for Children Act (VCA),<sup>1</sup> non-governmental entities, also referred to in this document as qualified entities (QE), that serve children, the elderly or disabled persons will have access to national criminal history record information upon acceptance into the MoVECHS program. The guidelines for program participation are specific for interested non-governmental entities. Requirements, in part, include: (1) the execution of a user agreement<sup>2</sup>, and (2) a consent form (waiver) from every employee or volunteer subjected to the criminal history record inquiry. The program policy and procedures are further explained in detail within this document.

Through the MoVECHS program, it is the expectation and goal of the Criminal Records and Identification Division to provide agencies providing services to children, the elderly, or disabled persons, an avenue to access national criminal history record information.

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<sup>1</sup> 42 U.S.C. Section 5119a. The criminal history record information background checks under the NCPA/VCA determine whether the individual has been convicted of crimes that bear upon his fitness to have responsibility for the safety and well being of children, the elderly or individuals with disabilities.

<sup>2</sup> User Agreement - establishes the terms under which the criminal history record checks may be performed.

## II. CRIMINAL HISTORY PROCESS

### A. *Missouri Criminal Records Repository*

The Missouri State Highway Patrol (MSHP), also known as the “Patrol”, has been the repository for fingerprint and criminal arrest record information since 1934 when the Bureau of Identification was established. The name of the Bureau was later changed to the Criminal Records and Identification Division (CRID) and officially designated as the central repository for the State of Missouri by the Legislature in 1987.<sup>3</sup> Chapter 43, Section 43.500 through Section 43.650, Missouri Revised Statutes (RSMo), made reporting criminal history actions to the central repository mandatory for all police officers, prosecutors, clerks of the courts, and corrections facilities in Missouri. Prior to this time, many law enforcement agencies submitted their data and fingerprints directly to the Federal Bureau of Investigation (FBI).

The central repository is the sole source communicator of Missouri criminal history record information to the FBI’s criminal history database, the Interstate Identification Index (Triple I, or III).<sup>4</sup> As indicated in state statutes, Missouri law enforcement officers, prosecuting attorneys, clerks of the courts, departments of corrections, sheriff’s and other criminal justice agencies are instructed to supply the repository with arrest, charge and disposition information for filing without “undue delay”. Undue delay is defined under Missouri Statute as less than thirty days after the reportable event (arrest).<sup>5</sup>

The overall duties and responsibilities placed on the central repository are to collect, maintain and disseminate to law enforcement and the general public criminal history record information as applicable per law.

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<sup>3</sup> Section 43.506.3 RSMo

<sup>4</sup> The Interstate Identification Index or III is a segment of IAFIS and is the national system designed to provide automated criminal history record information to participating states.

<sup>5</sup> Section 43.503.8 RSMo.

## ***B. State Maintained Criminal History Record Information***

The state criminal history record information (CHRI) system is housed within the Missouri Uniform Law Enforcement System (MULES) and maintained within the Criminal Records and Identification Division (CRID) at the Missouri State Highway Patrol General Headquarters in Jefferson City, Missouri.

Criminal history record information is submitted to CRID by means of the charge information contained on the state criminal fingerprint card and is tracked by means of the Offense Cycle Number (OCN). After the fingerprints have been identified through the Automated Fingerprint Identification System (AFIS) and matched to or assigned a State Identification number (SID), the information is automatically entered into criminal history for the individual, thus, making the fingerprint card the most critical element when creating a criminal history record. Without the fingerprint card, criminal history record information will not be present.

While establishment of a criminal record relies on the initial fingerprint card submission, an accurate and complete criminal history record relies on cooperation between all criminal justice reporting agencies, i.e., arresting agency, prosecuting attorney, court, Department of Corrections and the Department of Mental Health. At each point in the criminal history reporting process, a disposition is required on the action taken by each reporting agency.

### **1. State Authority**

In 1986, the 83rd General Assembly of the State of Missouri passed House Bills 873 and 874. These bills were introduced and overwhelmingly passed based on the need to protect victims of violent crimes and the need to provide a greater voice to those impacted by crime. On May 12, 1986, legislation was signed and the bills became law in August 1986. Chapter 43 of the Missouri Revised Statutes formally designated the Bureau of Identification as the central repository. As a result of the passing of these bills, the Missouri State Highway Patrol's Bureau of Identification was designated as the central repository for compiling, storing and disseminating criminal history record information. The bill further required the mandatory reporting of all felony and serious or aggravated misdemeanor criminal arrest information by law enforcement personnel, prosecuting attorneys, courts, Department of Corrections, and the Department of Mental Health. In 1991, the Bureau of Identification was renamed the Criminal Records and Identification Division. The Division currently functions under the Technical Services Bureau within the Missouri State Highway Patrol.

### **2. MULES**

The Missouri Uniform Law Enforcement System (MULES) is a network originally implemented in 1969 and is contained within the Information Systems Division (ISD) of the MSHP. MULES originated as a computerized information system to serve all criminal justice agencies in Missouri. The system provides a way for MULES users to enter, maintain, and inquire on records pertaining to areas of interest that includes a search

engine that handles the control processing of the data, parts, plates, boats, vehicles, and persons. MULES provides on-line screens for authorized users and asynchronous procedures for agencies that interface to MULES so that they may inquire, enter, modify, locate, clear, and cancel information on boats, stolen vehicles, towed vehicles, stolen and missing license plates, stolen parts, wanted persons and missing persons. The system also allows for any necessary reporting and batch update procedures needed by law enforcement agencies or those mandated by the National Crime and Information Center (NCIC) to maintain the integrity of the system. The criminal history record information is a component of MULES and retains arrest information, prosecutor and court actions along with any sentencing that an individual has incurred within the criminal justice system.

### **3. OCN**

The Offense Cycle Number (OCN) is the tracking number of an arrest. Each OCN in a criminal history record represents an arrest. When an individual is arrested and fingerprinted, the OCN is generated from the fingerprint card and is entered into criminal history after the prints are identified through AFIS. When a Record of Arrest and Prosecution (RAP) sheet is run on an individual that has criminal history, each OCN will indicate a separate arrest. However, there may be one or more charges with each OCN. The OCN is crucial to prosecutors and courts for submitting prosecutor action and court disposition to the central repository.

### **4. SID**

The State Identification (SID), is the number assigned to the fingerprints of an individual upon submission of the first set of fingerprints to the central repository. A SID number does not constitute a criminal record. Every person fingerprinted in Missouri, whether for civil purposes such as employment, licensing, etc., or from a criminal arrest card stemming from an arrest by law enforcement, will have an assigned SID number once the fingerprints are processed through AFIS. This SID number will accompany the individual throughout their life and will never change.

Other states have corresponding SID numbers as well. The FBI also assigns an FBI number, which is similar to a SID number, upon receipt of the initial arrest fingerprints. The FBI currently does not assign an FBI number on applicant fingerprints.

### **5. The Missouri Charge Code Manual**

The Missouri Charge Code Manual, published by the Missouri State Highway Patrol in conjunction with the Office of State Courts Administrator (OSCA), contains applicable statutes and arrest codes used by criminal justice agencies.<sup>6</sup> The information contained within the charge code manual delineates among felony, misdemeanor, local ordinance and

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<sup>6</sup> Section 43.512 RSMo

federal charges. The charge code manual is a necessary tool used by criminal justice agencies to report Missouri offense information.

## **6. Arresting Agency Information**

It is the responsibility of the arresting agency to complete a criminal fingerprint card for any reportable offense<sup>7</sup> listed in the Missouri Charge Code Manual. The completed fingerprint card should include all appropriate demographic information of the individual, applicable charges, disposition and fingerprint images. The completed card should be mailed or electronically transmitted (if using a livescan device) to the repository without undue delay.

## **7. Prosecuting Attorney Information**

It is the responsibility of the prosecuting attorney to report action taken on each arrest forwarded from the arresting agency. Prosecutor action received on an arrest is linked to criminal history by the OCN present on the arrest fingerprint card. It is the prosecuting attorney's responsibility to report any and all action taken, whether charges are not filed, amended, or filed, as stipulated in state statute.<sup>8</sup> Because the reporting of prosecutor action will affect the availability of public access to records, i.e., open records vs. closed records<sup>9</sup>, it is imperative that prosecutors understand the importance of their part in criminal history reporting. Arrest charge(s) and prosecutor action(s) may differ in that the prosecutor has unlimited discretion pertaining to filing of charges; therefore, at times, the arrest information reported and the prosecutor action may not match and are not required to match. The important factor is that some form of prosecutor action is present with each arrest/OCN housed in criminal history.

## **8. Court Disposition Information**

State court clerks are responsible for reporting all final dispositions of criminal cases using the OCN that initiated from the original arrest. The dispositions are reported through the Office of State Courts Administrator by using the Justice Information System (JIS).<sup>10</sup> The court is also responsible for providing the Department of Corrections and the Department of Mental Health with the OCN for those individuals sentenced or committed to their custody.<sup>11</sup>

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<sup>7</sup> Section 43.506.1 RSMo

<sup>8</sup> Chapter 43, Section 43.503.5 RSMo

<sup>9</sup> Missouri disseminates open and closed criminal history record information based on the type of request, who is requesting the information and authority. For further information on open and closed records, please refer to Section IV, page 14 of this document.

<sup>10</sup> The JIS (Justice Information System) is an automated court system administered through the Office of State Courts Administrator and allows participants in the judicial process and private citizens access to court information electronically throughout the state of Missouri.

<sup>11</sup> Section 43.503.8 RSMo

Fingerprints, and other indicia normally obtained from a person at the time of the arrest, may be obtained at any time while the subject is in the criminal justice system or committed to the Department of Mental Health. If fingerprints were not taken at the time of arrest, i.e., due to injury or hospitalization, a law enforcement agency or the Department of Corrections may fingerprint the person and obtain the necessary information at any time the subject is in custody. Generally, if the defendant has not been fingerprinted for a reportable offense at the time of disposition, the court shall order a law enforcement agency to fingerprint the defendant immediately. This is accomplished by completing an Order For Fingerprint. Once the Order has been completed, the law enforcement agency submits the fingerprints to the repository and forwards the OCN associated with the fingerprints to the prosecuting attorney, circuit attorney and clerk of the court.<sup>12</sup>

Although municipalities may report any disposition associated with an OCN, only ordinance violations for driving under the influence of drugs or alcohol are specified as reportable in statute.<sup>13</sup> Unlike state courts, municipal courts are not required to report cases through JIS and, therefore, need to submit the dispositions, either by electronic medium or by paper submission, to the repository.

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<sup>12</sup> Section 43.503.8 RSMo

<sup>13</sup> Section 43.506.1 RSMo

### **III. LEGAL AUTHORITY**

According to federal law<sup>14</sup>, the FBI has authority to collect and exchange criminal history record information for criminal justice and non-criminal justice purposes. As complex and diverse as the federal government is, there are several governmental actions that dramatically affect the way a federal agency may use the personal information it houses. Since the FBI has the authority to collect and disseminate criminal history information and criminal history information is considered private, the FBI must abide by federal laws, i.e., the Privacy Act of 1974 and the Freedom of Information Act.

#### ***A. Public Law (Pub. L.) 92-544***

Public Law 92-544, passed in 1972 by the U.S. Congress, is an appropriations statute that provides funding to the FBI for acquiring, collecting, classifying, preserving, and exchanging identification records with duly authorized officials of the federal government, the states, cities, and other institutions for the purpose of licensing and employment if authorized by state statute. The law, however, did not provide guidelines for obtaining federal criminal background checks. The authorization to disseminate criminal history information for the purposes of licensing and employment was restricted with a stipulation requiring a state statute authorizing the use of the information and approval by the U.S. Attorney General.

#### ***B. Privacy Act of 1974***

The Privacy Act of 1974 re-affirmed an earlier law (Public Law 92-544), in that it specified, “no governmental agency shall disclose any records to any person or agency unless prior written consent is received from the individual or it is used by the agency to perform the duties of the agency.” With the Privacy Act of 1974, government agencies may release certain information; however, they must track the dissemination of each record including the time, date, purpose, and to whom the information was disclosed. The information may not be disclosed except for government use or unless it is authorized by applicable law or state statute.

#### ***C. Freedom of Information Act***

The U.S. Freedom of Information Act (FOIA) is a law ensuring public access to the U.S. government records. FOIA carries a presumption of disclosure; the burden is on the government - not the public - to substantiate why information may not be released. Upon written request, agencies of the U.S. government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable in federal court.<sup>15</sup>

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<sup>14</sup> 28 U.S.C. 534

<sup>15</sup> <http://www.gwu.edu/~nsarchiv/nsa/foia.html>

***D. National Child Protection Act (NCPA), as amended by the Volunteers for Children Act (VCA)***

The NCPA/VCA encouraged states to authorize fingerprint-based national criminal history record information (CHRI) background checks of individuals having access to children and other vulnerable people, by enacting legislation under Public Law 92-544.<sup>16</sup> However, even without enacting state legislation, the NCPA/VCA authorized entities in states without specific Public Law 92-544 legislation to obtain national criminal record information background checks. Recommended policies and procedures for implementation of the NCPA/VCA were set out by the FBI and are followed by the MoVECHS program.

Missouri established its program based on the success of the Florida program (VECHS) developed by the Florida Department of Law Enforcement (FDLE), which used the basic framework of NCPA/VCA with the added feature of dissemination of an individual's CHRI to non-governmental entities (NGE's) at his/her request. By establishing strict controls on the access and use of CHRI by entities enrolled in the VECHS program, the FDLE created a program that facilitated the execution of criminal history record checks on thousands of individuals who work with children, the elderly, or individuals with disabilities.<sup>17</sup>

Based on a request from the National Crime Prevention and Privacy Compact Council (Compact) to the FBI regarding the dissemination under NCPA/VCA of an individual's criminal history record information to a non-governmental entity with a consent from the individual, the FBI made a determination that there is "no legal objection to the dissemination of CHRI at the consent of the individual, as the practice does not conflict with Federal Law".<sup>18</sup>

The provisions set forth by the FBI include: (1) the NGE's must execute a user agreement that sets out the terms under which the criminal history record checks may be performed, including security requirements for protection of the CHRI and procedures for challenging the accuracy and completeness of the CHRI and (2) the NGE shall obtain an executed consent form (waiver) from every employee or volunteer subjected to the criminal history record check. The NGE shall retain the original waiver and transmit a copy to the state. The terms of the waiver must include an acknowledgment that the NGE will perform an FBI criminal history records check and that the state is specifically authorized to disseminate the resulting CHRI, if any, to the NGE. The waiver may further authorize the NGE to provide the CHRI to another NGE. The NGE must maintain a record of any secondary dissemination of the CHRI.

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<sup>16</sup> 42 U.S.C. Section 5119a, the criminal history record information background checks under the NCPA/VCA determine whether the individual has been convicted of crimes that bear upon his fitness to have responsibility for the safety and well-being of children, the elderly or individuals with disabilities.

<sup>17</sup> U.S. Department of Justice, FBI, Criminal Justice Information Services Division, CJIS Information Letter, Dated November 2, 2006.

<sup>18</sup> Access to CHRI by the subject of the record, or by an authorized representative with the consent of the subject, cannot be withheld under the Freedom of Information Act (FOIA). See Title 5, U.S.C. Section 552a(d)(1) and (t)(1).

### ***E. Adam Walsh Child Protection and Safety Act***

The Adam Walsh Child Protection and Safety Act of 2006 (the act), Public Law (Pub. L.) 109-248 was enacted into law on July 27, 2006. Sections 151 and 153 of the act require the Attorney General (AG) to ensure access to FBI criminal history record information by (1) governmental social service agencies with child protection responsibilities, (2) child welfare agencies, and (3) public and private elementary and secondary schools and state and local educational agencies.

Section 151 provides that access by governmental social service agencies with child protection responsibilities is to be used only in investigating or responding to reports of child abuse, neglect, or exploitation. Therefore, states are authorized to provide governmental social service agencies access to the National Crime Information Center (NCIC) and the Interstate Identification Index (III) databases.<sup>19</sup>

Personnel accessing CHRI under Section 151 must meet training, certification, and background screening requirements. Each agency is responsible for appropriate security measures as applicable to the physical security of terminals and telecommunication lines; personnel security to include background screening requirements; technical security to protect against unauthorized use; data security to include III use, dissemination, and logging; and security of criminal history records. In addition, each agency shall comply with all audit requirements for use of CJIS systems, shall be responsible for training requirements, including compliance with operator training mandates and shall be responsible for maintaining the integrity of the system in accordance with applicable FBI CJIS Division, state, federal, and tribal policies to ensure only authorized terminal access; only authorized transaction submission; and proper handling and dissemination of CJIS data. Sanctions may be imposed for unauthorized access, use, or dissemination of CJIS information. Such sanctions may include cancellation of the agency's access.

Section 153 of the act is titled the "Schools Safely Acquiring Faculty Excellence Act of 2006." This section provides that the AG shall, upon request of a state's chief executive officer (the Governor), conduct fingerprint-based checks of national crime information databases<sup>20</sup> pursuant to requests submitted by child welfare agencies or by private or public elementary or secondary schools or local or state educational agencies.<sup>21</sup> All fingerprints submitted to the FBI under this new authority must reflect "Adam Walsh Act" as the reason fingerprinted.

Individuals for whom requests for fingerprint checks can be submitted, include not only current and prospective employees of the qualified public or private schools or local or state educational agencies, but also other individuals, such as volunteers or contractors, who are "otherwise in a position in which the individual would work with or around children in the school or agency."

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<sup>19</sup> U.S. Department of Justice, FBI, CJIS Division, Information Newsletter, dated October 31, 2006, page 1.

<sup>20</sup> 28 U.S.C. Section 534

<sup>21</sup> U.S. Department of Justice, FBI, CJIS Division, Information Newsletter, dated October 31, 2006, page 3.

## IV. NON-CRIMINAL JUSTICE BACKGROUND CHECKS

### A. *Criminal Record Requests*

The term “non-criminal justice purposes” is defined by the National Crime Prevention and Privacy Compact (Compact Council)<sup>22</sup> as uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.<sup>23</sup>

#### 1. Authority

The authority for non-criminal justice agencies to request national criminal history record information is provided in state statute and specifies state agencies, purpose of search request, use and dissemination, and must be based on the submission of fingerprints. Chapter 43, Section 43.540, 43.543 and 43.546 RSMo, directly address state agency requests for obtaining national criminal history record information.

Public Law (Pub. L) 92-544, passed by Congress in 1972 is an appropriations statute that provides funding to the FBI for acquiring, collecting, classifying, preserving, and exchanging identification records with duly authorized officials of the federal government, the states, cities, and other institutions. The law authorized criminal history inquiries to the FBI for non-criminal justice purposes with specifications for states that included: 1) statutory authority, 2) requires fingerprints, 3) must authorize fingerprint submissions, 4) identifies a specific category of applicants, licenses or volunteers, 5) must not be against public policy and 6) must not authorize the receipt of criminal history record information (CHRI) by private entities. In response to the Public Law 92-544 requirements, Missouri enacted many laws relating to criminal background checks.

The Freedom of Information Act (FOIA)<sup>24</sup> allows an individual to consent to the disclosure of information about the individual from federal agencies to third parties. This includes access to an individual’s criminal history record maintained by the FBI. There are no restrictions regarding the purpose of a FOIA request and, therefore, an individual could make such a request for his or her FBI criminal record and either provide it to an employer or specify that the record be sent directly to an employer. FBI maintains that the federal Privacy Act protects criminal history record information.<sup>25</sup> Its disclosure is prohibited

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<sup>22</sup> The Compact established a 15-member Council whose members are appointed by the Attorney General and represent state and federal agencies that are providers and users of FBI-maintained criminal history record information for non-criminal justice purposes. The Council promulgates rules and procedures governing the exchange and use of III criminal history records for non-criminal justice purposes.

<sup>23</sup> The National Crime Prevention and Privacy Compact, Pub. L. 105-251, Art. I (18) 42 USC 14616.

<sup>24</sup> The U.S. Freedom of Information Act (FOIA) is a law ensuring public access to U.S. government records.

<sup>25</sup> 5 USC Section 552a.

without consent from the individual who is the subject of the information or a state statutory exception that authorizes disclosure.

## **2. Personal Identifier Search**

A personal identifier search, also known as a name-based search, can be processed using the name, date of birth, and social security number of an individual in order to search against the state criminal history database. Name-based searches are not allowed through the III except for law enforcement purposes or if authorized by federal law<sup>26</sup>. The response to a name-based search would provide only a “possible match” based on the search criteria provided on an individual. Any individual/party may request a name-based search on any individual by submitting a request to the Patrol with the appropriate fee. Name-based searches provide only open records and are also searched against the names contained within the sex offender registry file.

Searches based on personal identifiers in the criminal history record system present the risk of false positives (incorrectly associated a record with a person with a common name) and false negatives (missing a record associated with a person because he or she provided false identifying information) and should not be deemed accurate or final. When at all possible, fingerprints should be submitted when a named-based search response provides questionable information or when the individual disputes the information.

Access through the III for name-based searches is allowed for law enforcement purposes; however, in addition to the Adam Walsh Act, requests are also permitted when requested by the Juvenile Office or Children’s Division of the State when in conjunction with the emergency placement of children in exigent circumstances<sup>27</sup>. The Juvenile Officer or Children’s Division of the State of Missouri will make the request to a law enforcement agency for a name-based search into the national database, III, using MULES. The inquiry will be for a response to the name(s) of the individual(s) of where the child will be placed. The requesting state agency is required to follow up each request with fingerprints and with the appropriate fees within 15 days of the initial request. It is not the responsibility of the law enforcement agency that performed the inquiry to submit fingerprints. The responsibility of the fingerprint submission after the III inquiry is placed solely with the requesting state agency and is subject to audit by both state and federal regulators.<sup>28</sup> Generally, name-based searches through III are only performed by law enforcement in the performance of duty where access to fingerprints is not available or time is of the essence.

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<sup>26</sup> Adam Walsh Child Protection and Safety Act of 2006, Section 151.

<sup>27</sup> Exigent circumstances - is in reference to a sudden unexpected event that results in an apparent risk to the health and safety of an individual which necessitates immediate action on the part of the state to provide protection to that individual. ( [http://en.wikipedia.org/wiki/Exigent\\_circumstance](http://en.wikipedia.org/wiki/Exigent_circumstance))

<sup>28</sup> Chapter 210, Section 210.482 RSMo

When this occurs and the search results in a hit warranting an arrest, the arrest is generally followed up by the collection of fingerprints allowing for the positive identification of the arrested individual.

### **3. Fingerprint-Based Search**

A fingerprint-based search will produce a positive match response when matched to a criminal history record in the state and/or national databases. To date, there has not been a set of fingerprints matching two different individuals. Even twins, who have the same DNA, will not possess the same set of identical fingerprints. All fingerprint submissions received at the central repository are automatically searched against the existing database, which also includes a database of unsolved latent prints (prints lifted from crime scenes). Once the state has made the determination of the fingerprint images and either matched to or assigned a SID number, the applicant print and associated demographic information is added into MULES as an “applicant role”.

A fingerprint-based search can be processed through the state repository for various reasons and depending on the requestor and purpose for the fingerprint search, the response will be sent to the requestor. All appropriate fees must be paid prior to processing. If the request is for both a state and federal search, processing fees for both will apply.

All names associated with fingerprints processed through AFIS are also searched against the names contained within the database along with the names associated within the sex offender registry file.

### **4. Fingerprint Rejection Process**

When the FBI rejects a fingerprint card (generally state prints are not rejected), a rejection notice will be sent to the requesting entity. Fingerprints will need to be re-taken and re-submitted to the Patrol at the individual’s earliest convenience.

Procedure after 1st Rejection: After an initial FBI rejection, the QE should have the fingerprints scanned or inked for a second submission. The FBI will provide a TCN or tracking number for each rejected print. This tracking number indicates to the FBI that the prints were previously submitted and upon resubmission, no additional fee will be charged to the QE. Upon resubmission, the TCN should be entered in the appropriate field on the applicant fingerprint card and sent or transmitted to the Patrol. If the resubmission is mailed, a copy of the initial rejection notice should accompany the fingerprint card.

Procedure after 2nd Rejection: If the resubmission print is rejected, the QE will receive a 2nd rejection notice along with a new TCN. After the 2nd rejection, the FBI allows a name-based search. Previously, if the QE desired a name-based search from the FBI, the QE would submit a “CJIS Name Search Request Form” to the FBI CJIS Division.

However, the name search request is an automatic service provided by the Criminal Records and Identification Division after a second fingerprint submission rejection.

## ***B. Dissemination and Penalties for Misuse***

Dissemination of criminal history record information from the central repository includes either open or closed records. The distinction between the two types of records is determined by: (1) the type of request, (2) who is requesting, and (3) authority. State and federal law place restrictions on the dissemination of criminal history record information.<sup>29</sup> Missouri statutes addressing Public Law 92-544 include Section 43.540 through 43.543 RSMo and Section 610.120 RSMo. Section 43.540.5 RSMo specifically addresses the fact that the dissemination of criminal history information from the Federal Bureau of Investigation (federal background check) beyond the authorized state agency or related governmental entity is prohibited. All criminal record check information shall be confidential and any person who discloses the information beyond the scope allowed is guilty of a Class A misdemeanor.

Under the Adam Walsh Child Protection and Safety Act of 2006 (otherwise known as the “act”), Section 153(e) provides that “An individual having information derived as a result of a check under subsection (b) of the “act” may release that information only to appropriate officers of child welfare agencies, public or private elementary or secondary schools, or educational agencies or other persons authorized by law to receive that information.” Section 153(f) provides that “An individual who knowingly exceeds the authority in subsection (b), or knowingly releases information in violation of subsection (e), shall be imprisoned not more than 10 years or fined under Title 18, United States Code, or both. Title 28, Section 20.33 (7) (b) states “the exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments, related agencies, or service providers identified in paragraphs (a)(6) and (a)(7) of this section”. Criminal history records received from the III System shall be used only for the purpose requested and a current record should be required when needed for a subsequent authorized use.<sup>30</sup>

### **1. Open Records**

Open record information is provided when the request is made based on personal identifier (name, date of birth and social security number) search requests. The search response will include (1) records containing convictions, (plead guilty to, or convicted of), (2) arrest information that is less than 30 days old from the date of arrest, (3) filed charges by the prosecutor that are awaiting final disposition from court, and (4) records that contain a suspended imposition of sentence (SIS) during the probation period.<sup>31</sup>

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<sup>29</sup> Public Law 92-544 “no governmental agency shall disclose any records to any person or agency unless prior written consent is received from the individual or it is used by the agency to perform the duties of the agency.”

<sup>30</sup> Title 28, Code of Federal Regulations, Part 20, Subpart C, Section 20.33 (7)(d).

<sup>31</sup> Chapter 610, Section 610.120 RSMo

An applicant will never receive closed record information when conducting a personal identifier request. The information provided is not guaranteed since the information was not verified through the submission of fingerprints.

## **2. Closed Records**

Closed record information is disseminated from fingerprint-based search requests and will be given to the individual or qualifying entity pursuant to state law.<sup>32</sup> The records disclosed will include: (1) all criminal history data, including all arrests (filed or not filed charges), (2) charges that have been nolle prossed, dismissed, or found not guilty in a court of law, and (3) will include any SIS after the probation period is complete. SIS after probation, contrary to what some individuals may be advised, will not be removed from criminal history. The SIS will become a closed record; however, depending on the authority of the requesting entity, the information could be disseminated. The only process available for removal or deletion of arrest information from the state and national databases is through the expungement process. For more information regarding expungement, please refer to “Expungement Information” on page 18 of this document.

Closed record information is provided to sheriff departments for determining eligibility pertaining to permits for conceal and carry of weapons. In addition to law enforcement, closed record information is also available to any business or organization providing care placement or educational services for children, elderly, or disabled persons and may be requested for current employees, potential employees or volunteers.<sup>33</sup>

## **3. FBI Records**

FBI criminal history record information contains all arrest information. The FBI does not differentiate between open and closed records.

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<sup>32</sup> Chapter 43, Section 43.530 RSMo

<sup>33</sup> Chapter 43, Section 43.540 RSMo

## ***C. Fingerprint Locations and Services***

Fingerprint services for the public are available throughout Missouri primarily through law enforcement agencies. In addition to these agencies, Missouri has contracted with an independent vendor in order to expedite applicant requests. For best results and to minimize rejections of submitted fingerprints, it is recommended that one of the following agencies be contacted for assistance with fingerprinting needs.

### **1. Missouri Applicant Processing Services (MOAPS)**

Fingerprinting services are provided through the Missouri Applicant Processing Services (MOAPS). MOAPS is a partnership of the Missouri State Highway Patrol Criminal Records and Identification Division and Integrated Biometric Technology (IBT), formerly Identix Identification Services (IIS). The partnership with IBT began in April 2005 after the State competitive bid process was finalized. The agreement with IBT initiated with a contract period of two years, ending June 30, 2007, with the option to renew yearly for the next three years. When utilizing IBT services through MOAPS, non-criminal justice background requests are processed electronically and submitted directly to CRID for processing. MOAPS is the only authorized agency permitted to transmit applicant background check requests for the public. MOAPS fingerprint technicians are located throughout the state and provide a fast and efficient manner of submitting applicant fingerprint requests. With the capability of submitting electronically, the time required to process applicant fingerprint requests is reduced from weeks to days. For more information pertaining to fingerprint services offered through MOAPS, please access the MSHP website ([www.msdp.dps.mo.gov](http://www.msdp.dps.mo.gov)) under the tab for publications/brochures.

### **2. Missouri State Highway Patrol**

The Missouri State Highway Patrol's Public Window, located at the General Headquarters Annex Building, 1510 East Elm Street, in Jefferson City, Missouri, is open to the public Monday through Friday from 8:00 a.m. to 4:00 p.m. daily with the exception of state and federal holidays. Requests submitted in person for a single search based on personal identifiers (name-based) or for a request based from fingerprints can be processed within approximately thirty minutes while the applicant waits. In addition to the public window, the Patrol has nine Troop locations that may assist with fingerprint needs.

### **3. Other Law Enforcement**

County sheriff departments and local police departments throughout the state of Missouri may also assist the public with fingerprint needs. Although several law enforcement agencies have access to a livescan device,<sup>34</sup> they are not permitted to transmit applicant background checks for the public, unless the request is for conceal and carry

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<sup>34</sup> Livescan is the electronic image capture of fingerprints. Livescan devices have the capability to electronically transmit data and fingerprint images directly to the Central Repository.

weapon permit or for a registration requirement of a convicted sex offender. The law enforcement agency may use the livescan device in lieu of ink fingerprinting to capture the required information; however, fingerprinting for the public requires the agency to print out the fingerprint card for the applicant so the applicant can mail with appropriate fees to the Patrol. Law enforcement agencies that transmit applicant fingerprint cards without authorization<sup>35</sup> are subject to all applicable fees.

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<sup>35</sup> Law enforcement agencies may use a livescan device to transmit applicant fingerprint information if authorized by state statute (Section 571.101 RSMo, Section 43.535 RSMo, Section 589.400 to 589.425 RSMo), for law enforcement employment or for identification purposes.

## ***D. Fees***

Fees are established pursuant to Chapter 43, Section 43.530 RSMo. The statute stipulates that a fee of not more than nine dollars per request for criminal history record information not based on a fingerprint search is required. In each year beginning on or after January 1, 2010, the superintendent (Patrol) may increase the fee paid by requesting entities by an amount not to exceed one dollar per year; however, under no circumstance shall the fee paid by requesting entities exceed fifteen dollars per request. The statute further stipulates requests based on fingerprints will be a fee of not more than twenty dollars per request unless the request is required under the provisions of subdivision (6) of section 210.481, RSMo, section 210.487, RSMo, or section 571.101, RSMo, in which case the fee shall be fourteen dollars. A request made under subsections 1 and 2 of this section shall be limited to check and search on one individual. Payment of fees should be in the form of check, money order, or electronic payment payable to the "Criminal Record System Fund".

### **1. Personal Identifier (name-based) Background Search**

As of 2008, named-based search requests require a fee of \$9.00 per request. The response will be returned with open record information.

### **2. Fingerprint-Based Background Search**

A state fingerprint-based search requires a \$20.00 fee, with the exception of requests for conceal-carry weapons permits pursuant to Section 571.101 RSMo, and the Department of Social Services for foster care placement, pursuant to Section 210.487 RSMo, which will remain at \$14.00 per request. The response will include complete records (both open and closed) and will be sent to the individual or qualifying entity.

### **3. FBI Submission**

The FBI fee is \$19.25 for fingerprint-based searches and \$15.25 when requests are for volunteers. The fee required when an applicant submits a fingerprint-based request directly to the FBI is \$18.00 per request.

### **4. Payment Method**

Payments made to the Missouri State Highway Patrol are required in the form of check or money order; cash is not accepted, and should be made payable to "Missouri State Criminal Record System Fund". Fees that require both state and federal payment may be combined into one payment. Monthly billing procedures may also be established through the accounting section within CRID. Inquiries regarding establishing an account for billing should be directed to CRID at telephone number (573) 526-6153. For applicants submitting federal background checks directly to the FBI (the \$18.00 fee), payment should be made payable to the FBI and mailed to "FBI, CJIS Division, Attn: SCU, MOD.D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26303.

***E. Response Time***

With the growth and use of Missouri's computerized criminal history record system, the response time for requests of criminal history information has greatly improved from previous years. With the advances of livescan transmissions from both law enforcement and authorized civilian personnel, inquiries into the criminal history database are more efficient and expedient. Processing time for applicant background checks received by mail in past years would take approximately 12 to 16 weeks; however with the advancement of electronic transmissions (more fingerprints submitted via livescan), the processing time for mail is far less. Livescan applicant fingerprint submissions are generally processed within 10 business days or less.

## ***F. RAP SHEET***

The RAP sheet, otherwise known as “Record of Arrest and Prosecution” provides arrest and subsequent disposition information belonging to an individual. Law enforcement personnel utilize criminal history information for many reasons. One significant aspect is the assessing of whether a subject should be considered dangerous whereas non-criminal justice agencies primarily use criminal history information for employment and licensing purposes.

The RAP sheet will contain closed or otherwise known as complete state record information with fingerprint-based inquiries under the authority of the MoVECHS program. In addition to the state response, an FBI or federal RAP sheet will also be provided, if applicable.

### **1. State Response - No Record**

The “no record” response from the state will be in the form of a copy of the fingerprint card (the front portion). There will be a stamp in the upper right hand area of the fingerprint card copy indicating “no record”.

### **2. State Response - Criminal Record**

The “criminal record” response from the state will be in a similar fashion, although the stamp in the upper right hand area of the fingerprint card copy will indicate “criminal history record attached”, and the RAP sheet will be stapled to the fingerprint copy.

The state RAP sheet may be various pages in length depending upon the number of charges and OCNs present. Typically, the cover page will include the date the record was provided to the requestor, the SID, the number of pages of the RAP sheet, the use and dissemination restrictions and the dissemination information. The RAP sheet is broken down into several segments including (1) Demographic information, (2) Arrest charges (3) Information supplied by the prosecutor (4) Information supplied by the courts (5) Custody detail provided by Corrections.

The demographic page indicates the individual’s SID number, alias information from time of arrest(s), and other demographic information submitted from a criminal fingerprint card during an arrest, such as height, weight, hair and eye color, etc.

The summary page indicates the total number of arrests reported on the individual, types of charges, such as felony, misdemeanor, or ordinance violations, and total number of conviction information and correction information.

The criminal history information page is the detail page indicating the arrest information, prosecutor and court information, if available.

An OCN listed in the middle of the criminal history information page indicates a separate arrest. Each OCN, or arrest, should have prosecutor action and court disposition, if

applicable, with each criminal charge listed. However, there may be instances when the prosecutor and/or courts have not furnished information to the Central Repository and, therefore, the RAP sheet will be incomplete or may only show arrest charges.

### **3. FBI Response - No Record**

The “no record” response from the FBI will appear in the form of an email, generated by the Patrol. The phrase “civil applicant response” will appear at the top middle portion of the email response. It will indicate the ICN, transaction number from the FBI, and the applicant name, race, height, date of birth, social security number, and sex. Below this section will be the ORI (Originating Agency Routing Identifier) of the requesting entity along with the city, state and date processed. The next section will indicate, “A search of the fingerprints on the above individual has revealed no prior arrest data.” The conclusion of the RAP sheet will indicate, “CJIS Division, date, and Federal Bureau of Investigation.

### **4. FBI Response - Criminal Record**

The “criminal record” response from the FBI will appear in the form of an email generated by the Patrol. The top portion of the email will indicate “United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Clarksburg, WV 26306. Below this portion will be the submitting agency’s ORI and the FBI’s TCN (tracking) number. The following portion will indicate a statement of, “The FBI identified your ten-print submission which contained the following descriptors:” The first page will list the name of the applicant, date arrested/fingerprinted, the sex, race, birth date, height, weight, eye color, hair color, State ID (SID from the state the arrest information was obtained), birth place, citizenship, any other identifying information such as scars, marks or tattoos and the social security number. The second page consists of similar information and a dissemination restriction statement. In addition, it will state that “when explanation of a charge or disposition is needed, communicate directly with the agency that furnished the data to the FBI”. The third page consists of the arrest data, which indicates the type of arrest, and the agency that submitted the arrest information.

### ***G. Challenging Authenticity of Criminal Records***

A review of a state disseminated criminal history record may be requested by the individual that the record implicates. This request is also known as a “challenge” and may be made in person at the Missouri State Highway Patrol, General Headquarters, Public Window located in the Annex Building, in Jefferson City or via mail with the submission of fingerprints. Generally, most challenges are in response to a “match” from a name-based search performed on an individual and is based on the personal identifying information, i.e., name, date of birth and/or social security number. Because a name-based search is not positive proof of an individual’s identity, the submission of fingerprints is required in order to make a positive match. There is no fee associated with a challenge request when the record of challenge was disseminated from the MSHP. Criminal history record information received through other sources that were not funneled through the MSHP are not considered challenges and, therefore, fees will apply. Upon receipt of the request and fingerprints, AFIS will process the fingerprints for identification and the criminal history record information (if any) will be reviewed in accordance with the fingerprint match. Certified documentation will be supplied to the requesting entity upon completion of findings.

If an individual or applicant wishes to correct a record as it appears in the FBI’s CJIS Division records system, the applicant should be advised that the procedures to change, correct, or update the record are set forth in Title 28, CFR, Section 16.34. When explanation of a charge or disposition is needed, communication should be made directly to the agency that furnished the data to the FBI.

If an individual has been the victim of identity theft, the individual that is affected by such theft is provided recourse action through state statute.<sup>36</sup> In order to have information removed from a criminal history record, i.e., name, date of birth and/or social security number, a person must follow procedures typical to that of expungement procedures. Any person who is the victim of a false impersonation and whose identity has been falsely reported in an arrest or conviction record(s), may move for expungement and correction of said records under the procedures set forth in Chapter 610, Section 610.123 RSMo.

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<sup>36</sup> Chapter 575, Section 575.120(4) RSMo.

## ***H. Expungement Information***

Any person who wishes to have a record of arrest expunged, i.e., deleted, erased, pursuant to Chapter 610, Section 610.122 RSMo, may file a verified petition for expungement in the civil division of the circuit court in the county of the arrest as provided in subsection 4 of Section 610.123.1. The petition should include the petitioner's full name, sex, race, date of birth, driver's license number, social security number, address at the time of arrest, the offense charged against the petitioner, the date the petitioner was arrested, the name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality, the name of the agency that arrested the petitioner, the case number and court of the offense.

The petitioner is required to also provide fingerprints on a standard fingerprint card at the time of filing a petition. The fingerprints will be forwarded to the central repository for the sole purpose of positively identifying the petitioner. Thus, the fingerprints should be taken either by livescan device or ink on an applicant format card and not on a state criminal card. The petition should name as defendants all law enforcement agencies, courts, prosecuting attorneys, central state repositories of criminal records or others who the petitioner has reason to believe may possess the records subject to expungement. The court's order shall not affect any person or entity not named as a defendant in the action. It is important for persons filing expungement petitions to name the Missouri State Central Repository and FBI, otherwise, the criminal history databases that house the criminal history record information for the state and FBI will not be cleared of the arrest(s) named in the petition should the petition be granted.

The court is required to set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition.

If the court finds that the petitioner is entitled to an expungement of any record that is the subject of the petition, it shall enter an order directing expungement. Upon granting of the order of expungement, the records and files maintained in any administrative or court proceeding in an associate or circuit division of the circuit court under this section shall be confidential and only available to the parties or by order of the court for good cause shown. A copy of the order shall be provided to each agency identified in the petition.<sup>37</sup>

Pursuant to Section 610.122 and notwithstanding other provisions of law to the contrary, any record of arrest recorded pursuant to section 43.503 RSMo, may be expunged if the court determines that the arrest was based on false information and the following conditions exist: (1) There is no probable cause, at the time of the action to expunge, to believe the individual committed the offense; (2) No charges will be pursued as a result of the arrest; (3) The subject of the arrest has no prior or subsequent misdemeanor or felony convictions; (4) The subject of the arrest did not receive a suspended imposition of sentence (SIS) for the offense for which the arrest was made or for any offense related to the arrest; and (5) No civil action is pending relating to the arrest or the records sought to be expunged.

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<sup>37</sup> Chapter 610, Section 610.123 RSMo

It is important to note that an expungement of an arrest record does not reflect on the validity of the arrest and should not be construed to indicate a lack of probable cause for the arrest. As stated in statute, except as provided by sections 610.122 to 610.126, the courts of Missouri shall have no legal or equitable authority to close or expunge any arrest record. The petitioner shall not bring any action subsequent to the expungement against any person or agency relating to the arrest described in the expunged records.<sup>38</sup>

The Quality Control section located within the Criminal Records and Identification Division reviews and handles expungement requests. Correspondence or questions pertaining to expungements should be forwarded to the Missouri State Highway Patrol, Criminal Records and Identification Division, Attention Quality Control, 1510 E. Elm Street, P. O. Box 9500, Jefferson City, Missouri 65102.

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<sup>38</sup> Chapter 610, Section 610.126 RSMo, (expungement does not deem arrest invalid--department of revenue may retain records necessary for administrative actions on driver's license--power to close or expunge record, limitation.)

## ***I. Sex Offender Registration Information***

The Sex Offender Registry was created in response to the Missouri Legislature's resolution to facilitate public access to available information about persons registered as sexual offenders. The information on the website<sup>39</sup> refers only to persons who have been convicted of, found guilty of or plead guilty to committing or attempting to commit sexual offenses and may not reflect the entire criminal history of a particular individual.

The Revised Statutes of Missouri, Chapter 589, Sections 400 - 425 and Chapter 43, Section 43.650 RSMo mandate that the Missouri State Highway Patrol shall maintain a sex offender database and website on the Internet that is accessible to the public. The information contained on the website can change at any time so the current residence, status or other information regarding an offender may not be accurate. Though much of the information is of record, some information is gathered from the offenders themselves who may fail to provide accurate or required information. Additional information and verification may be obtained from the Chief Law Enforcement Official (Sheriff) of the county where the sex offender resides.

The sex offender registry section of the MSHP is located within the Criminal Records and Identification Division at General Headquarters in Jefferson City, Missouri. In addition to a website, a toll free number for sex offender information is available for individuals wanting to speak to a person or do not have Internet access. The toll free number is 1-888-SOR-MSHP or 1-888-767-6747 and is answered from 7:00 a.m. until 7:00 p.m. Monday through Friday. The toll free number was established pursuant to Chapter 589, Section 589.407 RSMo and is also listed on the Patrol's website. It is important to note that an inquiry of a person and the information provided regarding a person believed to be a sexual offender could not be established as positive identification unless a fingerprint comparison is made, and that it is illegal to use such information regarding a registered sexual offender to facilitate the commission of a crime.

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<sup>39</sup> <http://www.mshp.dps.missouri.gov/MSHPWeb/PatrolDivisions/CRID/SOR/SORPage.html>. The national registry may be accessed at: <http://www.nsopr.gov>

## **V. MoVECHS PROGRAM**

The Missouri State Highway Patrol (Patrol) developed the MoVECHS program to enable non-governmental entities (NGE's) that meet specific qualifying criteria to obtain both state and national background information with the submission of fingerprints and a waiver statement.

In order to participate in the MoVECHS program, an entity must provide some type of "care" or "care placement services" for children, the elderly, or disabled persons, even if only as a limited part of the entity's overall business. Once qualified to participate in the program, a qualified entity (QE) may request criminal history record information on all current and prospective employees and volunteers, not only those who work with vulnerable persons.

### ***A. Initial Contact***

When a business or organization is interested and believes they meet the criteria of a "qualified entity", they may contact the MoVECHS Unit, located within the Criminal Records and Identification Division of the Missouri State Highway Patrol and request a copy of the MoVECHS Qualified Entity Application and User Agreement or email a request at [MoVECHS@mshp.dps.mo.gov](mailto:MoVECHS@mshp.dps.mo.gov).

The application should be completed indicating what functions the entity performs that serve children, the elderly or disabled persons and whether the requests for criminal history records would be for the entity's employees, volunteers or both.

The User Agreement should be reviewed and signed by an authorized representative of the requesting entity. This document states, in part, that the entity will abide by all laws, regulations, and instructions pertaining to the program and that the entity will use the criminal history information to screen potential employees and volunteers. The Agreement also states that the information provided through the MoVECHS program may not be used outside of its intended use and may not be disseminated to unauthorized personnel or other entities.

Upon return of the application and signed User Agreement, the entity must provide a current copy of their business license. All documents must be mailed to the Missouri State Highway Patrol, Criminal Records and Identification Division, Attention: MoVECHS Unit, P. O. Box 9500, Jefferson City, MO 65102-9500.

## ***B. Program Documents***

### **1. Qualified Entity Application.**

The Qualified Entity Application is the initial document completed in order to participate in the MoVECHS program. The form provides vital information about the entity and should be completed in its entirety. As stated previously, a current copy of the entity's business license is required and should accompany the application.

### **2. Waiver Agreement and Statement**

Pursuant to the National Child Protection Act of 1993 (NCPA), as amended by the Volunteers for Children Act (VCA), the Waiver Agreement and Statement form (waiver) must be completed and signed by every current or prospective employee, volunteer, and contractor/vendor, for whom criminal history records are required by a qualified entity. The waiver authorizes the qualified entity to access and review Missouri and national (FBI) criminal history records.

The waiver further declares that until the criminal history background check is completed, the qualified entity may choose to deny the applicant any unsupervised access to children, the elderly, or individuals with disabilities. Upon request by the applicant, the qualified entity will provide a copy of the criminal history background report, if any, and that the applicant is entitled to challenge the accuracy and completeness of any information contained in any such report. The applicant should be given the opportunity to obtain a prompt determination as to the validity of the challenge before a final decision is made about the status of being an employee, volunteer, contractor, or subcontractor.

The original waiver form must be retained by the entity and a copy of the waiver must accompany the fingerprint card when mailed to the repository. When using a livescan device (electronic fingerprint image capture device), the OCN generated at the time of fingerprinting must be written on the waiver form in the space located in the lower right-hand corner of the waiver form. Because the fingerprints are electronically submitted, the waiver form cannot be attached to the fingerprint card; therefore, the waiver form must be faxed to the central repository the same day the prints are transmitted, or as soon as possible thereafter.

### **3. User Agreement.**

The User Agreement is an agreement entered into by the Missouri State Highway and the qualified entity. The intent of the agreement is to set forth the terms and conditions under which criminal history background checks authorized by the National Protection Act of 1993 (NCPA), as amended by the Volunteers for Children Act (VCA), are conducted.

The agreement sets forth the parties in agreement, describing the requirements and obligations of each party. It further stipulates the importance of privacy and security

requirements and the associated penalties for misuse of criminal history record information. Both the head of the qualified entity and the Superintendent of the Missouri State Highway Patrol will sign the agreement. Once signed, and upon approval into the program, a copy of the signed document will be returned to the qualified entity and the original will be retained at the Patrol.

#### **4. Dissemination Log**

Under the provisions of Title 28, Code of Federal Regulations (CFR), Section 50.12, relating to the exchange of FBI identification records, criminal history record information obtained under this authority, and pursuant to MoVECHS program, may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. The duty to limit dissemination of the criminal history record information is restricted to appropriate officers of a qualified entity, related qualified entity, or to the individual. With every occurrence when criminal history record information is disseminated to another qualified entity or to the individual, a dissemination log must be completed and maintained. Each dissemination log record is to be retained by the entity for a minimum of 13 months. Dissemination records are subject to audit by both state and federal regulators.

### ***C. Entity Review Process***

Upon receipt of the application, business license, and user agreement, the documentation will be reviewed and verified. If determined that the entity meets the requirements set forth in the MoVECHS program, an acceptance letter, instructions and program documentation will be returned to the qualified entity (QE).

#### **Documentation will include:**

1. Acceptance letter
2. The QE's assigned OCA number
3. Instructions regarding how to submit the fingerprint cards
4. A copy of the waiver agreement and statement form
5. A copy of the approved application
6. A copy of the signed User Agreement

If determined that the entity does not meet program requirements, a denial letter will be sent to the entity. At that time, the entity will have the right to appeal or re-apply for program participation.

## ***D. The Fingerprint Card***

### **1. Fingerprint Card Submission**

Fingerprints may be taken by ink method or by electronic device. The required or standardized information obtained on an applicant fingerprint card includes: (1) Originating Agency Routing Identifier or ORI, (2) applicant name, (3) applicant date of birth, (4) applicant race, (5) applicant sex, (6) the reason fingerprinted, (7) OCA number, and (8) social security number, if applicable.

### **2. Reason Fingerprinted**

The MoVECHS program requires that the “reason fingerprinted” field indicate either “NCPA/VCA Employee or NCPA/VCA Volunteer”.

### **3. OCA Field**

The OCA (Originating Case Agency) field specifies the participating entities authorization to participate in the program. The OCA number will be assigned upon approval into the program and must be entered in the OCA field on each applicant fingerprint card. The OCA number provides the Patrol with the name and address of the QE and is pertinent for dissemination of state and national criminal history record responses. Without the OCA, the Patrol will be unable to return the results to the QE.

### **4. Electronic Submission**

Integrated Biometric Technology (IBT) provides applicant electronic submission of fingerprints to the Patrol. With livescan operators (LSO’s) located throughout the state, IBT provides a fast and efficient manner of submitting fingerprints for background checks. For more information pertaining to fingerprint services offered through IBT, please access the MSHP website, under publications, brochures at [www.msHP.dps.missouri.gov](http://www.msHP.dps.missouri.gov) or contact IBT toll free at 866-522-7067 or view their website at: [www.L1id.com/IBT](http://www.L1id.com/IBT).

Electronic fingerprint submission is also available at the Patrol’s public window, located at the Missouri State Highway Patrol General Headquarters, Annex Building, 1510 East Elm Street, Jefferson City, Missouri. Applicant fingerprints will be scanned using a livescan device and the state criminal history record information will be processed within 30 minutes, generally while the applicant waits. The federal search will not be available the same day and therefore, the results will be mailed to the QE.

Although many law enforcement agencies throughout the state of Missouri have livescan devices, they are not permitted to “transmit” applicant requests for the

public<sup>40</sup>. The fingerprint images and information must be printed out on a hard copy fingerprint card, given to the applicant, and either the applicant or QE will mail the card(s) with appropriate fee(s) and waiver to the Patrol.

## **5. Ink Submission**

Ink fingerprints are also accepted. Any law enforcement agency may assist the public with ink fingerprints. Applicants or QE's should check with their local law enforcement for assistance.

Applicant fingerprint cards that are mailed to the central repository regardless if they are livescan or ink will require longer processing time.

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<sup>40</sup> Exception includes requests for conceal/carry weapon permits under Section 571.101 RSMo.

**E. Fees**

**1. State**

A state fingerprint-based search requires a \$20.00 fee.

**2. FBI**

The FBI fee is \$19.25 for fingerprint-based searches and this fee is reduced to \$15.25 for volunteers.

**3. IBT - (Integrated Biometric Technology)**

IBT charges a processing (handling) fee of \$12.95 per applicant submission. This fee is in addition to the state and federal fees. When utilizing IBT services, the state and national criminal history record check fees are payable directly to IBT.

**4. Payment Method - Missouri State Highway Patrol**

Payments made at or mailed to the MSHP are required in the form of check or money order and payable to "Missouri State Criminal Record System Fund". Cash is not accepted. Fees for both state and federal may be combined into one payment (check or money order). Monthly billing procedures may also be established through the accounting section within the Criminal Records and Identification Division (CRID). Inquiries regarding establishing a billing account should be directed to CRID at telephone number (573) 526-6153.

## **VI. POLICY COMPLIANCE REVIEW (THE AUDIT PROCESS)**

Non-criminal justice entities receiving national criminal history record information are subject to audit procedures as required under federal law under the provisions of Title 28, Code of Federal Regulations, Section 50.12, relating to the exchange of FBI identification records. The regulation is applicable to both governmental and non-governmental authorized recipients of criminal history record information. The primary function of the audit is to ascertain that the criminal history record information (CHRI) obtained from the national database is used solely for the purpose requested and not disseminated outside the receiving departments, related agencies, or other authorized entities.

The audit procedures outlined in this section are intended to explain Policy Compliance Review (PCR) before, during, and after a non-criminal justice entity review. The review has been developed to assist qualified entities with a clear perspective on the tasks conducted by the auditors.

### ***A. Qualified Entity Review***

The qualified entity review consists of four phases: (1) the pre-review preparation, (2) the administrative interview, (3) the criminal history record review, and (4) exit briefing.

#### **1. Pre-Review Preparation**

The auditor assigned to conduct the review will contact the entity head approximately six weeks prior to the on-site visit. This initial contact is to gather or confirm basic information and to schedule an appointment for review. A confirmation letter will be mailed to the entity head upon completion of the pre-review.

#### **2. Administrative Interview**

Upon arrival, the auditor will meet with the entity head prior to beginning the review of data. This meeting is to verify procedures in the following areas: (1) point of contact, (2) the use of criminal history information, such as the legal authority, fingerprint submission process, the user agreement and waiver statements, (3) the dissemination of CHRI (4) maintenance of CHRI and (5) security of CHRI.

#### **3. Criminal History Record Review**

A random number of criminal history records received by the QE will be reviewed. The records chose for review are based on a statistical sampling method and additional records may be reviewed if needed to provide an adequate assessment of the QE's criminal

history record requests. Source documents are compared to the CHRI received by the QE to determine if the entity is in compliance. The auditor will document each discrepancy found, if any. Examples of specific error types that may be noted during the audit include: (1) invalid request - no substantiating documentation as to employment or volunteer status such as missing employment applications, (2) incomplete - the record of CHRI is missing or waiver statement is missing, or both (3) inaccurate - CHRI and/or waiver filed in conjunction with personnel records and (4) undocumented - unable to locate agency record for requested CHRI.

#### **4. Exit Briefing**

The purpose of the QE exit briefing is to present the findings of the program compliance review (PCR) to the entity head. An Exit-Briefing Packet, which is a summary of findings and recommendations, will be provided by the auditor to the entity head upon conclusion of the review. The exit-briefing packet will contain a short description of all the topics covered during the administrative interview and documents whether the entity meets or does not meet program requirements.

All discrepancies noted during the PCR are copied and provided to the entity head. The entity head will have an opportunity to review each of the discrepancies, if any, and either agree or disagree with the findings. The exit-briefing document will be the official record of the PCR.

***B. Program Compliance Review Schedule***

The PCR schedule is designed in accordance with the federal review process. The objective of the analysis is to annually assess the compliance of CHRI within a specific non-governmental entity (NGE). Upon acceptance into the MoVECHS program, the review will be scheduled annually based upon the start date for the QE. Based upon the results of the initial review, the review will commence biannually thereafter for entities with acceptable review results.

***C. Survey***

Accountability describes the nature of Policy Compliance Review process; therefore, the objective is to assess compliance. While continuously reviewing avenues to improve services, a survey was designed to gauge the effectiveness of the PCR process and provide an overall rating of the review.

A survey is sent to each QE upon completion of the PCR process. The completion of the survey will assist in ascertaining whether the process is an accurate monitoring of participating entities while obtaining information and opinions from the evaluated entities.

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This document is intended for training purposes only and should not be construed as a legal document of the Missouri State Highway Patrol. Questions or comments regarding this document may be addressed to:

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## **APPENDIX 1**

### **Acronyms.**

1. AFIS - Automated Fingerprint Identification System
2. AIU - Access Integrity Unit
3. CFR - Code of Federal Regulation
4. CHRI - Criminal History Record Information
5. CJIS - Criminal Justice Information Services
6. CRID - Criminal Records and Identification Division
7. DOC - Department of Corrections
8. FBI - Federal Bureau of Investigation
9. FOIA - Freedom of Information Act
10. GHQ - General Headquarters
11. IAFIS - Integrated Automated Fingerprint Identification System
12. IBT - Integrated Biometric Technology
13. III - Interstate Identification Index
14. ISD - Information Systems Division
15. JIS - Justice Information System
16. MCRR - Missouri Criminal Records Repository
17. MSHP - Missouri State Highway Patrol
18. MOAPS - Missouri Applicant Processing Services

19. MOVECHS - Missouri Volunteer and Employee Criminal History Service
20. MULES - Missouri Uniform Law Enforcement System
21. NCIC - National Crime Information Center
22. NCPA - National Child Protection Act
23. NGE - Non-Governmental Entity
24. NICS - National Instant Criminal Background Check System
25. NIST - National Institute of Standards and Technology
26. OCA - Originating Case Agency
27. OCN - Offense Cycle Number
28. ORI - Originating Agency Routing Identifier
29. OSCA - Office of State Courts Administrator
30. PCR - Program Compliance Review
31. POC - Point of Contact
32. QE - Qualified Entity
33. RAP - Record of Arrest and Prosecution
34. RSMo - Revised Statutes of Missouri
35. SES - Suspended Execution of Sentence
36. SID - State Identification Number
37. SIS - Suspended Imposition of Sentence
38. TCN - Transaction Control Number (FBI)
39. USC - United States Code
40. VCA - Volunteers for Children Act

## APPENDIX 2

### Definitions.

**These definitions are from the CJIS Security Policy, 28 CFR Section 20.3, the National Crime Prevention and Privacy Compact Council (Compact), and the Revised Statutes of Missouri.**

1. Administration of Criminal Justice - the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history information, including fingerprint searches, photographs, and other indicia of identification. (Section 43.500 RSMo)
2. Access - the opportunity to make use of an automated information system resource. The ability to have contact with a terminal from which a transaction may be initiated. (CJIS Security Policy)
3. Arrest - an actual restraint of the person of the defendant, or by his or her submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked. (Section 610.100 RSMo)
4. Arrest Report - a record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with the charge therefore. (Section 610.100 RSMo)
5. Attorney General - the Attorney General of the United States. (Compact)
6. Asynchronous - In programming, the events are those occurring independently of the main program flow. The actions are executed in non-blocking scheme, allowing the main program flow to continue processing.
7. Authorized State Agency - a division of state government or an office of state government designated by the statutes of Missouri to issue or renew a license, permit, certification, or registration of authority to a qualified entity. (Section 43.540 RSMo)

8. Audit - the independent examination of records and activities to ensure compliance with established controls, policy, and operational procedures, and to recommend any indicated changes in controls, policy, or procedures. (CJIS Security Policy)
9. Background Check - the check of all appropriate information sources to include a state of residency and national ten-print fingerprint based record check. (CJIS Security Policy)
10. Care - the provision of care, treatment, education, training, instruction, supervision, or recreation. (Section 43.540 RSMo)
11. Central Repository - the Missouri State Highway Patrol Criminal Records and Identification Division for compiling and disseminating complete and accurate criminal history records and for compiling, maintaining, and disseminating criminal incident and arrest reports and statistics. (Section 43.500 RSMo)
12. Child - any person, regardless of physical or mental condition, under eighteen years of age. (Section 210.110 RSMo)
13. Children's Services Providers and Agencies - any public, quasi-public, or private entity with the appropriate and relevant training and expertise in delivering services to children and their families as determined by the children's division, and capable of providing direct services and other family services for children in the custody of the children's division or any such entities or agencies that are receiving state moneys for such services. (Section 210.110 RSMo)
14. Confidential Information - information maintained by the state agency that is exempt from disclosure under the provisions of the Public Records Act or other applicable state or federal laws. The controlling factor for confidential information is dissemination. Criminal history record information is protected by federal legislation. (CJIS Security Policy)
15. Criminal History Record Information - information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges, and any disposition arising there from, sentencing, correctional supervision, and release. (Section 43.500 RSMo)
16. Criminal History Record Information System - a system including the equipment, facilities, procedures, agreements, and organizations thereof for the collection, processing, preservation, or dissemination of criminal history record information. (28 CFR Section 20.3)
17. Criminal History Records - (1) information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions,

- indictments, or other formal criminal charges, and any disposition arising there from, including acquittal, sentencing, correctional supervision, or release; and (2) does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system. (Compact)
18. Criminal Justice - activities relating to the detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records. (Compact)
  19. Criminal Justice Agency - (1) Courts, and (2) a governmental agency or any sub-unit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. State and Federal Inspector General Offices are included. (Compact)
  20. Disposition - information disclosing that criminal proceedings have been concluded and the nature of the termination, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings; or disclosing that proceedings have been indefinitely postponed and the reason for such postponement. Dispositions shall include, but shall not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision. (28 CFR Section 20.3)
  21. Exigent Circumstances - a sudden unexpected event that results in an apparent risk to the health and safety of an individual which necessitates immediate action on the part of the state to provide protection to that individual.
  22. Final disposition - the formal conclusion of a criminal proceeding, at whatever stage it occurs in the criminal justice system. (Section 43.500 RSMo)
  23. FBI - the Federal Bureau of Investigation. (Compact)
  24. Interstate Identification Index System or "III System" - the cooperative federal-state system for the exchange of criminal history records, and includes the National Identification Index, the National Fingerprint File, and, to the extent of their

- participation in such system, the criminal history record repositories of the states and the FBI. (28 CFR Section 20.3 and Compact)
25. Missouri Charge Code - a unique number assigned by the office of state courts administrator to an offense for tracking and grouping offenses. Beginning January 1, 2005, the complete charge code shall consist of digits assigned by the office of state courts administrator, the two-digit national crime information center modifiers and a single digit designating attempt, accessory, or conspiracy. The only exception to the January 1, 2005, date shall be the courts that are not using the statewide court automation case management pursuant to section 476.055, RSMo; the effective date will be as soon thereafter as economically feasible for all other courts. (Section 43.500 RSMo)
  26. Missouri Criminal Record Review - a review of criminal history records and sex offender registration records pursuant to sections 589.400 to 589.425, RSMo, maintained by the Missouri State Highway Patrol is the Missouri criminal records repository. (Section 43.540 RSMo)
  27. MULES - Missouri Uniform Law Enforcement System, a statewide-computerized communications system provided by the patrol designed to provide services, information, and capabilities to the law enforcement and criminal justice community in the state of Missouri. (Section 43.010 RSMo)
  28. National Crime Information Center or "NCIC" - the computerized information system, which includes telecommunications lines and any message switching facilities that are authorized by law, regulation, or policy approved by the Attorney General of the United States to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. The NCIC includes, but is not limited to, information in the III System. (28 CFR Section 20.3)
  29. National Criminal Record Review - a review of the criminal history records maintained by the Federal Bureau of Investigation. (Chapter 43, Section 43.540 RSMo)
  30. Non-Criminal Justice Agency - a non-governmental agency or any subunit thereof that provides services primarily for purposes other than the administration of criminal justice. (CJIS Security Policy)
  31. Non-Criminal Justice Purposes - the uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances. (Compact)
  32. Patrol - the Missouri State Highway Patrol. (Section 43.010 RSMo)

33. Positive Identification - a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of subjects' names or other non-unique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification. (Compact)
34. Provider - a person who has or may have unsupervised access to children, the elderly, or persons with disabilities, and is employed by or seeks employment with a qualified entity, or volunteers or seeks to volunteer with a qualified entity, or owns or operates a qualified entity. (Section 43.540 RSMo)
35. Qualified Entity - a person, business or organization, whether public or private, for profit, not for profit, or voluntary, that provides care, placement, or educational services for children, the elderly, or persons with disabilities as patients or residents, including a business or organization that licenses or certifies others to provide care or placement services. (Section 43.540 RSMo)
36. Secondary Dissemination - the re-dissemination of FBI CJIS data or records from an authorized agency that has direct access to the data, to another authorized agency. (CJIS Security Policy)
37. State Offense Cycle Number - a unique number, supplied by or approved by the Missouri State Highway Patrol, on the state criminal fingerprint card. The offense cycle number, OCN, is used to link the identity of a person, through fingerprints, to one or many offenses for which the person is arrested or charged. The OCN will be used to track an offense incident from the date of arrest to the final disposition when the offender exits from the criminal justice system. (Section 43.500 RSMo)
38. Statute - an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state. (28 CFR Section 20.3)

## APPENDIX 3

### Penalties.

**The sentence of imprisonment terms and conditional release information are stated in Chapter 558, Section 558.011.1 of the Missouri Revised Statutes.**

39. Suspended Imposition of Sentence (SIS) - the record will show probationary time for the arrest. In Missouri, a SIS is not considered a conviction but it does remain an “open” record during the probationary period. When the probationary period is completed, the record will be closed. It is the courts responsibility to notify the Central Repository when a person has completed the terms of probation earlier than previously reported.
40. Suspended Execution of Sentence (SES)- the record will include probationary time and a sentence; however, part or all of the sentence of the SES is suspended as long as the individual follows the guidelines of the probation. SES’ are considered convictions and will not be closed record information since an actual sentence is imposed although not executed unless probation is revoked.
41. Range of Penalties for Felony Offenses - are separated into 4 classes and are identified as Class A, Class B, Class C, and Class D. The severity of the offense is classified beginning with Class A as the most severe.
42. Felony - A serious crime usually punishable by imprisonment for more than one year or by death. Examples include murder, rape, arson, and burglary.
43. Misdemeanor - A crime that is less serious than a felony and is usually punishable by fine, penalty, forfeiture, or confinement in a place other than prison, such as a county jail up to one year.
44. Aggravated or Gross Misdemeanor - A serious misdemeanor, though not a felony.
45. Class A Felony - the most serious with penalties ranging from a minimum 10 years up to 30 years or life imprisonment in the Department of Corrections (DOC).
46. Class B Felony - provides for penalties ranging from a minimum 5 years up to 15 years imprisonment in the DOC.
47. Class C Felony - provides for penalties ranging from 1 day up to 1 year in the County Jail, or up to 7 years imprisonment in the DOC, and/or a fine of \$1 up to \$5,000.

48. Class D Felony - provides for penalties ranging from 1 day up to 1 year in the County Jail, or up to 4 years in the DOC, and/or a fine of \$1 up to \$5,000.
49. Extended Terms for Persistent Felony Offenders - include if the offender has 2 or more prior convictions for felonies and/or certain misdemeanors, the maximum punishment for a pending Class B felony increases to 30 years, a Class C felony increases to 15 years, and Class D felony increases to 7 years.
50. Range of Penalties for Misdemeanor Offenses - are separated into 3 classes and are identified as Class A, Class B, and Class C. Class A is the most severe.
51. Class A Misdemeanor - provides for 1 day up to 1 year in the County Jail, and/or a fine of \$1 up to \$1,000.
52. Class B Misdemeanor - provides for 1 day up to 6 months in the County Jail, and/or a fine of \$1 up to \$500.
53. Class C Misdemeanor - provides for 1 day up to 15 days in the County Jail, and/or a fine of \$1 up to \$300.
54. Infractions - although not reportable offenses in criminal history, carry fines ranging from \$1 up to \$200.