
PART I: SECTION 37Y

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**NAPA COUNTY
CRIMINAL RECORD SECURITY POLICY AND PROCEDURES**

I. AUTHORITY

- A. Criminal Offender Record Information is information identified through fingerprint submission to the Department of Justice (“DOJ”) with a criminal record or “no record.” It is confidential information disseminated to certain agencies authorized by statute for fulfilling employment, licensing and certification, and volunteer duties.
- B. Pursuant to Penal Code Sections 11075-11081, the Attorney General is responsible for the security and privacy of criminal offender record information in California. Penal Code Section 11105(b)(10) authorizes Napa County to access criminal record offender information for the purposes of fulfilling employment, certification or licensing duties, so long as access is specifically authorized by the Board of Supervisors.
- C. Penal Code Section 11105.3 authorizes a human resource agency or any employer to access criminal offender record information relating to certain sex and drug offenses for persons/employees having supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired.
- D. 26 US Code Section 6103 and Internal Revenue Service (IRS) Publication 1075 require policies for background investigations of individuals granted access to Federal Tax Information (FTI). These investigations include review of FBI fingerprinting results, local law enforcement background checks (in the places where an individual has lived, worked, or attended school in the last 5 years), and validation of eligibility to work legally in the United States.

II. RECORDS SECURITY OFFICER

The Director of Human Resources, or their designee, shall be the Records Security Officer (hereafter collectively referred to as “Records Security Officer”). Any questions regarding the security and privacy of criminal offender record information are to be resolved by the Records Security Officer.

III. POLICY

A. Fingerprints and DOJ Background Checks

As a condition of employment, the Sheriff’s Office or authorized fingerprinting agency shall take fingerprints of new employees and certain categories of current employees. The Sheriff’s Office shall also be responsible for accompanying background checks of new employees and certain categories of current employees as described below. Employees

PART I: SECTION 37Y

shall make themselves available to be fingerprinted and shall provide a background check authorization form, when applicable, prior to receiving their first payment for performance of duties, or as soon thereafter as practicable.

Those persons who are required to submit to fingerprinting as a condition of employment include the following:

1. New employees (including regular and extra help employees, interns, and volunteers); and
2. All personnel hired after July 1, 1975, with access to criminal offender record information, as required by the California DOJ and the California Code of Regulations Section 703(d).

B. FBI Background Checks

In addition to submitting to fingerprinting and DOJ background checks, the following categories of employees, contractors, and subcontractors are required to submit to an FBI background check as a condition of employment:

1. Current and new employees (including regular, extra help, interns, volunteers, building maintenance, and custodial staff) who are hired, ~~assigned~~assigned, or transferred to the District Attorney's Office, Probation Department or Sheriff's Office and its divisions (Special Investigations Unit, Coroner, and Sergeant in Animal Services).
2. Current employees (including regular and extra help employees and interns and volunteers) having direct access to criminal offender record information.
3. Current and new employees (including regular, extra help, interns, and volunteers) who transfer, demote, or are promoted into a classification where the employees have supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired as provided in Penal Code Section 11105.3.
4. Current and new employees (including regular, extra help, interns, and volunteers) who transfer, demote, or who are promoted into a classification where the employees have direct access to FTI, in accordance with 26 US Code Section 6103 and IRS Publication 1075 Tax Information Security Guidelines for Federal, State and Local Agencies (Publication 1075).
5. Per the terms of their contract with the County, contractors and subcontractors who have supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired as provided in Penal Code Section 11105.3.
6. Per the terms of their contract with the County, contractors and subcontractors who have direct access to FTI, in accordance with 26 US Code Section 6103 and IRS Publication 1075 Tax Information Security Guidelines for Federal, State and Local Agencies (Publication 1075).

IV. FINGERPRINTING PROCEDURE

A. Fingerprinting and DOJ Background Checks for New Employees

1. Human Resources will refer all new employees (excluding peace officer categories) to the Sheriff's Office or authorized fingerprint agency for fingerprinting on a "Request for Live Scan Service" form supplied by the DOJ, along with a photocopy of a picture identification of the employee.
2. The Sheriff's Office or authorized fingerprint agency will submit the fingerprint information electronically to the DOJ. The DOJ will process the request and will electronically forward the results of the background check and any State Summary Criminal History Information directly to the Records Security Officer.
3. The DOJ provides a response within seventy-two (72) hours of submission of fingerprint information. If DOJ does not respond within seventy-two (72) hours, the Records Security Officer shall immediately follow up by calling the DOJ or by completing an "Applicant Fingerprint Transaction Follow-up Request" form supplied by the DOJ.
4. The Records Security Officer shall maintain a log or spreadsheet listing all persons who have been fingerprinted. If the results of the criminal background check from the DOJ indicate that there is no criminal history on the employee, the Records Security Officer shall note that information on the log or spreadsheet. The Records Security Officer shall also create a label and place it inside the front cover of the employee's file showing the DOJ response date. For extra help employees who do not have employee files, notation of the DOJ's Response Date shall be made on the extra help employee's Personnel Action Request (PAR) form. After making the notations described above, the Records Security Officer shall immediately delete the results of the criminal background check from their computer.
5. If the results of the criminal background check from the DOJ indicate that there is a "RAP Sheet" (State Summary Criminal History Information) on the employee, the Records Security Officer shall print the RAP Sheet.
6. Except as provided herein, no person who has been convicted of any crime which renders the person unsuitable for a position in a classification shall be eligible for employment in that classification; however, the Director of Human Resources and/or the appointing authority may disregard such conviction if they determine that mitigating circumstances exist, such as, but not limited to, evidence of rehabilitation, the length of time that has elapsed since such conviction, the age of the person at the time of the conviction, or that the conviction is not reasonably related to qualifications, duties, or functions of the classification in question.

The Director of Human Resources will determine whether it is necessary to share the information with a department or division head. If the Director of Human Resources

PART I: SECTION 37Y

deems sharing of information with a department or division head to be necessary, the procedures set forth below in Section VII shall be followed.

7. Once a decision is made on whether an individual will be employed with the County, all State Summary Criminal History shall be promptly destroyed. In no event shall the results of the criminal background information be kept longer than thirty (30) working days from the date a decision is made on whether the employee will be employed by the County.

B. Fingerprinting, DOJ and FBI Background Checks of Current and New Employees Having Supervisory or Disciplinary Power over Minors, the Elderly, the Handicapped, or the Mentally Impaired

1. Employees that have supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired will be subject to FBI and DOJ background checks. However, background checks on this category of employee shall be limited to records of convictions involving sex crimes, drug crimes or crimes of violence as specified in Penal Code Section 11105.3(h), as that statute may be amended from time to time.
2. Until background checks have been completed, and until after the Director of Human Resources consideration of the criminal record, if any, such persons shall not be allowed to work in positions where they will have supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired. Human Resources will notify the Department if and when persons are cleared to work.
3. The appointing authority of every department (or their designee) shall update a list of job classifications that have supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired on at least an annual basis. The appointing authority shall submit the list to Human Resources by July 1 each year.
4. The appointing authority of every department (or their designee) shall immediately notify Human Resources whenever any of the following occurs:
 - a) A person applies for or is promoted, reassigned, or transferred to a position where they will have supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired;
 - b) An employee's job duties or tasks change (without necessarily a change in title) such that the employee will have supervisory or disciplinary power over minors, the elderly, the handicapped, or the mentally impaired;
 - c) The appointing authority (or their) has any reason to believe that the provisions of Penal Code Section 11105.3 may apply to a particular employee.

C. Fingerprinting, DOJ and FBI Background Check of Current and New Employees, Volunteers, Agents, Contractors and Subcontractors Having Direct Access to FTI

1. The appointing authority of every department (or their designee) shall provide Human Resources with a list of those employees and their classifications of each County position having direct access to FTI.
2. Individuals identified as having direct access to FTI must undergo and pass both a DOJ and FBI background investigation prior to being permitted direct access to FTI. Individuals who have direct access to FTI are subject to reinvestigation every ~~ten~~ five (5) years thereafter.
3. Persons who have direct access to FTI shall be prohibited from working directly with FTI until the applicant or employee has submitted to fingerprinting, DOJ has responded, and if there is a Records of Arrests and Prosecutions (“RAP”) sheet, the Director of Human Resources has approved the person’s employment.
4. The background investigation and reinvestigation include criminal history screening as follows:
 - a) Review of FBI fingerprinting that includes criminal history in all 50 states.
 - b) Check of local law enforcement agencies where the individual requiring the background investigation has lived, worked, and/or attended school within the last five (5) years, and if applicable, a check of the appropriate agency for any identified arrests.
 - c) Validating citizenship/residency to confirm the individual’s eligibility to legally work in the United States (U.S.). Validation of citizenship/residency shall include the following:
 - i. Utilization of the Form I-9 and supporting documents; and
 - ii. Ongoing monitoring for expired employment eligibility, if applicable.
5. Conditional employment offers may be withdrawn and current employees may be determined ineligible for employment based on the results of the background investigation and/or their eligibility to be employed in the United States.
6. Disqualification from employment for positions including FTI all arrests for crimes including but not limited to:
 - a) Fraud of any kind,
 - b) Theft/burglary,
 - c) Misuse of data or inappropriate access to data.

PART I: SECTION 37Y

7. Disqualification or ineligibility for employment determination will be limited to background investigation results which are related to the job or a business necessity.
8. In the event the background investigation results in an unfavorable outcome or requires clarification, individuals will have the opportunity to provide additional information within a ten business days. Final decisions resulting in a disqualification will be provided in a written statement with the reason for the denial.

D. Fingerprinting, DOJ and FBI Background Check of Current and New Employees, Volunteers, Agents, Contractors and Subcontractors Having Access to Criminal Offender Record Information

1. The appointing authority of every department (or their designee) shall provide Human Resources with a list of those employees and their classifications of each County position having access to Criminal Offender Record Information.
2. Individuals identified as having direct access to criminal must undergo and pass both a DOJ and FBI background investigation prior to being permitted access to Criminal Offender Record Information are subject to reinvestigation every ten (10) years thereafter.
3. Persons who have direct access to Criminal Offender Record Information shall be prohibited from working directly with Criminal History Information until the applicant or employee has submitted to fingerprinting, a response has been received from the DOJ, and where there is a RAP sheet, the Director of Human Resources has approved the person's employment.

I. LAW ENFORCEMENT FINGERPRINTING PROCEDURE

A. The Sheriff's Office and its divisions (Special Investigations Unit, Coroner, and Sergeant in Animal Services) will fingerprint their own employees, volunteers, custodial staff and building maintenance assigned to the Sheriff's Office. In that case, the DOJ will forward results of the criminal background check directly to the Sheriff's Office.

B. The District Attorney's Office will fingerprint their own employees, volunteers, custodial staff and building maintenance assigned to the District Attorney's Office ~~and volunteers~~ as part of the background investigation. In that case, the DOJ will forward results of the criminal background check directly to the District Attorney's Office.

~~B.C.~~ The Probation Department will fingerprint their own employees, volunteers, custodial staff and building maintenance assigned to the Probation Department. In that case, DOJ will forward results of the criminal background check directly to the Probation Department, in addition to Human Resources.

~~C.D.~~ All new employee non-sworn law enforcement personnel will be subject to the fingerprinting procedure described in Section IV A of this policy.

II. DOCUMENTS RECEIVED FROM THE DOJ

Any mail or other documents sent to Human Resources from the DOJ shall be opened only

by the Records Security Officer.

III. RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION

PART I: SECTION 37Y

- A. Criminal offender record information maintained by this agency will not be released to any other agency. Any person or entity may view State Summary Criminal History Information if on a ~~need-to-know~~need-to-know basis the Director of Human Resources, or their designee, permits or requests them to view the information from the state summary Criminal History Information as provided for in Sections 11105 and 11105.3.

Any release of State Summary Criminal History Information shall be documented in the following manner:

1. A record shall be maintained of each release of information and shall contain the date of dissemination, the name of the agency, and the name of the person to whom the information was given, the extent of the information given, and how it was transmitted.
2. The Records Security Officer shall comply with any reasonable request made by a DOJ representative regarding any security and privacy audit of the County.
3. Any person to whom State Summary Criminal History Information is released shall first submit to fingerprinting (if that person is not on record as having been fingerprinted) and shall read and sign the DOJ required documents regarding the misuse of confidential criminal record information.

Any deviation from this policy must be approved in writing by the Records Security Officer. If the release of information involves Criminal Record Information of an individual employee, the Human Resources Director, or their designee will meet and confer with the Union.

IV. JUVENILE RECORDS

Juvenile records shall not be released except to the Juvenile Court or by Juvenile Court order.

V. PROTECTION FROM UNAUTHORIZED PERSONS

Criminal offender record information shall be maintained by Human Resources and shall be stored in a secure area in a locked cabinet and separate from the employee's personnel file. Only persons authorized by the Records Security Officer may have access to criminal offender record information. Any person given access to such information shall first submit to fingerprinting and shall read and sign the document entitled "Employee Statement Form-Use of Criminal Justice Information" (as provided above in Section VII) which the Records Security Officer shall retain.

VI. DESTRUCTION

If the results of the criminal background check sent electronically from the DOJ indicate that there is no criminal history on the employee, the Records Security Officer shall make the requisite notations on the log/spreadsheet and files as described in Section IV above

PART I: SECTION 37Y

and shall then immediately delete the results of the criminal background check from the computer.

Hard copies of criminal offender record information shall be destroyed by shredding. All criminal offender record information shall be destroyed in such a way that the subject's name can no longer be identified. Criminal offender record information shall be destroyed by a person authorized to do so by the Director of Human Resources or their designee. However, the State Identification Number (SID) shall be retained for the purpose of including such information on the "No Longer Interested" form for subsequent arrest notification services provided pursuant to Penal Code Section 11105.2 and as discussed in Section XI below.

VII. SUBSEQUENT ARREST AND NO LONGER INTERESTED NOTIFICATION

- A. Pursuant to Penal Code Section 11105.2, Napa County is authorized to receive subsequent arrest information from the DOJ for employment, licensing or certification purposes upon the arrest of any person whose fingerprints are maintained on file at the DOJ. The notification consists of a current copy of the person's State Summary Criminal History Information. The policies and procedures set forth herein shall apply to subsequent arrest information, which shall be treated the same as any other State Summary Criminal History Information.
- B. The Records Security Officer shall immediately notify the DOJ in writing when the County is no longer interested in receiving any information on the former employee who has previously been fingerprinted. If an applicant for employment is fingerprinted, the Records Security Officer shall immediately notify the DOJ if the applicant is not subsequently employed. The Records Security Officer shall complete a "No Longer Interested Notification" DOJ form, or it may develop its own form indicating on the document "No Longer Interested Notification" and the effective date. The Records Security Officer shall indicate on Human Resource's log or spreadsheet the termination date and the "No Longer Interested Notification" form submission date to the DOJ.

VIII. TRAINING

All persons with access to criminal offender record information are required to read and understand this policy. All persons with access to criminal offender record information shall be trained in the maintenance, use and control of such information and shall be familiar with the laws regarding record security.

IX. MISUSE

Misuse of criminal offender record information may adversely affect an individual's civil rights and violates the law. Misuse of such information is a misdemeanor and may result in criminal and/or civil action.

PART I: SECTION 37Y

Violation of the laws relating to criminal record information, or this policy is subject to discipline, up to and including termination of employment.