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## Criminal Law; Nevada Criminal History Records Act

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## FOOTNOTES

1. 1979 Nev. Stats. ch. 340 §1 (amending NRS 205.275(2)).
2. Senate Committee on Judiciary minutes for February 27, 1979 and March 7, 1979.
3. State v. Williams, 46 Nev. 263, 270, 210 P.995, 996-997 (1923). See also State v. Teeter, 65 Nev. 584, 642, 200 P.2d 657, 685 (1948).
4. Tot v. U.S., 319 U.S. 463, 467 (1943); Carter v. State, 82 Nev. 246, 248, 415 P.2d 325, 326 (1966).
5. U.S. v. Gainey, 380 U.S. 63, 66 (1965); Tot v. U.S., 319 U.S. at 467-468; Edwards v. Sheriff, 93 Nev. 13, 15, 558 P.2d 1144, 1145 (1977) (statutory presumption that a person in possession of a car without the owner's consent has stolen car—NRS 205.2715—is valid). See generally, White v. State, 83 Nev. 292, 429 P.2d 55 (1967) and McNeeley v. State, 81 Nev. 663, 409 P.2d 135 (1965) (statutory presumption that defendant who unlawfully enters building or vehicle has broken and entered with intent to commit grand or petty larceny or felony—NRS 205.065—does not deny due process). Cf., Carter v. state, 82 Nev. 246, 415 P.2d 325 (1966) (statutory presumption that a person in possession of stolen goods within six months of their taking is guilty of stealing them—NRS 205.280, repealed by 1967 Nev. Stats. ch. 9 §1, at 35 was arbitrary and did not satisfy due process requirements).
6. Turner v. U.S., 396 U.S. 398, 416-418 (1970); Carter v. State, 82 Nev. at 249-250, 415 P.2d at 327.
7. Redeford v. State, 93 Nev. 649, 654, 572 P.2d 219, 221-222 (1977).

### CRIMINAL LAW; NEVADA CRIMINAL HISTORY RECORDS ACT

Adds to NRS Title 14

AB 524 (Committee on Judiciary); STATS 1979, Ch 689

Chapter 689 adds a new chapter to NRS Title 14 enacting the Nevada Criminal History Records Act to be administered by the Commission on Crimes, Delinquency, and Corrections<sup>1</sup> (hereinafter "commission"). Chapter 689 was passed in response to LEAA regulations mandating state controls on the dissemination of certain criminal records.<sup>2</sup> The purpose of the LEAA regulations is to ensure the accuracy, completeness, and security of criminal record information and to protect individual privacy.<sup>3</sup> In order to meet the above objectives, the Nevada law restricts the information that

can be disseminated and allows examination and challenge of records. Previous law did not restrict the distribution of criminal history records,<sup>4</sup> although conviction<sup>5</sup> and arrest records<sup>6</sup> are sealed in certain circumstances upon petition.

"Dissemination" is defined in Chapter 689 as the disclosure of a criminal history record or the absence of such a record to someone outside of the organization having control over the record.<sup>7</sup> It does not include disclosure among agencies which maintain a system for mutual exchange of criminal records<sup>8</sup> or for the purpose of administering the criminal justice system.<sup>9</sup> Reporting an event to the Nevada repository of criminal history records is also not considered dissemination.<sup>10</sup>

A criminal history record is information collected by criminal justice agencies containing descriptions of the subject and notations of his or her contacts with the Nevada criminal justice system.<sup>11</sup> It does not include investigative or intelligence information or crime reports,<sup>12</sup> posters and announcements identifying wanted persons,<sup>13</sup> original records of entry maintained in chronological order, and not cross-indexed,<sup>14</sup> or information regarding juveniles.<sup>15</sup>

#### Limited Dissemination

Chapter 689 limits the dissemination of non-conviction criminal history records. Arrest records or records containing information regarding disposition of a case other than conviction can be distributed only to the following: a) the subject of the record for the purpose of inspection<sup>16</sup> or when the subject is party to a proceeding where the information is relevant;<sup>17</sup> b) the gaming control board;<sup>18</sup> c) any criminal justice agency of the United States, another state, or the District of Columbia;<sup>19</sup> d) a public utility for a security investigation of an employee or to protect the public health, safety, or welfare;<sup>20</sup> e) any reporter in his or her professional capacity for communication to the public;<sup>21</sup> f) prospective employers, upon written consent from the subject of the record;<sup>22</sup> g) researchers working pursuant to an agreement with a criminal justice agency;<sup>23</sup> h) persons or government entities providing services to a criminal justice agency as authorized by their contract;<sup>24</sup> i) other persons and agencies authorized by law.<sup>25</sup>

#### Unrestricted Dissemination

Chapter 689 permits the unrestricted dissemination of conviction records<sup>26</sup> as well as records concerning an incident for which the individual is currently within

the criminal justice system.<sup>27</sup> Original records of entry may be freely distributed only if chronologically maintained and not cross-indexed.<sup>28</sup>

Unrestricted disclosure of non-conviction criminal history records is allowed among agencies participating in a mutual exchange system.<sup>29</sup> Additionally, a criminal justice agency may disclose a suspect's identity to the victim of a crime.<sup>30</sup>

### Safeguards

#### Confidentiality

Chapter 689 treats the information contained in non-conviction criminal history records as confidential. The recipients of the information, with the exception of the media, are forbidden to distribute it further without the authority of law or a court order.<sup>31</sup> Furthermore, Nevada criminal justice agencies will treat information received from other states with the same confidentiality that is required by the laws of those states.<sup>32</sup>

To secure the confidentiality of the information contained in non-conviction criminal history records, criminal justice agencies must maintain logs of the distribution of criminal history records showing when and to whom the record was distributed, including a brief description of the information provided.<sup>33</sup> The commission is required to establish regulations and standards for criminal justice personnel responsible for maintaining and disseminating criminal history records and to provide for audits of criminal history information systems.<sup>34</sup>

#### Accuracy

The LEAA regulations call for a system ensuring the accuracy and completeness of criminal history records.<sup>35</sup> In response, Chapter 689 contains several provisions for inspection and up-dating.

If a criminal justice agency has a cooperative agreement with a repository<sup>36</sup> of Nevada criminal history records, the agency must first check with the repository to obtain the most current and complete information available before distribution of a record.<sup>37</sup> The agency is relieved of this duty only if a) the repository is unable to respond within the required time;<sup>38</sup> b) the information requested is within the direct knowledge of the agency;<sup>39</sup> c) the information requested had already been

received from the repository within the previous thirty days;<sup>40</sup> d) the request refers only to information contained in the agency's files;<sup>41</sup> or e) the information requested is for research based upon information maintained in the agency's files.<sup>42</sup>

Chapter 689 allows removal of certain information from criminal history records. The subject of the record may request removal of information pertaining to an arrest or issuance of a citation or warrant occurring five years prior which did not result in conviction.<sup>43</sup> The record must be removed unless a) the subject is a fugitive<sup>44</sup> or has been arrested for another crime within the last five years<sup>45</sup> or has a prior conviction for a felony or gross misdemeanor;<sup>46</sup> b) the case is being actively prosecuted;<sup>47</sup> or c) the disposition of the case was a deferred prosecution or plea bargain.<sup>48</sup> This provision does not restrict the authority of a court to order deletion or modification of a record.<sup>49</sup>

Another check upon the accuracy of records is the provision allowing inspection by the subject. The subject has the right to inspect his or her criminal history record maintained by any criminal justice agency<sup>50</sup> or repository,<sup>51</sup> with the exception of investigative and intelligence data.<sup>52</sup> Each agency is to establish regulations for this purpose.<sup>53</sup>

The subject may challenge the record as inaccurate or incomplete.<sup>54</sup> The Commission is to adopt regulations governing the specific procedure for challenge and correction,<sup>55</sup> but the correction must occur within ninety days and must be sent to each person who requested the information within the past twelve months.<sup>56</sup>

### Criminal penalties

Chapter 689 provides that anyone who attempts to obtain records under false pretenses, attempts to communicate information in violation of Chapter 689, or falsifies any criminal history record is guilty of a misdemeanor.<sup>57</sup>

Noreen M. Evans

## FOOTNOTES

1. 1979 Nev. Stats. ch. 689 (hereinafter "Ch. 689") §16 (adding to NRS Title 14).
2. 28 CFR §20 (1977).
3. 28 CFR §20.1 (1977).
4. See generally NRS Title 14.
5. NRS 179.245.
6. NRS 179.255.
7. Ch. 689 §7 (adding to NRS Title 14).
8. Id. §7 ¶1 (adding to NRS Title 14).
9. Id. §7 ¶2 (adding to NRS Title 14).
10. Id. §7 ¶3 (adding to NRS Title 14).
11. Id. §8 ¶1 (adding to NRS Title 14).
12. Id. §8 ¶2(a) (adding to NRS Title 14).
13. Id. §8 ¶2(c) (adding to NRS Title 14).
14. Id. §8 ¶2(d) (adding to NRS Title 14).
15. Id. §8 ¶2(b) (Adding to NRS Title 14). See also NRS 200.5045.
16. Ch. 689 §10 ¶4(a) (adding to NRS Title 14).
17. Id. §10 ¶4(b) (adding to NRS Title 14).
18. Id. §10 ¶4(c) (adding to NRS Title 14).
19. Id. §10 ¶4(d) (adding to NRS Title 14).
20. Id. §10 ¶4(e) (adding to NRS Title 14).
21. Id. §10 ¶4(h) (adding to NRS Title 14).
22. Id. §10 ¶4(i) (adding to NRS Title 14).
23. Id. §10 ¶4(j) (adding to NRS Title 14).
24. Id. §10 ¶4(g) (adding to NRS Title 14).
25. Id. §10 ¶4(f) (adding to NRS Title 14).
26. Id. §10 ¶1 (adding to NRS Title 14).
27. Id. §10 ¶2 (adding to NRS Title 14).
28. Id. §8 ¶2(d) (adding to NRS Title 14).
29. Id. §7 ¶1 (adding to NRS Title 14).
30. Id. §14 ¶1 (adding to NRS Title 14).
31. Id. §11 (adding to NRS Title 14).
32. Id. §10 ¶5 (adding to NRS Title 14).
33. Id. §12 (adding to NRS Title 14).
34. Id. §16 (adding to NRS Title 14).
35. 28 CFR §20.21(a) (1977).

36. The system of criminal history records maintained by the Clark County data processing facility, known as SCOPE, is designated as a temporary repository for Nevada criminal history records. Ch. 689 §19.
37. Ch. 689 §9 (adding to NRS Title 14).
38. Id. §9 ¶1 (adding to NRS Title 14).
39. Id. §9 ¶2 (adding to NRS Title 14).
40. Id. §9 ¶3 (adding to NRS Title 14).
41. Id. §9 ¶4 (adding to NRS Title 14).
42. Id. §9 ¶5 (adding to NRS Title 14).
43. Id. §13 (adding to NRS Title 14).
44. Id. §13 ¶1 (adding to NRS Title 14).
45. Id. §13 ¶5 (adding to NRS Title 14).
46. Id. §13 ¶4 (adding to NRS Title 14).
47. Id. §13 ¶2 (adding to NRS Title 14).
48. Id. §13 ¶3 (adding to NRS Title 14).
49. Id. §13 (adding to NRS Title 14).
50. Id. §15 ¶1 (adding to NRS Title 14).
51. Id. §15 ¶3 (adding to NRS Title 14).
52. Id. §15 ¶1 (adding to NRS Title 14).
53. Id. §15 ¶2 (adding to NRS Title 14).
54. Id. §15 ¶4 (adding to NRS Title 14). See also 28 CFR app. §20.21(g)(1) (1977).
55. Ch. 689 §15 ¶4 (adding to NRS Title 14).
56. Id.
57. Ch. 689 §18 (adding to NRS Title 14).

#### CRIMINAL LAW; RESTITUTION CENTERS

AB 804 (Mann); STATS 1979, Ch 422

Chapter 422 is an experimental law<sup>1</sup> which creates centers to house offenders within a community while they work to pay restitution to their victims.<sup>2</sup> Under existing law, victims of crime are entitled to compensation from the state.<sup>3</sup> Chapter 422 allows victims (including commercial and corporate victims)<sup>4</sup> to be compensated by offenders.<sup>5</sup>