Sierra County
Board of Supervisors’
Agenda Transmittal &
Record of Proceedings

**MEETING DATE:** August 7, 2018

**TYPE OF AGENDA ITEM:**
- ☑ Regular
- ☐ Timed
- ☐ Consent

**DEPARTMENT:** County Counsel/Personnel Director

**APPROVING PARTY:** Margaret Long

**PHONE NUMBER:** 530-691-0800

**AGENDA ITEM:** Resolution approving Agreement to allow the county Personnel Director to request and receive background checks on prospective and current employees when the law allows.

**SUPPORTIVE DOCUMENTS ATTACHED:**
- Memo
- Resolution
- Agreement
- Other

**BACKGROUND INFORMATION:**
The Sheriff informed Department Heads several months ago that he was not authorized under the contract his department has with the State Department of Justice to provide anyone but law enforcement with supporting documents of a criminal background. The State of California requires employers to inform an employee or prospective employee of a background check and to give the employee or prospective employee a copy of the background check if the employer relies on it to decline employment or discipline an employee.

The attached agreement sets up an account for Sierra County and designates the Personnel Director as the custodian of these records. This allows the County to comply with state and federal laws and prudent internal controls when hiring or recertifying an employee’s criminal background or lack of.

**FUNDING SOURCE:**

**GENERAL FUND IMPACT:** No General Fund Impact

**OTHER FUND:**
- **AMOUNT:** $ N/A

**ARE ADDITIONAL PERSONNEL REQUIRED?**
- ☐ Yes, -- --
- ☑ No

**IS THIS ITEM ALLOCATED IN THE BUDGET?**
- ☐ Yes
- ☑ No

**IS A BUDGET TRANSFER REQUIRED?**
- ☐ Yes
- ☑ No

**SPACE BELOW FOR CLERK’S USE**

**BOARD ACTION:**
- ☐ Approved
- ☐ Approved as amended
- ☐ Adopted
- ☐ Adopted as amended
- ☐ Denied
- ☐ Other
- ☐ No Action Taken

- ☐ Set public hearing
  For: _________________________
- ☐ Direction to: _________________________
- ☐ Referred to: _________________________
- ☐ Continued to: _________________________
- ☐ Authorization given to: _________________________

**Resolution 2018- ____________**

**Agreement 2018- ____________**

**Ordinance ____________**

**Vote:**
- Ayes: ____________
- Noes: ____________
- Abstain: ____________
- Absent: ____________

- ☐ By Consensus
<table>
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<th>COMMENTS:</th>
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CLERK TO THE BOARD

DATE
WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) authorize cities, counties, districts and joint powers authorities to access state and local summary criminal history information for employment, licensing or certification purposes; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require that there be a requirement or exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

WHEREAS, Penal Code Sections 11105(b)(11) and 13300(b)(11) require the city council, board of supervisors, or governing body of a city, county, district or joint powers authorities to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

NOW THEREFORE BE IT RESOLVED, that the Sierra County Personnel Director is hereby authorized to access state summary criminal history information for employment (including volunteers and contract employees), licensing, or certification purposes and may not disseminate the information to a private entity.

ADOPTED by the Board of Supervisors of the County of Sierra, State of California on the 7th day of August, 2018 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNTY OF SIERRA

SCOTT SCHLEFSTEIN,
CHAIRPERSON
BOARD OF SUPERVISORS

ATTEST:

HEATHER FOSTER
CLERK OF THE BOARD

APPROVED AS TO FORM:

DAVID PRENTICE
COUNTY COUNSEL
REQUEST FOR CONTRIBUTING AGENCY ORI AND/OR RESPONSE MAIL CODE

In order to submit applicant fingerprints via Live Scan, you must have an Originating Agency Identifier (ORI) code to identify your agency. In order to receive responses electronically, you must request a Response Mail Code. Note that electronic responses will be sent to a secure electronic mailbox, from which you will retrieve your messages. In order to receive a Mail Code, you must have a completed form BCII 9005, Subscriber Agreement, on file with the Department of Justice or returned with this request.

[X] Request for ORI  [X] Request for Electronic Response Mail Code

Contributing Agency Name: County of Sierra

Mailing Address: P.O. Box D

City, State, Zip Code: Downieville, Ca. 95936

Your projection for monthly applicant submissions: 

Contact Person Name: Margaret E. Long  Phone Number: 530 691-0800

Email: margaret@lielawfirm.com  Fax Number: 530 691-0700

Please describe the services your agency provides and indicate the California statute you believe authorizes your agency to request criminal history information.

Sierra County is a subdivision of the State of California (Local Government). The County provide policing, Child Welfare services, Elder Welfare services, mental health services, handles and invests public funds.

Please check the box(es) for the type(s) of applicants for whom you will be submitting:

[X] Employment  All employees

☐ License, Certification, Permit

Identify Licensing Agency as it would appear on fingerprint card (i.e., Department of Social Service)

[X] Volunteers

☐ We request that all responses be sent electronically to the same secure mailbox.

☐ We request separate secure mailbox(es) for the following application type(s):

☐ Employment

☐ License, Certification, Permit

☐ Volunteers

ORI's and mail code number(s) will be assigned by the Department of Justice and the information returned to you on form BCII 9003, Notification of ORI, Mail Code, and/or Billing Number.
NOTIFICATION OF ORI, MAIL CODE, AND/OR BILLING NUMBER

CONTRIBUTING Agency - please provide a complete address in the space below. This form will be returned to you with your ORI, Mail Code, and/or Billing Number information.

Contributing Agency Name: County of Sierra
Mailing Address: 2240 Court Street
City, State, Zip Code: Redding, Ca. 96001

Listed below are the ORI, Mail Code, and/or Billing Number assigned to your agency for applicant responses.

ORI

Mail Code

Billing Number

If separate response locations were requested, assigned codes are as follows:

<table>
<thead>
<tr>
<th>Type</th>
<th>ORI</th>
<th>Mail Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licensing, Certification, or Permit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Volunteer</td>
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</tbody>
</table>

The following are the ONLY applicant types with CJIS codes your agency is authorized to submit to the DOJ for background check purposes. The CJIS Code is for internal use only and is not utilized on the BCIA 8016 form.

<table>
<thead>
<tr>
<th>Applicant Type</th>
<th>CJIS Code</th>
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<tbody>
<tr>
<td>1</td>
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<td>2</td>
<td></td>
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<td>3</td>
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<td>9</td>
<td></td>
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<td>10</td>
<td></td>
</tr>
</tbody>
</table>

Should your address or agency information change in the future, you must notify the DOJ immediately. Please visit the DOJ's website to obtain form BCIA 8386, Applicant Submitting Agency Request to Change.
**Applicant Information**

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Middle Name</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long</td>
<td>Margaret</td>
<td>Engelhart</td>
<td>2240 Court Street</td>
<td>Redding</td>
<td>Ca.</td>
<td>96001</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone Number</th>
<th>Date of Birth</th>
<th>Driver's License or CA ID Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>530 691 0800</td>
<td>6/12/1978</td>
<td>D3834381</td>
</tr>
</tbody>
</table>

**Agency/Organization Information**

<table>
<thead>
<tr>
<th>Agency Head</th>
<th>Agency Name</th>
<th>ORI</th>
<th>Mail Code</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scott Sclefstein</td>
<td>County of Sierra</td>
<td></td>
<td></td>
<td>P.O. Box D</td>
<td>Downieville</td>
<td>Ca</td>
<td>95936</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phone Number</th>
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<tr>
<td>530 289 3295</td>
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</tbody>
</table>

**Please answer fully the following questions:**

1. **Does the designated Custodian of Records work for the applicant agency?**
   - [ ] Yes
   - [X] No
   
   **If yes, what is the relationship?**
   - Contract Personnel and County Counsel

2. **Have you ever used a name other than the one on this application?**
   - [X] Yes
   - [ ] No
   
   **If yes, please list other names below.**
   - Margaret Ann Engelhardt

3. **Have you ever been arrested in California or any other state and/or are you awaiting adjudication for any offense for which you were arrested?**
   - [ ] Yes
   - [X] No
   
   **If yes, give details below.**

4. **Have you ever been convicted by any court of a felony or misdemeanor offense in California or any other state?**
   - [ ] Yes
   - [X] No
   
   **If yes, disclose the date and place of arrest, whether the conviction was for a felony or misdemeanor, and the sentence imposed.**

5. **Have you ever been denied a professional license or had such license revoked, suspended, or restricted?**
   - [ ] Yes
   - [X] No
   
   **If yes, give details below.**

6. **Have you ever been adjudged liable for damages in any suit grounded in fraud, misrepresentation, or in violation of state regulatory laws?**
   - [ ] Yes
   - [X] No
   
   **If yes, give details below.**

7. **Have you ever failed to satisfy any court ordered money judgment including restitution?**
   - [ ] Yes
   - [X] No
   
   **If yes, give details below.**

---

**Certification**

I certify under penalty of perjury under the laws of the State of California to the truth and accuracy of all statements, answers, and representations made in the foregoing application, including all supplementary statements.

Signature of Applicant: ___________________________ Date: __________

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**DOJ USE ONLY**

Confirmation of Custodian of Records

Date confirmed: ___________ Completed by: ________

(initials)

California Department of Justice
Bureau of Criminal Information and Analysis
Custodian of Records Unit
P.O. Box 903417
Sacramento, CA 94203-4170

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SECURITY OF CRIMINAL OFFENDER RECORD INFORMATION

Criminal Offender Record Information (CORI) 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 applicant agencies authorized by California statute for the purposes of employment, licensing, certification, and volunteer clearances. The following information describes each agency's responsibility toward accessing, storage, handling, dissemination, and destruction of CORI.

Background

Penal Code sections 11105 and 13300 identify who may have access to criminal history information and under what circumstances it may be released.

The DOJ maintains the California Law Enforcement Telecommunications System (CLETS) that provides law enforcement agencies with information directly from federal, state, and local computerized information files. However, restrictions have been placed on the user to ensure that the rights of all citizens of California are properly protected.

Article 1, section 1 of the California Constitution grants California citizens an absolute right to privacy. Individuals or agencies violating these privacy rights place themselves at both criminal and civil liability. Laws governing Californians' right-to-privacy were created to curb, among other things, the excessive collection and retention of personal information by government agencies, the improper use of information properly obtained for a proper purpose, and lack of a reasonable check on the accuracy of existing records. (White v. Davis (1975) 13 Cal. 3d 757, 775.)

Employment Background Checks

It is only through the submission of fingerprints to the DOJ that the true identity of an individual can be established. In a 1977 lawsuit (Central Valley v. Younger), the court ruled that only arrest entries resulting in conviction, and arrest entries that indicate active prosecution, may be provided for evaluation for employment, licensing, or certification purposes.

Exceptions

Some statutory provisions, such as those relating to youth organizations, schools, and financial institutions, further limit information dissemination to conviction for specific offenses. Records provided for criminal justice agency employment as defined in Section 13101 of the Penal Code are exempt from these limitations. In addition, arrest information for certain narcotic and sex crimes, irrespective of disposition, will be provided for employment with a human resource agency as defined in section 1250 of the Health and Safety Code. Other exceptions are listed in the CLETS Policies, Practices, and Procedures (section 1.6.1).
Unauthorized Access and Misuse

The unauthorized access and misuse of CORI may affect an individual's civil rights. Additionally, any person intentionally disclosing information obtained from personal or confidential records maintained by a state agency or from records within a system of records maintained by a governmental agency has violated various California statutes. There are several code sections that provide penalties for misuse or unauthorized use of CORI.

Authorized Access

CORI shall be accessible only to the Records Custodian and/or hiring authority charged with determining the suitability for employment or licensing of an applicant. The information received shall be used by the requesting agency solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency.

The retention and sharing of information between employing and licensing agencies are strictly prohibited. Retention and sharing of information infringes upon the right of privacy as defined in the California Constitution, and fails to meet the compelling state interest defined in Loder v. Municipal Court (1976) 17 Cal. 3d 859. In addition, maintenance of CORI separate from the information maintained by the DOJ precludes subsequent record updates and makes it impossible for the DOJ to control dissemination of CORI as outlined in section 11105 of the Penal Code.

CLETS Policies, Practices, and Procedures state that any information transmitted or received via CLETS is confidential and for official use only by authorized personnel (section 1.6.4). The California Code of Regulations, Article 1, section 703, addresses the "right and need" to know CLETS-provided information.

The Bureau of Criminal Information and Analysis (BCIA) recommends that state summary criminal history records, obtained for employment, licensing, or certification purposes, be destroyed once a decision is made to employ, license, or certify the subject of the record. Agencies that either are mandated or permitted by California statute to receive subsequent arrest notifications pursuant to Penal Code (PC) section 11105.2 must complete a Contract for Subsequent Arrest Notification Service (BCIA 8049).

Retention of criminal history records beyond this time should be based on documented legal authority and need. Any records retained must be stored in a secured, confidential file. The agency should designate a specific person responsible for the confidentiality of the record and have procedures to prevent further dissemination of the record, unless such dissemination is specifically provided for by law or regulation.
APPLICANT FINGERPRINT RESPONSE SUBSCRIBER AGREEMENT

As an agency receiving background clearance information in response to the submission of applicant fingerprint cards to the DOJ, you are aware of the regulations regarding the security of the hard copy information that you currently receive. The purpose of this Subscriber Agreement is to restate existing regulations and clarify how they apply to the electronic receipt of this same information via fax or e-mail. There are no new regulations. Items 1, 2, 4, 5, and 7 restate existing regulations relative to receiving hard copy information. Item 2 has been expanded to include electronic information. Items 3 and 6 are intended to clarify these regulations relative to electronic information.

In accordance with section 11077 of the Penal Code, the Attorney General is responsible for the security of criminal offender record information. Section 707(a) of the California Code of Regulations requires that "Automated systems handling criminal offender record information and the information derived therefrom shall be secure from unauthorized access, alteration, deletion, or release. The computer terminals shall be located in secure premises."

SUBSCRIBER AGREEMENT

This agreement is between the County of Sierra

and the Department of Justice for the purposes of the exchange of criminal offender record information. The above agrees that:

1. Criminal offender record information and the information derived therefrom shall be accessible only to the records custodian and/or hiring authority charged with determining the suitability of the applicant.

2. Confidential information received electronically or via mail shall be used solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency.

3. Retention of CORI is permissible if, after making its initial employment, licensing, or certification decision, the agency has legitimate business need for the information and there are no statutory requirements to destroy such information. Any record information that is retained by the applicant agency must be stored in a secure and confidential file.

4. Criminal history background checks have been completed on all individuals with access or proximity to terminals or fax machines receiving criminal offender record information.

5. Staff with access to criminal offender record information have received training and counseling on the handling of criminal offender record information and have signed employment statement forms acknowledging and understanding of the criminal penalties for the misuse of criminal offender record information (Penal Code sections 502, 11142, and 11143).
APPLICANT FINGERPRINT RESPONSE SUBSCRIBER AGREEMENT

6. Reasonable measures shall be taken to locate terminals and fax machines in a secure area to provide protection from unauthorized access to criminal offender record information by other than authorized personnel. Access is defined as the ability to view criminal offender record information on a terminal or on paper.

7. Pursuant to section 702 of the California Code of Regulations, authorized agencies violating this agreement may lose direct access to criminal offender record information maintained by the Department of Justice.

Contributing Agency Name: County of Sierra

Mailing Address: P.O. Box D

City, State, Zip Code: Downieville, Ca. 95936

Phone Number: +1 (530) 289-3295

Signature of Agency Official

Printed Name of Agency Official Scott Schlefstein

Title of Agency Official Chairperson Board of Supervisors

Date _____________________
CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION
CRIMINAL OFFENDER RECORD INFORMATION POLICY
Use of Applicant Criminal Offender Record Information
Head of contributing agency/organization must sign and return document

This policy has been developed to meet the requirements of the State of California, Department of Justice, Division of California Justice Information Services, for any agency that receives Criminal Offender Record Information (CORI).

To ensure the suitability of individuals accessing confidential criminal history records, anyone with access to CORI shall be fingerprinted and processed through the California Department of Justice.

The overall responsibility for the administration of this rests with the agency head or person in charge.

A. Record Security: Any questions regarding the release, security and privacy of Criminal Offender Record Information (CORI) are to be resolved by the agency head or person in charge.

B. Record Destruction: It is recommended that the state summary of CORI obtained for employment, licensing or certification purposes be destroyed once a decision is made to employ, license or certify the subject of the record. Retention beyond this time, should be based on legitimate business need or statute.

C. Record Dissemination: CORI shall be used only for the purpose for which it was requested.

D. Record Storage: CORI shall be securely maintained and accessible only to the agency head and any others designated by the agency head committed to protect CORI from unauthorized access, use, or disclosure.

E. Record Reproduction: CORI shall not be reproduced for secondary dissemination to any other employment or licensing agency. However, the requesting agency may provide a copy of the DOJ applicant response to the subject of the record.

F. Training: The agency head shall:
1. Understand and enforce this policy.
2. Be fingerprinted and have a criminal history clearance.
3. Have on file a signed copy of the attached Employee Statement Form (which is itself a part of this policy) which acknowledges an understanding of laws prohibiting misuse of CORI.

G. Penalties: Misuse of CORI is a criminal offense. Misuse of CORI may result in criminal or civil prosecution and/or administrative action up to and including loss of access to information maintained by the Department of Justice.

I HAVE READ THE ABOVE AND UNDERSTAND THE POLICY REQUIREMENTS.

Signature: ___________________________ Date: ___________________________

Print Name: Scott Schleifstein
Title: Chairperson Board of Supervisors

Contributing Agency/Organization Name: County of Sierra

Mailing Address: P.O. Box D

City, State, Zip Code: Downieville, Ca. 95936

Physical Address: same as above
CALIFORNIA DEPARTMENT OF JUSTICE  
CALIFORNIA JUSTICE INFORMATION SERVICES DIVISION  
CRIMINAL OFFENDER RECORD INFORMATION SECURITY REQUIREMENTS  
Use of Applicant Criminal Offender Record Information  
Custodian of Records must sign and return document  

CUSTODIAN OF RECORDS DUTIES  

1. The information provided by the Department of Justice (DOJ) to this agency is confidential and shall not be disseminated to any other person or agency not authorized by law. A violation of this section is a misdemeanor. (Penal Code Section 11142). However, the requesting agency may provide a copy of the DOJ applicant response to the subject of the record.  

2. All personnel/individuals with access to Criminal Offender Record Information (CORI) will have a fingerprint background clearance record check completed through the DOJ as required by the California Code of Regulations Section 703 (d) prior to the submission of fingerprints for employment, licensing, certification or volunteer purposes. ($32 processing fee)  

3. All personnel/individuals with access to CORI will have a signed "Employee Statement Form" on file acknowledging an understanding of laws prohibiting its misuse. (See Employee Statement)  

4. All personnel/individuals with access to CORI will be trained in the secure handling, storage, dissemination and destruction of CORI.  

5. My agency/organization will have a written policy for securing access, storage, dissemination and destruction of criminal record information. This policy will include the steps to be taken to prevent unauthorized access to CORI maintained in our agency files.  

6. The Department of Justice may conduct audits of the authorized persons or agencies using CORI to ensure compliance with state laws and regulations. (Section 702 (c) California Code of Regulations)  

7. The information provided by the Department of Justice will be maintained in a secured area/locked cabinet separate from the employees personnel file and be used only for the purpose for which it was acquired.  

8. Our agency/organization will notify the Department of Justice with regard to any change of agency name, address, telephone number, fax number, Custodian of Records and contact person.  

9. The "No Longer Interested Notification Form" will be sent to DOJ, when applicable.  

10. Our agency/organization will send an updated Live Scan Subscriber Agreement form to DOJ signed by our new agency official, when applicable.  

On behalf of our agency/organization, I hereby acknowledge that I have read and agree to the above.  

Signature: ___________________________ Date: ___________________________  
Print Name: Margaret E. Long Title: Personnel Director  
Contributing Agency/Organization Name: County of Sierra  
Mailing Address: 2240 Court Street  
City, State, Zip Code: Redding, Ca. 96001  
Physical Address: 2240 Court Street Redding, Ca. 96001
STATE OF CALIFORNIA
BCIA 8049

CONTRACT FOR SUBSEQUENT ARREST NOTIFICATION SERVICE

Department of Justice
Bureau of Criminal Information and Analysis
P.O. Box 903417
Sacramento, CA 94203-4170

The agency listed below is authorized to receive state summary criminal history information from the files of the Department of Justice (DOJ) for employment, licensing, or certification purposes. This agency further requests that fingerprint transactions submitted for this purpose be retained in DOJ’s files for California only subsequent arrest notification service pursuant to section 11105.2 of the California Penal Code. Fingerprint submissions received before the effective date of this contract will not be retained by the California Department of Justice.

AGENCY NAME: County of Sierra

AGENCY ADDRESS: 2240 Court Street

CITY: Redding
STATE: Ca.
ZIP CODE: 96001

ORI NUMBER: (If Applicable)

CONTACT PERSON(S): Margaret E. Long

CONTACT PERSON(S) TELEPHONE: +1 (530) 691-0800

Please retain the following authorized categories:

☒ ALL EMPLOYEES ☒ ALL VOLUNTEERS
☐ ALL LICENSES, CERTIFICATIONS, OR PERMITS
☐ OTHER: (specify)

This agency certifies that, to its knowledge, there is no statute or regulation prohibiting this notification and that all requirements for criminal record security and privacy of individuals will be met. This agency will notify the Bureau of Criminal Information and Analysis when it no longer has a legitimate interest in a subject, as required by section 11105.2 of the California Penal Code. The agency agrees to immediately return any subsequent arrest notification received from DOJ for any person unknown to the agency.

FOR DOJ USE ONLY:
☐ Approved ☐ Not Authorized

Signature of DOJ Representative

Print Name

Title of Agency Representative

Effective Date

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