

CALIFORNIA DEPARTMENT OF JUSTICE

TITLE 11. LAW

DIVISION 1. ATTORNEY GENERAL

CHAPTER 23. CONFIRMATION OF INDIVIDUALS DESIGNATED
BY A PUBLIC OR PRIVATE AGENCY AS A CUSTODIAN OF RECORDS

TEXT OF MODIFIED REGULATIONS

The original text published in the California Code of Regulations has no underline. The initial proposal (noticed on September 8, 2023) is illustrated by single blue underline for proposed additions and ~~single red strikethrough~~ for proposed deletions. Changes made after the 45-day comment period are illustrated by **bold double underline** for proposed additions and ~~bold strikethrough~~ for proposed deletions.

Article 1. General

§ 999.600. Definition of Key Terms.

- (a) “Applicant” means the individual applying to be a Custodian of Records.
- (b) “Agency” shall have the meaning set forth in Penal Code section 11102.2, subdivision (a)(2).
- (c) “Criminal offender record information” or “CORI” shall have the meaning set forth in Penal Code sections 11075, subdivision (a) and 13102.
- (d) “Custodian of Records” shall have the meaning set forth in Penal Code section 11102.2, subdivision (a)(1).
- (e) “Department” means the California Department of Justice.

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.

Article 2. Application for Confirmation as a Custodian of Records

§ 999.601. Application for Confirmation.

- (a) An individual designated as a Custodian of Records for an agency shall apply for confirmation by submitting to the Department a Custodian of Records Application for Confirmation, BCIA 8374 (Orig. 0501/20234), incorporated herein by reference. This

requirement does not apply to criminal justice agency personnel who have undergone a state and federal criminal record background check and are exempt from the requirements of Penal Code section 11102.2.

(b) The applicant shall submit the completed Custodian of Records Application for Confirmation, BCIA 8374 (Orig. ~~501/20234~~), and electronically transmit fingerprint images to the Department. Fingerprint images shall be electronically submitted by using the Request for Live Scan Service, BCIA 8016CUS (Orig. ~~0501/20234~~), incorporated herein by reference. Alternatively, if an applicant is unavailable to be fingerprinted via Live Scan within California, the applicant shall submit to the Department the completed Custodian of Records Application for Confirmation, BCIA 8374 (Orig. ~~0501/20234~~), and a completed 10-print fingerprint card, Applicant Fingerprint Form, FD-258 (Rev. 11-1-20) 1110-0046, incorporated herein by reference.

(c) The applicant shall submit a check or money order in the amount of thirty dollars (\$30) to cover the costs of the confirmation program, made payable to “Department of Justice.”

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.

Article 3. Custodian of Records Confirmation

§ 999.602. Confirmation by the Department.

(a) After the Department receives the ~~applicant’s~~ application and results of the fingerprint-based CORI background check, the Department shall make a determination about the applicant’s eligibility for confirmation, pursuant to Penal Code section 11102.2, subdivisions (d), (e), (f), and (g).

(b) The Department shall notify the applicant and agency whether the applicant has been confirmed or the application has been denied.

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.

§ 999.603. Duration of Confirmation.

(a) The confirmation notice issued pursuant to these regulations remains in effect for the duration of the individual's designation as a Custodian of Records by the agency listed on the application or until the confirmation is surrendered by the agency as described in subdivision (b) or revoked by the Department.

(b) All agencies shall immediately notify the Department when an individual designated as a Custodian of Records no longer serves in that capacity by submitting an email to COR@doj.ca.gov. The email shall contain the full name of the Custodian of Records and the agency's Originating Agency Identifier (ORI).

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.

§ 999.604. Non-Transferability of Confirmation.

The Custodian of Records confirmation is issued to an individual and is not transferable or assignable to any other individual. The Custodian of Records confirmation shall only be used by the confirmed individual for the agency listed on the Custodian of Records Application for Confirmation, BCIA 8374 (Orig. 0501/20234), and whose fingerprints were previously submitted to the Department.

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.

Article 4. Procedures for Denial of an Application or Revocation of an Existing Custodian of Records Confirmation; Request for Reconsideration; and Administrative Hearing

§ 999.605. Denial of an Application or Revocation of an Existing Custodian of Records Confirmation.

When a Custodian of Records application is denied or an existing Custodian of Records confirmation is revoked the Department shall provide the applicant subject to the denial, or the Custodian of Records subject to the revocation, with a written notice which specifies all grounds on which the denial or revocation is based. Pursuant to Penal Code section 11105, subdivision (t), if the criminal history information is the basis for that decision the written notice shall

include a copy of the criminal history information used to make an adverse confirmation decision.

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.

§ 999.606. Request for Reconsideration.

When a Custodian of Records application is denied or when an existing Custodian of Records confirmation is revoked, and the applicant subject to the denial, or Custodian of Records subject to the revocation, wishes to challenge the Department's denial or revocation, they must first submit a written request for reconsideration to the Department within 30 days of the date of the written notification of denial or revocation. Such requests may include any and all evidence and legal arguments which the applicant subject to the denial or Custodian of Records subject to the revocation, contends are relevant to a reconsideration of the denial or revocation. The request shall be submitted via email to COR@doj.ca.gov. The Department shall provide the applicant subject to the denial, or Custodian of Records subject to the revocation, with a written notice of its decision within 30 days of the date the request for reconsideration is received.

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.

§ 999.607. Administrative Hearing.

(a) If a request for reconsideration is denied by the Department, and the applicant subject to denial, or the Custodian of Records subject to the revocation, wishes to further appeal the Department's decision, they shall submit a request for an administrative hearing to the Department within 30 days of the written notice of the Department's decision.

(b) The Department shall refer the denial or revocation for administrative adjudication to the Office of Administrative Hearings in accordance with chapter 5 (commencing with section 11500) of part 1, division 3, title 2 of the Government Code and California Code of Regulations, title 1, division 2 for a determination of whether a confirmation should be granted or restored.

(c) Judicial review of the decision shall be governed by Government Code section 11523.

Note: Authority cited: Section 11102.2, Penal Code. Reference: Section 11102.2, Penal Code.