



***COMMONWEALTH of VIRGINIA***  
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**MEMORANDUM**

**TO:** Leonard G. Cooke, Director  
Department of Criminal Justice Services

**FROM:** Matthew A. Conrad  
Assistant Attorney General

**DATE:** May 15, 2006

**SUBJECT:** Authority to amend regulations contained in 6 VAC 20-120-80.

**CC:** George Gotschalk  
Sections Chief, Standards and Training

In response to a request from the Department of Criminal Justice Services (“DCJS”) regarding the need to amend 6 VAC 20-120-80, I am of the opinion that the proposed amendments are exempted from Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(a).

These regulations pertain to the procedures for the expungement of a criminal history record or a portion thereof and also designate the agency responsible for directing expungement. Effective July 1, 2001, and pursuant to 2001 Va. Acts cc. 40 and 345, the agency responsible for receiving orders of expungement from the various clerks of court and for directing expungement of criminal history records has been changed to the Department of State Police (“DSP”). Prior to July 1, 2001, DCJS was the agency responsible for such matters. The statutory amendments enacted by the General Assembly make it necessary that the language of the regulations reflect the change in responsibility from DCJS to DSP.

It is my opinion that the proposed amendments to 6 VAC 20-120-80 are exempt from the requirements of Article 2 of the Administrative Process Act, pursuant to § 2.2-4006(A)(4)(a), as an agency action that is necessary to conform regulations to changes in Virginia statutory law where no agency discretion is involved. Thus, upon review of the statutory amendments enacted, and in light of the fact that the amendments to the

regulations constitute an agency action that is necessary to conform them to changes in Virginia statutory law where no agency discretion is involved, the Department has the authority to implement the amendments outside of the requirements imposed by Article 2 of the Administrative Process Act.

*Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.*