



Virginia  
Regulatory  
Town Hall

[townhall.virginia.gov](http://townhall.virginia.gov)

## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Criminal Justice Services
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC 20-120
<b>Regulation title</b>	Regulations Relating to Criminal History Record Information Use & Security
<b>Action title</b>	Comprehensive Review of Regulations Relating to Criminal History Record Information Use & Security
<b>Date this document prepared</b>	February 4, 2014

sThis information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The Board and Department are required by §9.1-102 of the Code of Virginia to establish regulations regarding the use and security of criminal history record information and §9.1-131 to conduct annual audits. These regulations have not been reviewed since 1997.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The Code of Virginia, §9.1-102 (24) instructs the Department of Criminal Justice Services to “adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders”. §9.1-131 instructs that “the Board shall ensure that annual audits are conducted of a representative sample of state and local criminal justice agencies to ensure compliance with this article and Board regulations. The Board shall adopt such regulations as may be necessary for the conduct of audits, the retention of records to facilitate such audits, the determination of necessary corrective actions, and the reporting of corrective actions taken.” The Criminal Justice Services Board approved these recommendations December 12, 2013.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory action will update 6VAC20-120, and bring necessary changes to reflect the most current practices relating to criminal history use, information and storage. This regulation is essential to protect the health, safety and welfare of the citizens of the Commonwealth.

**Substance**

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

6VAC20-120-20 – Definitions

Definitions have been amended based on terminology related to criminal history record information use and security.

6VAC20-120-30 – Applicability

The amendments to this section came from an official opinion from the Office of the Attorney General.

6VAC20-120-40 – Collection

The amendments reflect the current practices according to Central Criminal Records Exchange requirements and current practices of state, local and criminal justice agencies in the Commonwealth with access to criminal history record information.

6VAC20-120-50 - Dissemination

The amendments reflect the requirements of the Central Criminal Records Exchange in reference to the query and dissemination of criminal history record information. Additional changes relating to “noncriminal justice agencies” was removed due to an official opinion from the Office of the Attorney General.

6VAC20-120-60 - Access and review

These amendments reflect the current practices according to the Central Criminal Records Exchange and the Virginia Criminal Information Network.

6VAC20-120-70 – Challenge

These amendments reflect the current procedures in accordance with the Central Criminal Records Exchange.

6VAC20-120-80 – Expungement and sealing

These amendments reflect the current requirements in accordance with § 19.2-392 of the Code of Virginia in relation to expunged records, as well as current court requirements when using imaged case records.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

There are no alternatives to the proposed regulatory action.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The Department worked in conjunction with the Virginia Department of State Police to revise and amend this regulation. The included revisions are suggestions agreed upon by both agencies.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

Revising these regulations for criminal history information, use and security will enhance service to our constituents and the citizens of the Commonwealth by ensuring criminal history record information is used and stored in accordance with the Code of Virginia.

**Periodic review and small business impact review report of findings**

***If this NOIRA is not the result of a periodic review/small business impact review of the regulation, please delete this entire section.***

*If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

*In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

Commenter	Comment	Agency response
Michel McQuigg, Clerk of Prince William Circuit Court	<p><b>Expungement of Automated Records</b></p> <p>6VAC20-120-80. Expungement and sealing.</p> <p>D. is not operable for Circuit Court Clerk’s Offices that scan all of their records and do not keep hard copies because the electronic record is the actual, legal record. A scanned record is safer than a paper record that is subject to fire, flood, and other destructive events. If we put it on off-line media, it faces the same problems of paper and requires more manpower. It is not efficient. A properly secured electronic system is better than either. Being on the Office of the Executive Secretary for the Supreme Court of Virginia’s system assures a level of security and control that would not exist for systems created by individual Clerk’s.</p>	Thank you for your response. These changes have been made to 6VAC20-120-80.D.

	<p>The following is a proposed 2<sup>nd</sup> paragraph for D.:</p> <p>Notwithstanding any other provisions of this section, any imaged case records maintained in the statewide circuit, general district or juvenile and domestic relations district court case imaging system operated by the Office of the Executive Secretary for the Supreme Court of Virginia that are to be expunged may be transferred to a confidential and secure area inaccessible from normal use within the respective statewide case imaging system and shall be considered sealed. Access to the expunged, imaged case records shall be limited to the manager of records for the court with the exception of designated staff within the Office of the Executive Secretary who are responsible for the operation of such case imaging systems and have access to the confidential and secure area for the discrete purpose of providing the manager of the records access to the secure area. No notification that expunged data exists shall be left in the normally accessed case imaging system. Any related records that are maintained in an electronic order book shall also be deleted.</p>	
--	---	--