



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6 VAC 20-120
Regulation title	Regulations Relating to Criminal History Record Information Use & Security
Action title	Comprehensive Review of Regulations Relating to Criminal History Record Information Use & Security
Date this document prepared	July 29, 2014

This 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*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

§9.1-131 requires that the Department, under direction of the Criminal Justice Services Board, conduct annual audits of a representation of state and local criminal justice agencies and 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 per § 9.1-102(24).

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CCRE means Central Criminal Records Exchange

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.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

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 revised since 1997.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

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.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of the public and the Commonwealth will be a standard regulatory process for how personal criminal history record information is handled amongst state and local law enforcement agencies within the Commonwealth.

There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements exceeding federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities are uniquely affected by the proposed regulations, as they will apply statewide.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **Stephanie Morton, 1100 Bank Street, Richmond, VA 23219, phone number (804) 786-8003, fax number (804) 786-0410 and stephanie.morton@dcjs.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	There are no new costs involved.
Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	0
Benefits expected as a result of this regulatory proposal.	0
Projected cost to the state to implement and enforce this regulatory proposal.	0
Projected cost to localities to implement and	0

enforce this regulatory proposal.	
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	0

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives to the proposed regulatory action.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

§ 9.1-102(24) of the Code of Virginia directs the Department of Criminal Justice Services to establish these minimum requirements as set forth in 6VAC20-120. Therefore, an alternative regulatory measure does not exist. There are no small businesses that will be affected by the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received during the public comment period.

Commenter	Comment	Agency response

Family impact

Please assess the 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency regulation** and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
6VAC20-120-20		Definitions... "Conviction data" means information in the custody of any criminal justice agency relating to a judgement of conviction, and the consequences arising therefrom, in any court.	Revise to correct spelling error. "Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.
6VAC20-120-20		Definitions... "Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity.	Revise to add clarity to definition. "Criminal intelligence information" means data that has been evaluate3d and determined to be relevant to the identification and criminal activity of individuals or organizations that are reasonably suspected of involvement in criminal activity. Criminal intelligence information shall not include criminal investigative files.
6VAC20-120-30 3		3. Noncriminal justice agencies or individuals who are eligible under the	Revise to remove number 3; per Code of Virginia §9.1-102, the Department does not have authority to audit "noncriminal justice

		provisions of § 19.2-389 of the Code of Virginia to receive limited criminal history record information.	agencies”.
6VAC20-120-40 C.2		2. Nonconvictions. For arrests except as noted in subdivision 3a below, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days from the date the order is entered by the presiding judge.	Revise to remove; the CCRE has a separate set of guidelines instructing court’s notification process.
6VAC20-120-40 C.3.b		b. For arrests except as noted in subdivision 3 a above, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days after occurrence of the disposition.	Revise to remove; the CCRE has a separate set of guideline instructing court’s notification process.
6VAC20-120-40 D		D. Updating and accuracy. Arresting officers and court clerks noted above are responsible for notifying the Central Criminal Records Exchange in a timely fashion, and always within 30 days, of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated.	Revise to add clarity. D. Updating and accuracy. Arresting officers and court clerks noted above are responsible for notifying the Central Criminal Records Exchange in a timely manner , and always within 30 days, of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated.
6VAC20-120-50 B.1.a		a. For offenses required to be reported to the Central Criminal Records Exchange (CCRE), they may refer the requester to the Central Criminal Records Exchange, which will directly provide the requester with the information, or shall themselves query the Central Criminal Records Exchange to obtain the most accurate and complete information available and provide the information to the requester. (See § 19.2-389 of the Code	Revise to add clarity; agencies are <i>not</i> authorized to query CCRE at the request of an individual. Those requests must be made to the Virginia State Police, §19.2-389. a. For offenses required to be reported to the Central Criminal Records Exchange (CCRE), they shall refer the requester to the Central Criminal Records Exchange, which will directly provide the requester with the information. (See § 19.2-389 of the Code of Virginia.) It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to

		<p>of Virginia.) It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to information requests. The local law-enforcement agency may directly provide criminal history record information to the requester without making an inquiry to the Central Criminal Records Exchange or referring the requester to the Central Criminal Records Exchange if the time is of the essence and the normal response time of the exchange would exceed the necessary time period. (See § 19.2-389 of the Code of Virginia.) Under circumstances where an inquiry to the exchange is not made, the record provided by the local law-enforcement agency should be accompanied by an appropriate disclaimer indicating that the record may not be complete.</p>	<p>information requests. Where an inquiry to the exchange is not made, the record provided by the local law-enforcement agency should be accompanied by an appropriate disclaimer indicating that the record may not be complete.</p>
<p>6VAC20-120-50 B.2.b.(3)</p>		<p>(3) Noncriminal justice agencies. Full name, date of birth, race, and sex of the record subject must be provided by the requester for a criminal history record to be disseminated. Fingerprint identification may be required prior to dissemination if there is any doubt as to the match. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange. Information supplied by the requester and available through the Central Criminal Records Exchange (or in the local files where the request is for criminal history record information maintained only locally) must match to the satisfaction of the</p>	<p>Revise to remove number (3); per Code of Virginia §9.1-102, the Department does not have authority to audit “noncriminal justice agencies”.</p>

		<p>disseminator, or the dissemination shall not be made.</p>	
<p>6VAC20-120-50 B.3</p>		<p>3. Locating and disseminating information requested. Once a request for a criminal history record has been made, and the responsible official is satisfied as to the legitimacy of the request and the identity of the subject and has informed the requester of costs and restrictions, the responsible official conducting the search for the record shall supply the information after querying the Central Criminal Records Exchange. However, if time is of the essence, or the offenses in a criminal history record are not required to be reported to Central Criminal Records Exchange, the responsible official may directly supply the information (see § 19.2-389 of the Code of Virginia).</p>	<p>Revise to remove reference of the Central Criminal Records Exchange. Localities cannot run query the CCRE at the request of an individual.</p> <p>3. Locating and disseminating information requested. Once a request for a criminal history record has been made, and the responsible official is satisfied as to the legitimacy of the request and the identity of the subject and has informed the requester of costs and restrictions, the responsible official conducting the search for the record shall supply the information contained in the local files on offenses not required to be reported to the Central Criminal Records Exchange (see § 19.2-389 of the Code of Virginia).</p>

<p>6VAC20-120-50 B.5</p>		<p>5. Maintaining a dissemination log. A record of any dissemination shall be maintained at the disseminating criminal justice agency or shall be accessible electronically for a period of at least two years from the date of the dissemination.</p>	<p>Revise to add clarification; agencies are only required to maintain a log of secondary dissemination.</p> <p>5. Maintaining a dissemination log. A record of all secondary disseminations...</p>
<p>6VAC20-120-50-B.5.b</p>		<p>b. Requesting agency name and address;</p>	<p>Revise to provide clarity; agencies are given a unique identifier.</p> <p>b. The agency ORI;</p>

<p>6VAC20-120-60 A</p>		<p>A. ...Completing a request form may be required by the Central Criminal Records Exchange or the local criminal justice agency.</p>	<p>Provide to add requirement already established by the Central Criminal Records Exchange.</p> <p>A... Completing a request form shall be required...</p>
<p>6VAC20-120-60 B</p>		<p>B. An individual or his attorney may review the individual's criminal history record information arising from arrests for felonies and Class 1 and 2 misdemeanors maintained in the Central Criminal Records Exchange by applying at any law-enforcement agency with terminal capabilities on the Virginia Criminal Information Network or to the Central Criminal Records Exchange of the Virginia Department of State Police, during normal working hours.</p>	<p>Revise to add clarity; law enforcement agencies are not authorized to query CCRE even if they have access. Those requests must be vetted through the Virginia State Police.</p> <p>B. An individual or his attorney may review the individual's criminal history record information arising from arrests for felonies and Class 1 and 2 misdemeanors maintained in the Central Criminal Records Exchange by applying at the Virginia Criminal Information Network or to the Central Criminal Records Exchange of the Virginia Department of State Police, during normal working hours.</p>

<p>6VAC20-120-60 C</p>		<p>The criminal justice agency locating an individual's criminal history record information shall examine its own files and shall contact the Central Criminal Records Exchange for the most up-to-date criminal history record information, and supply both to the requester.</p>	<p>Revise to add clarity; law enforcement agencies are not authorized to query CCRE even if they have access. Those requests must be vetted through the Virginia State Police.</p> <p>The criminal justice agency locating an individual's criminal history record information shall examine its own files for the most up-to-date criminal history record information, and supply to the requester.</p>
<p>6VAC20-120-70</p>		<p>... The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the Central Criminal Records Exchange or the criminal justice agency maintaining the record...</p>	<p>For a record that is required to be reported to the Central Criminal Records Exchange, Virginia State Police is the authority to handle such challenges, not a local law enforcement agency.</p> <p>... The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the Central Criminal Records Exchange of the Department of the State Police...</p>

<p>6VAC20-120-70 B.2</p>		<p>2. Examination and correction agency. If the challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the validity of the challenge...</p>	<p>Revise to correct spelling error.</p> <p>2. Examination and correction agency. If the challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the validity of the challenge...</p>
<p>6VAC20-120-80 A</p>		<p>A. Responsibility of the Superintendent of the Virginia Department of State Police. The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order...</p>	<p>Remove for clarity; expungement orders are not the sole responsibility of the Department of State Police.</p> <p>A. The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order...</p>

<p>6VAC20-120-80 C</p>		<p>C. Procedure for expungement and sealing of hard copy records.</p>	<p>As with the digital age, records now include both hard and electronic copies.</p> <p>C. Procedure for expungement and sealing of electronic and hard copy records.</p>
<p>6VAC20-120-80 D</p>			<p>Insert for clarification; This process is important to the circuit court clerks. Although these regulations are aimed at criminal history record audits, they provide guidance and support to other processes, such as electronic expungement.</p> <p>Notwithstanding any other provision 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 the 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>

<p>6VAC20-120-70 E</p>		<p>E. Department to be notified following expungement. Upon receipt of a request from the Virginia Department of State Police to expunge and seal a record, the affected agency or agencies shall perform the steps above, and notify the Virginia Department of State Police of their action in writing within 120 days of their receipt of the request.</p>	<p>Revise for clarification; Virginia State Police requires agencies to expunge and seal a record within 60 days.</p> <p>E. Department to be notified following expungement. Upon receipt of a request from the Virginia Department of State Police to expunge and seal a record, the affected agency or agencies shall perform the steps above, and notify the Virginia Department of State Police of their action in writing within 60 days of their receipt of the request.</p>
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