



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC 20-120
VAC Chapter title(s)	Regulations Relating to Criminal History Record Information Use and Security
Action title	Comprehensive Review and Update of Requirements Related to Sealing and Expungement of Records
Date this document prepared	11/08/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

After completion of a periodic review earlier in 2024, the Department of Criminal Justice Services (DCJS) intends to amend several sections within 6 VAC 20-120 to modify and update the requirements related to the sealing and expungement of criminal history records. The intention of this regulatory action is to make technical amendments, eliminate unnecessary requirements, and update and clarify language contained within various regulatory sections to comply with legislative requirements from HB2113 (2021).

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

DCJS: Department of Criminal Justice Services
CJSB: Criminal Justice Services Board, DCJS' policy board
Department: Department of Criminal Justice Services
Board: Criminal Justice Services Board
VSP: Virginia State Police
VSCC: Virginia State Crime Commission
CCRE: Central Criminal Records Exchange

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The current regulation and requirements related to criminal history record use and security has not been updated since 2016, respectively. The passage of HB2113 (2021) also added additional information related to deferred and dismissed charges for marijuana convictions that directly relates to sections of the current regulation. A periodic review of the regulation in its entirety was opened and conducted in early 2024, and after consulting with the Virginia State Crime Commission and the Virginia State Police, DCJS sought and obtained formal Board approval from the CJSB to open this Notice of Intended Regulatory Action on October 10, 2024.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

HB 2113 (2021) required the establishment of a process for the automatic sealing of police and court records, defined in the bill, for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also allows a person to petition for the sealing of police and court records relating to certain convictions, and has a staggered delayed effective date(s) in order to develop systems for implementing the provisions listed within HB2113. The passage of this bill in 2021 also amended and reenacted §§ 9.1-101, as it was previously effective and as it become effective, [9.1-128](#), [9.1-134](#), [17.1-293.1](#), [17.1-502](#), [19.2-72](#), [19.2-74](#), [19.2-310.7](#), [19.2-340](#), [19.2-389.3](#), and [19.2-390](#) of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 2 of Title 17.1 a section numbered [17.1-205.1](#) and by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered [19.2-392.5](#) through [19.2-392.17](#), relating to sealing of criminal records.

The CJSB is the policy board for the Department of Criminal Justice Services, and at the October 10, 2024 meeting, DCJS obtained formal approval to move forward with a Notice of Intended Regulatory Action to update various sections of 6 VAC20-120 to not only comply with HB2113, but to also make necessary updates for VSP, as their new automated system dealing with the process of expungement of records, is due to be implemented in 2025. Although DCJS has not handled sealing or expungement of

records since 2006, as it is now the sole responsibility of VSP and the CCRE, the 1986 requirement for DCJS to house such a regulation still remains.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is to improve efficiency and ensure compliance with legislation from 2021. Although DCJS has not handled or overseen the sealing and expungement of records since prior to 2006, the agency is still required to house the regulation governing such. DCJS has been involved in many ongoing discussions with VSP related to the new automated system that they plan to employ in 2025, and this regulatory action will allow for that system to be implemented, once effective. Additionally, this regulatory action is expected to make technical amendments, align the definition of “sealing” with legislation passed in 2021, and reduce redundancy and requirements that are no longer relevant. After a thorough periodic review (submitted on 04/01/2024), DCJS, along with VSP, has determined that this regulation is essential to protect the safety and overall welfare of citizens, by expunging and sealing criminal history records, where appropriate. There are no current unforeseen issues that will need to be addressed as DCJS works in conjunction with VSP to amend and update the regulatory language.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Substantive changes that are being considered and likely be included are the update and clarification of language to ensure continuity definitions between the current regulation and legislation passed in 2021, as well as the amendment of sections of the regulation dealing with expungement, to allow for electronic submissions and notification. It will also amend language to direct the CCRE to remove the record and place in a physically or electronically segregated file. 6 VAC 20-120-50 is also likely to be amended, to add additional information from §§ 19.2-389.3 and 19.2-392.13, related to deferred/dismissed charges for the possession of marijuana. Conversations with the VSP and VSCC are ongoing.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

DCJS does not have any viable alternatives to the regulatory changes and updates being proposed. Updating language and requirements that have not been revised many years will be neither burdensome nor intrusive and will not add any financial burden to small businesses, as defined in § 2.2-4007. On the contrary, it will make the sealing and expungement process for criminal history records across the Commonwealth more efficient.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is not conducting a periodic review and small business impact review of this regulation at this time, as one was already conducted in early 2024. It was determined that this regulation should be retained and amended, which is the purpose of this regulatory action. Public comment was sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable, and only one comment was received.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

A public hearing will not be held following the publication of this regulatory action.