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Proposed Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC20-120
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	03/20/2026

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

After completion of a periodic review in 2024, the Department of Criminal Justice Services (DCJS) is amending several sections within 6 VAC 20-120 to modify and update the requirements related to the sealing and expungement of criminal history records. This regulatory action makes technical amendments, eliminates unnecessary requirements, and updates and clarifies language contained within various sections of the regulation to comply with legislative requirements from HB2113 (2021).

The existing regulation establishes requirements governing the collection, updating, dissemination, and security of criminal history record information maintained by state or local criminal justice agencies in the Commonwealth. The amendments to the current regulation establish procedures for individuals to challenge their records, updates the processing of expungement and sealing of criminal history record information to reflect current statutory requirements and Virginia State Police automated processes, and

establishes safeguards to ensure that such information is maintained and shared only for authorized purposes.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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

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 governing the use and security of criminal history record information has not been updated since 2016. The passage of HB2113 (2021) established provisions related to deferred and dismissed charges for marijuana convictions that directly affect several sections of the existing regulation.

In early 2024, DCJS conducted a periodic review of the entire regulation. Following consultation with the Virginia State Crime Commission and the Virginia State Police, DCJS sought and obtained formal approval from the CJSB on October 10, 2024, to initiate a regulatory action to amend and incorporate necessary revisions, legislatively mandated by HB2113 (2021). At the March 19, 2026 meeting of the CJSB, proposed amendments to the regulation were approved unanimously.

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.

DCJS is the promulgating agency. The legal authority for this regulatory change is HB2113, introduced during the 2021 General Assembly session and enacted by Chapter 542 of the 2021 Special Session I Acts of Assembly. The bill 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 an individual 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 becomes 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 are amended, adding in Article 1 of Chapter 2 of Title

17.1, a section numbered [17.1-205.1](#). It also added Title 19.2, a chapter numbered 23.2, consisting of sections numbered §§ [19.2-392.5](#) through [19.2-392.17](#), relating to the 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 VAC 20-120 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 was 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 remains.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This regulatory change is required so that relevant sections of the regulation comply with the requirements established by HB2113 (2021). Additionally, the updates will ensure that the regulation provides for VSP’s newly implemented system for the expungement of records. DCJS, along with VSP, has determined that this regulatory change is essential to protect the safety and overall welfare of citizens by expunging and sealing criminal history records, where appropriate.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The proposal amends definitions in Section 20, updates dissemination provisions in Section 50, and substantially revises Section 80 governing expungement and sealing of criminal history record information.

References to DCJS have been changed to VSP where appropriate, and definitions related to the destruction, sealing, and storage of records have been updated. Section 50 has been updated to reference current statutory provisions and reduce the secondary dissemination log retention period from two years to one year. Updates to Section 80 include clarifications to existing expungement and sealing procedures and the establishment of new requirements for electronic notification of expungement orders.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Primary advantages to the public are improved clarity in the regulation, conformity with current law, and more efficient administration of the sealing and expungement processes administered by VSP. The amendments included in this regulatory change reduce confusion by removing outdated provisions and

updating technical terms, as well as applicable citations of the Code of Virginia. The Commonwealth will likewise benefit from the updates and clarifications of the respective responsibilities for DCJS and VSP under current law.

There are no identifiable disadvantages to the public or to the Commonwealth that will result from this regulatory change.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory change, other than the Virginia State Police. As noted aforementioned sections, DCJS has not had sealing or expungement responsibilities since 2006, but is still required by Code to house the regulation.

No localities or other entities are particularly affected by the regulatory change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and</p>	<p>There are no associated costs, savings, fees, or revenues resulting from this regulatory change.</p>
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c) whether any costs or revenue loss can be absorbed within existing resources.	
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no known projected costs, savings, or revenues resulting from this regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The primary benefit of this regulatory change is compliance with the Code of Virginia and related legislative mandates, as well as increased clarification of sealing and expungement processes within the Commonwealth.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	N/A
Benefits the regulatory change is designed to produce.	N/A

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	N/A
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	N/A
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	N/A
Benefits the regulatory change is designed to produce.	N/A

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.

There are no viable alternatives to the proposed regulatory change, as it has been legislatively mandated with the passage of HB2113 (2021).

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no applicable agency analyses of alternative regulatory methods that have the ability to accomplish objectives while minimizing adverse impact on small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Although a periodic review of this regulation was conducted in 2024, this action is the result of a 2021 legislative mandate and changes and improvements to VSP’s system of sealing and expungement of certain criminal convictions.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
N/A	N/A	N/A

The public comment period began on 04/21/2025 and ended 05/21/2025. No public comments were 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.

The Department of Criminal Justice Services (DCJS) is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to: Kristi Shalton, 1100 Bank St, Richmond, VA 23219, (804) 987-0332, or Kristi.shalton@dcjs.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or

sections are being repealed *and replaced*, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
120-20	N/A	<p>The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.</p> <p>"Access" means the ability to obtain, directly or through an intermediary, criminal history record information contained in manual or automated files.</p> <p>"Board" means the Criminal Justice Services Board, as defined in § 9.1-108 of the Code of Virginia.</p> <p>"Central Criminal Records Exchange" means the repository in this Commonwealth that receives, identifies, maintains, and disseminates individual criminal history records, in accordance with Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 of the Code of Virginia.</p> <p>"Challenge" means an individual's objection to his criminal history record information.</p> <p>"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.</p> <p>"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of</p>	<p>Section 20 defines the key terms within 6 VAC 20-120. This regulatory action clarifies that "Department" refers to the Virginia State Police, rather than the Department of Criminal Justice Services, and adds further clarification by defining "sealing" and "partitioned or segregated separate file." The rationale behind these additions and changes to the current section are to enhance understanding and transparency in VSP's new system dealing with sealing and expungement. The only likely impact of these changes is a better understanding of how certain convictions are dealt with in the Commonwealth of Virginia.</p>

		<p>sentence, parole, pardon, or court decision.</p> <p>"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal charges and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by §§ 16.1-299 and 19.2-389.1 of the Code of Virginia, criminal justice investigative information, or correctional status information.</p> <p>"Criminal history record information area" means any office, room, or space in which criminal history record information is regularly collected, processed, stored, or disseminated to an authorized user. This area includes computer rooms, computer terminal workstations, file rooms, and any other rooms or space in which those activities are carried out.</p> <p>"Criminal intelligence information" means data that has been evaluated 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.</p> <p>"Criminal investigative information" means information on identifiable individuals compiled in the course of the investigation of specific criminal acts.</p> <p>"Criminal justice agency" means a court or any other governmental agency or</p>	
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		<p>subunit thereof that as its principal function performs the administration of criminal justice and any other agency or subunit thereof that performs criminal justice activities.</p> <p>"Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, that is used for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.</p> <p>"Department" means the Department of Criminal Justice Services.</p> <p>"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.</p> <p>"Director" means the chief administrative officer of the department.</p> <p>"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and a right to know the information.</p> <p>"Expunge" means to remove, in accordance with a court order, a criminal history record or a portion of a record from public inspection or normal access.</p> <p>"Modify" means to add or delete information from a record to accurately reflect the reported facts of an individual's criminal history</p>	
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		<p>record. (See § 9.1-132 of the Code of Virginia.) This includes eradicating, supplementing, updating, and correcting inaccurate and erroneous information.</p> <p>"Noncriminal justice agencies or individuals" means those agencies or individuals authorized to receive limited criminal history record information pursuant to a specific agreement with a criminal justice agency under the provisions of subsection A of § 19.2-389 of the Code of Virginia.</p> <p>"Originating agency identifier" or "ORI" means a unique nine-character designation used to identify the agency that places records in the Virginia Criminal Information Network (VCIN).</p> <p>"Seal" means to physically prevent access to a criminal history record or portion of a criminal history record.</p> <p>"Superintendent" means the chief administrative officer of the Virginia Department of State Police.</p>	
120-50	N/A	<p>A. Authorization.</p> <p>1. No criminal justice agency or individual shall confirm or deny the existence or nonexistence of a criminal history record to persons or agencies that would not be eligible to receive the information. No dissemination of a criminal history record is to be made to a noncriminal justice agency or individual if an</p>	<p>The revisions to this section of 6 VAC20-120 include the addition of §§ 19.2-389.3 and 19.2-392.13, as required by HB2113 (2021), dealing with the release of criminal history record information to an individual or other entity. Additional revisions include the change of a two to one-year timeframe for maintenance of a dissemination log at criminal justice agencies. This decreases the burden on such agencies.</p>

		<p>interval of one year has elapsed from the date of arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.</p> <p>2. Criminal history record information or portions of an individual's record both maintained and used by criminal justice agencies and eligible recipients, maintained either at the Central Criminal Records Exchange or by the originating criminal justice agency, or both, shall only be disseminated as provided by § 19.2-389 of the Code of Virginia.</p> <p>3. Upon receipt of a request for criminal history record information, by personal contact, mail, or electronic means from an agency or individual claiming to be authorized to obtain such information, the person responding to the request shall determine whether the requesting agency or individual is authorized to receive criminal history record information.</p>	
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		<p>4. Criminal justice agencies shall determine what positions in their agency require regular access to criminal history record information as part of the position's job responsibilities. These positions will be exempt from the provisions of subsection B of this section. Use of criminal history record information by a member of a criminal justice agency not occupying a position authorized to receive criminal history record information, or for a purpose or activity other than one for which the person is authorized to receive criminal history record information, will be considered a dissemination and shall meet the provisions of this section. If the user of criminal history record information does not meet the procedures in subsection B of this section, the use of the information will be considered an unauthorized dissemination.</p> <p>5. The release of criminal history record information to an individual or entity not included in § 19.2-389 of the Code of Virginia is unlawful</p>	
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		<p>and unauthorized. An individual or criminal justice agency that releases criminal history record information to a party which does not clearly belong to one of the categories of agencies and individuals authorized to receive the information as outlined in § 19.2-389 is subject to being denied access to state and national criminal history record information on a temporary or permanent basis and to the administrative sanctions described in 6VAC20-120-100. Unlawful dissemination contrary to the provisions of this chapter is also a Class 2 misdemeanor (see § 9.1-136 of the Code of Virginia).</p> <p>B. Procedures for responding to requests. A criminal justice agency disseminating criminal history record information shall adhere to the following provisions:</p> <p>1. Allowable responses to requests. Local and regional criminal justice agencies may respond to requests for criminal history record information in two ways:</p>	
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		<p>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.)</p> <p>When 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>b. For nonreportable offenses (i.e., those offenses not reported to the Central Criminal Records Exchange), the law-enforcement agency shall provide the information requested, following the dissemination procedures as required by subdivisions 2 through 8 of this subsection.</p> <p>2. Prior to dissemination. Prior to disseminating criminal history record information a criminal justice agency shall:</p> <p>a. Verify requester identity.</p>	
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		<p>(1) Individual requester. For an individual requesting his own record and not known to the person responding to the request, the individual shall provide proper identification, to include at least two of the following, one of which must be a photo identification: (i) a valid passport, (ii) drivers' license with photo, (iii) social security card, (iv) birth certificate, (v) military identification, or (vi) state issued identification card with photo, if there is more than one name match. Fingerprints or other additional information shall be required if the disseminating criminal justice agency deems it appropriate or necessary to ensure a match of the record and the requesting subject.</p> <p>(2) Criminal justice agencies. For personnel of criminal justice agencies requesting a record, the requester shall provide valid agency identification unless the disseminator recognizes the requesting individual as having previously been authorized to receive the</p>	
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		<p>information for the same purpose.</p> <p>(3) Noncriminal justice agencies or individuals. For an individual requesting the record of another, as in the case of an attorney requesting the record of his client, the individual shall provide a sworn written request from the record subject naming the requester as a recipient, as provided in subsection A of § 19.2-389 of the Code of Virginia. The written request shall include the full name, date of birth, race, and sex of the record subject. Identification of the attorney or individual shall also be required unless the attorney or individual is known to the official responding to the request.</p> <p>b. Verify record subject identity. Because serious harm could come from the matching of criminal history record information to the wrong individual, verification procedures shall be carefully managed, particularly when dissemination will be to noncriminal justice recipients. The following information</p>	
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		<p>shall be reviewed to verify the record subject's identity:</p> <p>(1) The full name, date of birth, race, and sex of the record subject. 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. Only when the information supplied and the information in the Central Criminal Records Exchange or local files satisfactorily match shall information be disseminated.</p> <p>(2) Criminal history record information which reasonably corresponds to the name, aliases, and physical identity of the subject can be disseminated to a legitimate requester when time is of the essence or if criminal justice interests will be best served by the dissemination. This includes the dissemination of records with similar but not identical name spellings, similar physical characteristics, and similar but not identical aliases.</p>	
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		<p>When criminal history record information is obtained in this manner and results in an apparent match between the identity of the subject and the record, the criminal history record should be verified using fingerprint identification prior to prosecution, adjudication or sentencing of the record subject. 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.</p> <p>c. Notify requester of costs and restrictions. The official responsible for aiding the requester shall notify the requester of the costs involved and of restrictions generally imposed on use of the data, or be reasonably assured that the requester is familiar with the costs and restrictions, prior to beginning the search for the requested criminal history record information and shall obtain the consent of the requester to pay any charges associated with the dissemination.</p>	
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		<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>4. Instructions regarding dissemination to requesters. The disseminated record must be accompanied by the message "UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES" in printed form, for the following requesters:</p> <p>a. Record subjects. Record subjects have a right to receive and disseminate their own criminal history record</p>	
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		<p>information, subject to this chapter and subdivision 11 of § 19.2-389 of the Code of Virginia. If a record subject or his attorney complies with the requirements of this section, he shall be given the requested criminal history record information. However, if an agency or individual receives a record from the record subject, that agency or individual shall not further disseminate the record.</p> <p>b. Criminal justice agencies.</p> <p>c. Noncriminal justice agencies and individuals other than record subjects. Even with the sworn consent of the record subject, only criminal history record information that is conviction data shall be disseminated to a noncriminal justice agency or an individual in compliance with the existing laws and shall not be disseminated further.</p> <p>5. Maintaining a dissemination log. A record of all secondary disseminations shall be maintained at the disseminating criminal justice agency or shall be accessible</p>	
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		<p>electronically for a period of at least two years from the date of the dissemination.</p> <p>The dissemination log must list all requests for criminal history record information. The log may be automated or manual.</p> <p>Records will include the following information on each dissemination:</p> <ul style="list-style-type: none">a. Date of inquiry;b. Requesting agency name and address or the agency ORI;c. Identifying name and number (either FBI or state identification number of record subject, or notification of "no record found");d. Name of requester within the agency requesting criminal history record information; ande. Name of disseminator (officer or civilian who provides the criminal history record information to the requester). <p>6. Reporting unauthorized disseminations. While</p>	
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		<p>individual criminal justice agencies are not expected to audit agencies that receive criminal history record information that they provide, in order to identify unauthorized releases, individual criminal justice agencies shall notify the department of any violations observed of this section. The department will investigate and respond to the violation in a manner deemed appropriate by the department.</p> <p>A criminal justice agency that knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log to ensure that disseminations are being appropriately managed.</p> <p>7. Interstate dissemination. Interstate dissemination of criminal history record information shall be subject to the procedures described in this section. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and this chapter, as if the agency were within the jurisdiction of the Commonwealth.</p>	
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		<p>8. Fees. Criminal justice agencies may charge a reasonable fee for search and copying time expended when dissemination of criminal history record information is requested by a noncriminal justice agency or an individual. The criminal justice agency shall post the schedule of fees to be charged and shall obtain approval from the requester to pay such costs prior to initiating the search.</p> <p>C. Limitations on use. Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purposes for which the information was given and may not be disseminated further.</p>	
120-80	N/A	<p>A. The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order. Upon receipt of a court order, petition, and other supporting documents for the expungement of a criminal history record, the superintendent, pursuant to</p>	<p>This section houses the greatest number of changes being proposed through regulatory amendment. 6 VAC 20-120-80 deals explicitly with the processes of sealing and expungement of criminal records, and revisions to this section update language and add in the additional procedures VSP takes when dealing with sealing and expungement. The changes reflect electronic notification by VSP to individuals or entities known to maintain or have obtained records within the previous year, to remove the electronic manual record or portion thereof from their repository and instruct them to place it in a physically or electronically partitioned</p>

	<p>§ 19.2-392.2 of the Code of Virginia, shall by letter with an enclosed copy of the order direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record to remove the electronic or manual record or portion thereof from its repository and place it in a physically sealed, separate file. The file shall be properly indexed to allow for later retrieval of the record if required by court order, and the record shall be labeled with the following designation: "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."</p> <p>B. Responsibility of agencies with a record to be expunged. The record named in the Virginia Department of State Police's letter shall be removed from normal access. The expunged information shall be sealed but remain available, as the courts may call for its reopening at a later date. (See § 19.2-392.3 of the Code of</p>	<p>or segregated separate file. Additions to this section also include instruction on the responsibility of agencies with a record to remove normal access, as well as the procedure for the expungement of electronic and hard copy records and the expungement of automated records. A new provision detailing the procedure for sealed records is also now included, stating specifically that sealing does not prohibit or limit dissemination of records within or between any department, division, board, bureau, commission, branch, authority, or other agency created by the Commonwealth, or to which the Commonwealth is a party or any political subdivision thereof, for the purpose of administering any duties or functions required by state or federal law. As enumerated in the new "H." in this section, the entire procedure the CCRE/CSP utilizes for sealed records, including electronic notification, is detailed. Enhanced clarification and transparency in procedure is a result of this change, as well as the compliance with HB2113 (2021).</p>
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		<p>Virginia.) Access to the record shall be possible only through a name index of expunged records maintained either with the expunged records or in a manner that will allow subsequent retrieval of the expunged record as may be required by the court or as part of the department's audit procedures. Should the name index make reference to the expunged record, it shall be apart from normally accessed files.</p> <p>C. Procedure for expungement and sealing of electronic and hard copy records.</p> <p>1. The expungement and sealing of hard copy original records of entry (arrest forms) is accomplished by physically removing them from a file and filing them in a physically secure location elsewhere, apart from normally accessed files. This file should be used only for expunged records and should be accessible only to the manager of records.</p> <p>2. If the information to be expunged is included among</p>	
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		<p>other information that has not been expunged on the same form or piece of paper, the expunged information shall be obliterated on the original or the original shall be retyped eliminating the expunged information. The expunged information shall then be placed in the file for expunged records, in its original or copied form, and shall be accessible only to the manager of records.</p> <p>3. If the expunged information is located on a criminal history record provided by the Central Criminal Records Exchange (i.e., "RAP sheet"), the criminal history record information shall be destroyed, and a new copy, not containing the expunged data, shall be obtained when necessary.</p> <p>D. Procedure for expunging automated records. Should the record to be expunged be maintained in an automated system, the Central Criminal Record Exchange or the agency known to possess such a record shall copy the automated record onto an off-line medium such as hard</p>	
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		<p>disk drive, USB flash drive, or hard copy printouts. The expunged record, regardless of the type of medium on which it is maintained, shall then be kept in a file used for expunged records and sealed from normal use, accessible only to the manager of records. No notification that expunged data exists shall be left in the normally accessed files.</p> <p>Notwithstanding any other provisions of this section, any imaged case records maintained in any circuit court, general district court, 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 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</p>	
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		<p>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>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 of this section, and notify the Virginia Department of State Police of their action in writing within 60 days of their receipt of the request.</p> <p>F. Expungement order not received by department. Should a court ordered expungement be directed to a criminal justice agency other than the Virginia Department of State Police,</p>	
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		<p>the directed criminal justice agency shall comply as outlined in this section and advise the superintendent without delay of such order. The superintendent shall, upon receipt of such notification, obtain a copy of the order from the appropriate circuit court.</p>	
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
N/A	N/A	N/A	N/A

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage
N/A	N/A	N/A	N/A