



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

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
Date this document prepared	11/08/2024

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*.

Acronyms and Definitions

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

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

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 or 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.

Pursuant to § 9.1-102(24), DCJS has the authority and responsibility 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.

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 a Notice of Intended Regulatory Action on October 10, 2024.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

DCJS does not have any viable alternatives to the regulatory changes and updates being proposed upon the completion of the periodic review. 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.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Stephaney	Advised they did not support a change in the regulation and that professionals should be held accountable.	Unable to contact.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Pursuant to 2.2-4007 of the Code of Virginia, this regulation meets the criteria set out in ORM procedures and remains necessary for the protection of public health, safety, and overall welfare. Although it is still relevant and written in easily understandable language, DCJS plans to continue to work with VSP to develop language to make the process of sealing and expungement more efficient.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

DCJS' decision to retain the regulation remains, but the agency will be promulgating a NOIRA to make necessary amendments.

Small Business Impact

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.

DCJS has considered both the need for the regulation as well as the nature of the complaint/comment received concerning the regulation as currently written. While the regulation does not overlap or duplicate federal or state law, amendments have not been made in several years, and the agency feels it appropriate to continue to work with VSP to make the regulatory language clearer and more concise, as well as make appropriate amendments to align with legislation (specifically, HB2113 from the 2021 Session of the General Assembly). The agency's decision to retain and amend 6 VAC 20-120 does not (and will continue to not) impact regulations on small businesses or create an economic burden.
