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Final Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation(s)	6 VAC 20-120
Regulation title(s)	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	March 24 , 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed amendments to the existing regulation include the following:

- Repeal 6VAC20-120-10
- Provide definitions for the following terms – challenge, noncriminal justice agencies or individuals, originating agency identifier, and superintendent
- Revise language and/or correct Code citations for definitions of the following terms: Central Criminal History Exchange (CCRE), criminal history record information, criminal intelligence information, modify.
- Remove language related to the Department of Criminal Justice Services regulating noncriminal justice agencies.
- Remove language regarding the court clerk's responsibility to notify the CCRE on the final action of a case.

- Remove language allowing a local law enforcement agency to provide criminal history record information without making an inquiry to the CCRE.
- Includes language stating dissemination of criminal history record information beyond the purpose for which the information was provided is prohibited.
- Reduces the number of days from 120 to 60 an agency has to notify the State Police action has been taken on an expungement

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 - Central Criminal Records Exchange
ORI –Originating Agency Identifier

Statement of final agency action

Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.

On March 24, 2016, the Criminal Justice Services Board voted to approve the submission of 6VAC20-120 Regulations Relating to Criminal History Record Information Use & Security to the Final Stage of the regulatory process.

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”. Section 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.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal 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 by § 9.1-131 of the *Code of Virginia* to conduct annual audits. The proposed changes will clarify the current language relating to criminal history records. DCJS worked with Virginia State Police to ensure the amendments reflect the current practices regarding the use of CCRE and the Virginia Criminal Information Network. The proposed revisions are intended to protect the safety and welfare of citizens by preventing the unlawful dissemination of a citizen's criminal history record information. Improper dissemination of criminal history record information has the potential to adversely impact a citizen's ability to obtain federal student loans, employment, promotions, and housing.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

6VAC20-10 –Purpose

Repealed - Per the staff from the regulatory information system, purpose statements are no longer being included in regulations.

6VAC20-120-20 – Definitions

Provide definitions for the following terms – challenge, noncriminal justice agencies or individuals, originating agency identifier, and superintendent

Revise language and/or correct Code citations for definitions of the following terms: Central Criminal History Exchange (CCRE), criminal history record information, criminal intelligence information, modify

6VAC20-120-30 – Applicability

DCJS no longer regulates the criminal history records of noncriminal justice agencies or individuals. This amendment was made as a result of advice from DCJS's representative from the Office of the Attorney General.

6VAC20-120-40 – Collection

The clerk of each circuit court and district court is no longer required to notify the CCRE of the final action of the case. The amendments reflect the current practices according to CCRE 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 CCRE in reference to the query and dissemination of criminal history record information. Language allowing a local law-enforcement agency to provide criminal history record information without making an inquiry to the CCRE was removed from the regulation. Additional changes relating to “noncriminal justice agencies” was removed as a result of advice from DCJS's representative from the Office of the Attorney General. A state issued identification card with a photo was added to the list of acceptable identification for record requestors. Confusing language regarding the message that must accompany disseminated records was removed. Language stating the use of criminal history records information shall be limited to the purpose for which the information was given was included in this section.

6VAC20-120-60 - Access and review

These amendments reflect the current practices according to the CCRE and the Virginia Criminal Information Network.

6VAC20-120-70 – Challenge

These amendments reflect the current procedures in accordance with the CCRE.

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. An amendment was made to this section requiring agencies notify the state police within 60 days rather than 120 days of action taken when notified of an expungement.

6VAC20-120-110 – Applicability

The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation. The term working day was changed to business day throughout this section.

6VAC20-120-120 Responsibilities

The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.

6VAC20-120-130 Physical access

The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.

6VAC20-120-140 Personnel

The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.

6VAC20-120-160 Computer operations

Criminal justice agencies are required to designate a system administrator to maintain and control authorized users accounts, system management, and the implementation of security measures. The language has been changed from should designate to shall designate to clarify this requirement. The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages to the public and the Commonwealth is clarification and standardization of the process for releasing records and protection against unlawful dissemination of criminal history record information. The proposed amendments provide concise and standardized process for how personal criminal history record information is handled amongst state and local law enforcement agencies within the Commonwealth. The proposed revisions are intended to protect the safety and welfare of citizens by preventing the unlawful dissemination of a citizen's criminal history record information. Improper

dissemination of criminal history record information has the potential to adversely impact a citizen's ability to obtain federal student loans, employment, promotions, and housing.

There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 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.

Family impact

Please assess the impact of this 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.

This regulation does not have an impact on the institution of the family or family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
6VAC20-	The definition of Central	The acronym CCRE has been	The acronym CCRE is

120-20	Criminal Records Exchange includes the acronym CCRE	removed from the definition	used throughout the agency background document but was not used within the language in the actual regulation.
6VAC20-120-50 (A)(5)	The words "of the Code of Virginia" and "of the Code" were struck after the Code citation §19.2-389	The words "of the Code of Virginia" were inserted after the Code citation §19.2-389	Consistency with the other Code references throughout the regulation
6VAC20-120-80(D)	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 tape, disk or hard copy printouts.	Removed the language referencing tape and disk. Language was added referencing hard drives and USB drives.	Tapes and disks are antiquated types of storage and are no longer used.
6VAC20-120-120	Title 15.1 of the Code Virginia	Title 15.2 of the Code of Virginia	Title 15.1 is no longer a Title the correct Title is 15. 2

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response

As posted in the NOIRA an opportunity for public comment was provided on 10/21/2015. No members of the public appeared on this date to make public comments.

No public comments were received on Town Hall and no comments were submitted directly to the agency.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section	Proposed new section	Current requirement	Proposed change and rationale

number	number, if applicable		
6VAC20-120-10		Statement of Purpose	Repeal this section. Per the staff from the regulatory information system purpose statements are no longer being included in regulations.
6VAC20-120-20		Definition of "Central Criminal Records Exchange (CCRE)" references a dated and incorrect <i>Code</i> citation § 9-170 22	The definition now references the correct <i>Code</i> citation: Chapter 23 of Title 19.2 of the <i>Code of Virginia</i>
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		The term challenge is not currently defined.	"Challenge" means an individual's objection to his criminal history record information.
6VAC20-120-20		Definition Criminal history record information	Corrects the Code sections referenced
6VAC20-120-20		Definitions... "Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity.	Revised to add clarity to definition. "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.
6VAC20-120-20		The term noncriminal justice agencies or individuals is not currently defined.	"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 §19.2-389(A) of the Code of Virginia.
6VAC20-120-20		The term originating agency identifier is not currently defined.	"Originating Agency Identifier (ORI)" means a unique nine character designation used to identify the agency that places records in the Virginia Criminal Information Network (VCIN).
6VAC20-120-20		The term superintendent is not currently defined.	"Superintendent" means the chief administrative officer of the Virginia Department of State Police.
6VAC20-120-30(3)		3. Noncriminal justice agencies or individuals who are eligible under the provisions of § 19.2-389 of the Code of Virginia to receive limited criminal history record information.	Revise to remove number 3; Per advice from DCJS's representative from the Office of the Attorney General, DCJS does not have authority to audit "noncriminal justice agencies". The paragraphs were given numbers and letters to allow a reader to cite and make

			reference as necessary to specific sections and paragraphs within the regulation.
6VAC20-120-40(B)(2)		Felonies or offenses punishable as a misdemeanor under Title 54.1 of the Code of Virginia	The correct Code Title is provided. Felonies or offenses punishable as a misdemeanor under Title 18.2 of the Code of Virginia
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.
6VAC20-50			The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.
6VAC20-120-50(A)		Unlawful dissemination contrary to the provisions of this chapter is also a Class 2 misdemeanor (see § 9-195 of the Code of Virginia).	Correct Code reference inserted. 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>6VAC20-120-50 (B)(1)(a)</p>		<p>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 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>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.</p> <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>It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to 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)(a)</p>		<p>Requires an individual to provide identification, if there is more than one name match. to include at</p>	<p>The language permitting a state issued identification card with photo was added as an option to the list of identification that can be provided.</p>

		<p>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, or (v) military identification.</p> <p>...the individual shall provide a sworn written request from the record subject naming the requester as a recipient...</p>	<p>Language has been added clarifying written requests for criminal history records must include the full name, date of birth, race, and sex of the record subject.</p>
6VAC20-120-50 B.2.b.(3)		<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 disseminator, or the dissemination shall not be made.</p>	<p>Revise to remove number (3); Per advice from DCJS's representative from the Office of the Attorney General, DCJS does not have authority to audit "noncriminal justice agencies".</p>
6VAC20-120-50 B.3		<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</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</p>

		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).	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).
6VAC20-120-50(4)		Requires one of the following three messages to be printed on records. <u>"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."</u> The message is listed three times but it is the same message.	Revised language to clarify the same statement (" <u>UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES.</u> ") is sent when records are disseminated regardless of who makes the request
6VAC20-120-50 B.5		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.	Revise to add clarification; agencies are only required to maintain a log of secondary dissemination. 5. Maintaining a dissemination log. A record of all secondary disseminations...
6VAC20-120-50-B.5.b		b. Requesting agency name and address;	Revise to provide clarity; agencies are given a unique identifier. b. The agency ORI;
6VAC20-120-50- C			A new section C was added to reiterate the importance of ensuring criminal history record information is not disseminated beyond its purpose. "Use of criminal history record information disseminated to noncriminal justice shall be limited to the purposes for which it was given and may not be disseminated further."
6VAC20-		An individual or his	An individual is required to complete a

60		<p>attorney, upon providing proper identification and in the case of an attorney representing a client, with a sworn written request from the record subject, shall have the right to inspect criminal history record information being maintained on that individual by the Central Criminal Records Exchange or other criminal justice agencies. Completing a request form may be required by the Central Criminal Records Exchange or the local criminal justice agency.</p>	<p>request form. The language was amended from "may" to "shall" be required</p> <p>Completing a request form shall be required by the Central Criminal Records Exchange or the local criminal justice agency.</p>
6VAC20-120-70 E		<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 to meet standard required by State Police; Virginia State Police requires agencies to expunge and seal a record within 60 day not the 120 currently listed in the regulation.</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>
6VAC20-120-80 D			<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</p>

			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.
6VAC20-120-100		Uses the term working days.	This was a technical change the term "working day" was changed to "business day" throughout the section.
6VAC20-120-110		These regulations are applicable to criminal justice information systems operated within the Commonwealth of Virginia. These regulations on security are not applicable to court records or other records expressly excluded by § 9-184, B of the Code of Virginia.	Corrected the Code reference These regulations are applicable to criminal justice information systems operated within the Commonwealth of Virginia. These regulations on security are not applicable to court records or other records expressly excluded by § 9.1-126 of the Code of Virginia. The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation. The term working day was changed to business day throughout this section.
6VAC20-120-120		Paragraphs were not numbered	The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.
6VAC20-120-130		Paragraphs were not numbered	The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.
6VAC20-120-140		Paragraphs were not numbered	The paragraphs were given numbers and letters to allow a reader to cite and make reference as necessary to specific sections and paragraphs within the regulation.
6VAC20-120-160		Criminal justice agencies having automated criminal history record files should designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures.	Criminal justice agencies are required to designate a system administrator to maintain and control authorized users accounts, system management, and the implementation of security measures. The language has been changed from should designate to shall designate to clarify this requirement.