

**FINAL REPORT OF THE VIRGINIA STATE CRIME  
COMMISSION ON**

**JUVENILE RECORDS RETENTION  
STUDY**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 38**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1996**





# COMMONWEALTH of VIRGINIA

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December 12, 1995

**TO: The Honorable George Allen, Governor of Virginia, and Members of the General Assembly:**

House Joint Resolution 473, agreed to by the 1995 General Assembly, directed the Virginia State Crime Commission to study the retention of juvenile criminal history records, and to submit its findings and recommendations to the Governor and the 1996 session of the General Assembly.

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission in 1995. I have the honor of submitting herewith the study report.

Respectfully submitted,

  
Elmo G. Cross, Jr.  
Chairman

EGC/dgs



**MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION 1995**

**From the Senate of Virginia:**

Elmo G. Cross, Jr., Chairman  
Janet D. Howell  
Edgar S. Robb

**From The House of Delegates:**

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Robert C. Bobb  
Robert F. Horan, Jr.  
Rev. George F. Ricketts, Sr.

**Attorney General:**

James S. Gilmore, III

## **Law Enforcement Subcommittee**

### **Crime Commission Members**

The Honorable Robert F. Horan, Chairman  
Delegate James F. Almand  
Delegate Howard E. Copeland  
Delegate Jean W. Cunningham  
Delegate Raymond R. Guest  
Senator Janet D. Howell  
Rev. George F. Ricketts, Sr.  
Senator Edgar S. Robb  
Senator Elmo G. Cross, Jr., ex officio

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# **Juvenile Records Retention Study**

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## Juvenile Records Retention Study

### **I. Authority for Study**

During the 1995 session of the Virginia General Assembly, Delegate Howard E. Copeland sponsored House Joint Resolution No. 473 (HJR 473) requesting and authorizing the Virginia State Crime Commission to "study the retention of juvenile criminal history records and to develop appropriate legislative recommendations for the 1996 Session of the General Assembly." The purpose of the study is "to address the issue of retention and access to certain juvenile conviction records for purposes of introduction at the sentencing phase of a bifurcated jury trial and for use in enhanced penalty sentencing under the sentencing guidelines." (See Appendix A.)

While the relevant Virginia Code sections had been amended or added by the legislature in 1994 to allow for such consideration of juvenile records for sentencing purposes, there were no provisions made for the retention of juvenile records or access to these records by the appropriate authorities.

Code of Virginia § 9-125 establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." Code of Virginia § 9-127 provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate its recommendations to the Governor and the General Assembly." Code of Virginia § 9-134 authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of juvenile records retention as requested and authorized by HJR 473.

### **II. Members Appointed to Serve**

At the April 27, 1995 meeting of the Crime Commission, Chairman Elmo G. Cross, Jr., selected Robert F. Horan, Jr., to serve as Chairman of the Law Enforcement Subcommittee, which was directed to conduct the juvenile records retention study. The following members of the Crime Commission were selected to serve on the subcommittee:

The Honorable Robert F. Horan, Fairfax, Chairman  
Delegate James F. Almand, Arlington  
Delegate Howard E. Copeland, Norfolk  
Delegate Jean W. Cunningham, Richmond

Delegate Raymond R. Guest, Front Royal  
Senator Janet D. Howell, Reston  
Rev. George F. Ricketts, Sr., Hallieford  
Senator Edgar S. Robb, Charlottesville  
Senator Elmo G. Cross, Jr., Mechanicsville, ex officio

### III. Executive Summary

During the 1995 session of the Virginia General Assembly, Delegate Howard E. Copeland of Norfolk introduced House Joint Resolution 473, requesting that the Virginia State Crime Commission study the current process of juvenile records retention and make appropriate legislative recommendations to ensure access to certain juvenile conviction records ". . . for purposes of introduction of such records at the sentencing phase of a bifurcated jury trial and for use in enhanced penalty sentencing under the sentencing guidelines." At the April 27, 1995 meeting of the Crime Commission, Chairman Elmo G. Cross, Jr., selected Robert F. Horan, Jr., to serve as Chairman of the Law Enforcement Subcommittee, which was directed to conduct the juvenile records retention study.

At the May 23, 1995 meeting of the subcommittee, Staff Attorney Dana Schrad presented an overview of the study requested. Ms. Schrad's presentation included a review of the current Code provisions pertaining to juvenile records retention. She was directed by the subcommittee to continue her review and present a suggested legislative package for the subcommittee's review at the October meeting.

Ms. Amy Curtis, Legal Analyst, presented a suggested legislative amendment package at the October 3, 1995 meeting. At the November 14, 1995 meeting, the subcommittee reviewed and adopted the draft report developed by staff. At the request of staff, the subcommittee voted to approve the publication of the report as a House document, pending final Commission approval. On December 12, 1995, the Crime Commission approved the study recommendations and adopted the report on the retention of juvenile records.

### IV. Background

#### A. Introduction

With the passage of legislation creating the bifurcated trial and the development of sentencing guidelines, both of which included juvenile records in their consideration for sentencing, the need arose to ensure that juvenile records were made a part of the Central Criminal Records Exchange (CCRE) and that judges, juries and Commonwealth's Attorneys had access to those records for sentencing

purposes. Delegate Howard Copeland sponsored House Joint Resolution No. 473 (HJR 473) during the 1995 General Assembly session, requesting that the Crime Commission review the current statutory provisions and develop legislative amendments that would enable the use of juvenile records at sentencing proceedings by the appropriate officials.

The current Code of Virginia provisions regarding juvenile records require the reporting of some juvenile records to the Central Criminal Records Exchange (CCRE), but under Code of Virginia § 19.2-389.1, dissemination of juvenile records only was permitted for limited purposes, which did not include the use by juries, judges or Commonwealth's Attorneys for sentencing purposes. Several Code amendments were necessary to ensure the proper retention of certain juvenile records by juvenile authorities, the reporting of these records to CCRE, and the availability of the records to juries, judges, and Commonwealth's Attorneys for sentencing purposes.

**B. Issues Involved**

A review of the current Code of Virginia provisions raised several issues for consideration in regard to juvenile records:

- **What juvenile dispositions, i.e., what crimes committed by juveniles, should become part of the juvenile "record" on the Central Criminal Records Exchange (CCRE)?**

Code of Virginia §16.1-299 currently requires that a law enforcement agency prepare CCRE fingerprint cards for reporting purposes, when a juvenile, age 14 or older, is charged with a delinquent act that would be a felony if committed by an adult. Fingerprinting also is required when juveniles age 13 or older commit certain felony offenses, including bodily wounding, use of a firearm in the commission of a felony, attempted poisoning, extortion, robbery, rape, forcible sodomy, object sexual penetration, grand larceny, burglary, arson and related crimes, or murder. There are no reporting requirements for those crimes that would be misdemeanors if committed by an adult.

- **At what minimum age should juvenile dispositions become part of a CCRE record?**

Currently, age 13 is the minimum age for certain felony offenses (enumerated above) and age 14 for all other crimes that would be felonies if committed by an adult.

- **When should juveniles be fingerprinted for alleged offenses to ensure forwarding of fingerprints with court disposition reporting forms?**

Law enforcement officers currently fingerprint juveniles, when required, upon taking them into custody under Code of Virginia § 16.1-299.

- **Who should bear the responsibility of forwarding dispositions to CCRE or of destruction of CCRE reporting forms should the juvenile be found not guilty?**

Under Code of Virginia §§ 16.1-299 and 19.2-390, the clerk of the juvenile court is required to make a dispositional report and forward the juvenile's fingerprints to CCRE if the juvenile is found guilty of the alleged offense. If the juvenile is found not guilty, the clerk of the juvenile court is charged with the destruction of those CCRE reporting forms and fingerprints.

- **Should the policy regarding expungement of juvenile records, contained in Code of Virginia § 16.1-306, be changed to accommodate the new use for these records in sentencing proceedings?**

Code of Virginia § 16.1-306 provides for the automatic expungement of juvenile records, for offenses that would be felonies if committed as an adult, at the age of 29. All other offenses may be expunged at age 19, if five years have elapsed since the juvenile's last contact with the court. Except in cases where a juvenile age 14 or older at the time of the offense was found guilty of a delinquent act that would be a felony if committed as an adult, an individual may petition for expungement of all records pertaining to his/her case after 10 years since the date of the last hearing in juvenile court (which may permit earlier expungement of records than that provided for with automatic expungement at age 29.) If a juvenile has been found not guilty of an act of delinquency or a traffic offense, or if the proceeding was dismissed, that juvenile may file a motion requesting the destruction of any records pertaining to the proceeding.

- **To whom should such juvenile records be made available?**

Dissemination of juvenile records maintained by CCRE is currently permitted only (1) to determine eligibility to purchase a handgun, (2) to aid in preparation of pre-sentence and post-sentence investigation reports, (3) to aid court service units in serving juveniles, and (4) to compare fingerprints in an investigation.

## V. Study Process

After reviewing the current Code provisions and identifying the issues involved, the staff began to develop a draft legislative amendment package that would become the basis for discussion with the various agencies and professionals involved. Captain Lewis Vass, from the Office of Records Management, Virginia

State Police, was vital in the development of this draft package, due to his knowledge of the Central Criminal Records Exchange and the elements that would be essential in receiving and processing juvenile records and in making them available for sentencing purposes.

In developing the draft package, the various issues discussed above needed to be reviewed and decisions made. To simplify the process for law enforcement and court personnel, a heavy emphasis was placed on creating a record retention policy that would parallel that of the adult system. By creating such a draft proposal, which included suggested amendments as well, that proposal could serve as the starting point of discussion for affected agencies.

A. Creating the Draft Proposal

The issues involved were addressed in the following manner:

- **What juvenile dispositions, i.e., what crimes committed by juveniles, should become part of the juvenile "record?"**

For discussion purposes, it was decided by staff that juvenile dispositions should be reported to CCRE, and fingerprints taken, for those offenses "for which an adult could receive a jail sentence," i.e., all felonies and Class 1 and 2 misdemeanors. This language paralleled the fingerprinting requirements for adults found in Code of Virginia § 19.2-74. The enumeration of offenses contained in Code of Virginia § 16.1-299 was seen as overburdensome and confusing. By paralleling the adult system, this change would simplify the process for law enforcement officers and court personnel.

- **At what minimum age should juvenile dispositions become part of a CCRE record?**

While arguments could be made for virtually any age below the age of majority, the staff chose to borrow age 13 from Code of Virginia § 16.1-299, which requires fingerprinting of juveniles age 13 or older who are arrested for certain enumerated felony offenses, as the minimum age at which juvenile dispositions, for offenses for which an adult could receive a jail sentence, would be reported to CCRE and become part of the CCRE juvenile record.

- **When should juveniles be fingerprinted for alleged offenses to ensure forwarding of fingerprints with court disposition reporting forms?**

Discussion centered on whether fingerprinting should be conducted when the juvenile was taken into custody or at disposition by court personnel. It was quickly recognized that requiring fingerprinting at disposition would be a new

obligation for court personnel and facilities. Fingerprinting by law enforcement personnel upon taking a juvenile into custody was found to be the best alternative, providing assurance that the fingerprint records could be easily created and would follow the juvenile throughout the process.

Because juveniles would be printed for those same offenses that adults would be fingerprinted, law enforcement personnel could adjust easily to the change. Juveniles may not be released on a summons for these offenses under the current Code provisions, so adding fingerprinting at this stage would only add an additional step in the process of taking a juvenile into custody. In addition, the introduction of mobile fingerprinting kits and their ready availability to law enforcement personnel make this the most logical stage in the juvenile process to require fingerprinting. Law enforcement officers currently are responsible for fingerprinting most juveniles who are arrested for most offenses that would be felonies if committed by an adult, so this would only expand the fingerprinting requirements for those who already are required to do it.

- **Who should bear the responsibility of forwarding dispositions to CCRE or of destruction of CCRE reporting forms should the juvenile be found not guilty?**

Because clerks of the juvenile courts currently bear this responsibility and because law enforcement officers often will not follow the juvenile all the way through the process to disposition, clerks should continue to bear the responsibility of forwarding these dispositions, on the dispositional reporting cards provided by law enforcement officers, to CCRE or destroying those CCRE reporting forms should the juvenile be found not guilty or the proceeding dismissed.

- **Should the policy regarding expungement of juvenile records be changed to accommodate the new use for these records in sentencing proceedings?**

For draft purposes, the staff chose to follow the adult provisions regarding expungement, contained in Code of Virginia § 19.2-392.2(E), and permit expungement of juvenile records upon petition by those individuals age 29 or older, eliminating the automatic expungement procedure that currently exists for juvenile records. Such petitions would be left to the discretion of the court, as is the case with adults. For those juveniles who were found not guilty, the provisions for filing a motion requesting destruction of records of the proceedings, contained in Code of Virginia § 16.1-306(D), should be maintained.

- **To whom should such juvenile records be made available?**

In order to provide for the continued confidentiality of juvenile records, language was drafted for the amendment of Code of Virginia § 19.2-389.1 to permit access to juvenile records on CCRE by juries, judges and Commonwealth's

Attorneys for sentencing purposes. Access to juvenile records would not be extended to potential employers; only law enforcement authorities using the records for sentencing purposes would have access to these records from CCRE. There would be no change in the confidentiality provisions contained in Code of Virginia § 16.1-305. Juvenile records would not be released to the general public, except when ordered by the court under Code of Virginia § 16.1-305(A)(4). Access to juvenile law enforcement records also is restricted only to necessary persons under Code of Virginia § 16.2-301.

B. Review of the Draft Proposal

The draft proposal was forwarded to several individuals, representative of the affected agencies and officials, for review and comment: Judge Nina Peace, Hanover Juvenile and Domestic Relations Court; Mr. William Muse, Department of Youth and Family Services; William Burch, Commonwealth's Attorney for Loudoun County; Captain Lewis Vass, Department of State Police; Jay Cochran, Executive Director, Virginia Association of Chiefs of Police; John Jones, Executive Director, Virginia Sheriffs Association; Ken Mittendorf, Office of the Supreme Court; and Iva Newman, Clerk, Danville Juvenile and Domestic Relations Court.

Comments received included the adding of a time requirement of within 10 days of the juvenile arrest for filing of the CCRE dispositional reporting form and fingerprints by the arresting officer. Such a time limit was added to the draft submitted for subcommittee review. Concerns were raised about the permitting of expungement of juvenile records upon petition for violent offenses. Another concern was the fiscal impact, including clerical hours and storage space requirements, for retaining the juvenile records since automatic expungement would be eliminated under the proposed system.

At the Law Enforcement Subcommittee meeting on October 3, 1995, Amy M. Curtis presented the suggested legislative amendment package along with those concerns that had been raised. The Subcommittee reviewed and adopted the draft package developed by staff. At the request of staff, the subcommittee voted to approve the publication of the report as a House document, pending final Commission approval.

After the Subcommittee meeting, additional individuals came forward with concerns about the fiscal impact the legislative amendments would have on juvenile clerks' offices. To respond to these concerns, the staff suggested the report be amended to include a possible budget impact statement. At the November 14, 1995 meeting, the subcommittee reviewed the final draft of the report, and voted to approve the publication of the report as a House document, pending final Commission approval. On December 12, 1995, the Crime Commission approved the study recommendations and adopted the report.

## VI. Findings and Recommendations

### Findings:

Several amendments are necessary to the Virginia Code provisions pertaining to juvenile records to ensure their retention and availability for sentencing purposes at bifurcated trials and under the sentencing guidelines.

Dispositions and fingerprints should be forwarded to the Central Criminal Records Exchange (CCRE) for all juveniles, age 13 or older, who commit offenses for which adults could receive a jail sentence, i.e., felonies and Class 1 and 2 misdemeanors. Law enforcement officers should fingerprint the juvenile, who is charged with an offense for which an adult could receive a jail sentence, at arrest and file the fingerprints on the appropriate court dispositional reporting form with the juvenile court clerk's office within 10 days of the arrest.

If the juvenile is found guilty of the offense, the fingerprints and disposition should be forwarded to CCRE by the juvenile court clerk. If no petition is filed by law enforcement officials or if the juvenile is found not guilty or the proceeding is dismissed, the juvenile court clerk should destroy those fingerprints and dispositional reporting forms within 60 days.

Juvenile records only should be expunged upon the granting of a petition by the court. Petitions may be filed by individuals who have reach the age of 29 without any adult convictions. Petitions should be governed by the same standards that are applicable to adult record expungements contained in Code of Virginia § 19.2-392.2(E.) Individuals should retain the option to petition for expungement of records for juveniles found innocent of charges or where charges were dismissed at any time thereafter.

The juvenile records maintained on CCRE should be disseminated to judges, juries and Commonwealth's Attorneys for sentencing purposes only. An appropriate amendment should be made to the bifurcated jury statute that delineates that only those juvenile offenses for which an adult may receive a jail sentence will be made a part of the "record of conviction" presented by the Commonwealth at the sentencing proceeding.

### Recommendation 1:

Amend Code of Virginia § 16.1-299 (A): Fingerprints for a juvenile thirteen years of age or older who is charged with a delinquent act for which an adult may receive a jail sentence shall be taken and filed with the juvenile court by law enforcement officers on forms provided by the Central Criminal Records Exchange within 10 days of the arrest. Photographs also may be taken and



filed by local law enforcement officers.

**Recommendation 2:**

Amend Code of Virginia § 16.1-299(C)(4): If (i) a juvenile age fourteen years of age or older is certified to the circuit court pursuant to Article 7 (Code of Virginia § 16.1-269.1 et seq.) of this chapter and is adjudicated delinquent or found guilty as an adult of the offense charged or (ii) a juvenile age thirteen years of age or older is adjudicated delinquent or found guilty in juvenile court of an offense for which an adult may receive a jail sentence, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court that heard the case.

**Recommendation 3:**

Amend Code of Virginia § 16.1-306: Provide that a person who has reached the age of 29 without any adult convictions may file a motion requesting the destruction of all records pertaining to his case. Notice of such a motion shall be given to the attorney for the Commonwealth. The court shall hold a hearing on the matter. If the court finds that the continued existence and possible dissemination of information relating to the adjudication of delinquency of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition.

**Recommendation 4:**

Retain provisions in Code of Virginia § 16.1-306(D) relating to expungement of records for juveniles found innocent of charges.

**Recommendation 5:**

Amend Code of Virginia § 19.2-295.1: Delineate that only those adjudications of delinquency for those offenses for which an adult may receive a jail sentence will be made a part of the "record of conviction" presented by the Commonwealth at the sentencing proceeding by the jury.

**Recommendation 6:**

Amend Code of Virginia § 19.2-389.1: Juvenile record information maintained in the Central Criminal Records Exchange pursuant to the provisions of Code of Virginia § 16.1-299 shall be disseminated only (i) to

make the determination as provided in Code of Virginia §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm, (ii) to aid in the preparation of a pre-sentence or post-sentence investigation report pursuant to Code of Virginia § 19.2-264.5 or Code of Virginia § 19.2-299, (iii) to aid all court service units serving juvenile delinquent offenders, (iv) to aid juries in sentence proceedings as provided in Code of Virginia § 19.2-295.1. (v) to aid judges and Commonwealth's Attorneys in the determination of the guidelines for appropriate sentencing for a felony conviction. and (vi) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer.

**Recommendation 7:**

Amend Code of Virginia § 19.2-390(C): The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of any adjudication of delinquency based upon an act for which an adult could receive a jail sentence (which includes all felonies and Class 1 and 2 misdemeanors, and unclassified offenses that carry a sentence of incarceration), provided fingerprints of the juvenile were required to be taken pursuant to subsection A of Code of Virginia § 16.1-299.

**Recommendation 8:**

Consideration of fiscal impact: The long-term fiscal impact that such retention of juvenile records may have on juvenile court clerks' offices, both as to storage facility requirements and clerical hours in maintaining such records, destroying such records, and forwarding dispositions to CCRE should be studied and considered prior to the passage of legislation requiring such retention.

**VII. Conclusion**

The above recommended amendments to the Code of Virginia provisions regarding juvenile records should create an appropriate system for ensuring the availability of juvenile records for the sentencing phase of bifurcated jury trials and for the use by judges and Commonwealth's Attorneys in determining the appropriate sentences for felonies under the Sentencing Guidelines. The approach taken seeks to balance the need to have juvenile dispositions for sentencing with the policy of protecting the confidentiality of these records as much as possible. With a uniform system in place, these records should be available in the future when required by the appropriate authorities.

## **VIII. Acknowledgements**

The members extend special thanks to the following agencies and individuals for their cooperation and valuable assistance to this study effort:

Delegate Howard Copeland, Norfolk

The Honorable William Burch  
Commonwealth's Attorney, Loudoun County

Mr. Jay Cochran, Executive Director  
Virginia Association of Chiefs of Police

Mr. John Jones, Executive Director  
Virginia Sheriffs Association

Mr. Ken Mittendorf  
Office of the Supreme Court of Virginia

Mr. William Muse  
Department of Youth and Family Services

Ms. Iva Newman, Clerk  
Danville Juvenile and Domestic Relations Court

The Honorable Nina Peace  
Judge, Hanover Juvenile and Domestic Relations Court

Captain Lewis Vass, Records Management  
Virginia Department of State Police



## **Appendix A**



# GENERAL ASSEMBLY OF VIRGINIA -- 1995 SESSION

## HOUSE JOINT RESOLUTION NO. 473

*Directing the Virginia State Crime Commission, in consultation with the Commission on Youth, to study retention of juvenile criminal history records and to develop appropriate legislative recommendations to address the effect of juvenile record expungement on criminal justice.*

Agreed to by the House of Delegates, February 23, 1995

Agreed to by the Senate, February 21, 1995

WHEREAS, the Virginia General Assembly passed legislation in 1994 which allows for the use of a bifurcated trial procedure in all jury felony cases; and

WHEREAS, the bifurcated trial procedure allows a jury to receive the defendant's record of prior convictions, including his juvenile record of offenses which would be classified as felonies if committed by an adult; and

WHEREAS, the legislation abolishing parole established a Sentencing Commission to develop sentencing guidelines for use by the judiciary; and

WHEREAS, the initial sentencing guidelines enacted provide for enhanced penalties for certain violent offenses or a history of convictions for violent offenses, including violent juvenile offenses; and

WHEREAS, current Virginia law provides for the expungement of juvenile records after a period of time, with records in most cases destroyed before the offender's 29th birthday; and

WHEREAS, prior to expungement, such records are protected in the Central Criminal Records Exchange by law governing confidentiality of juvenile records; and

WHEREAS, the lack of access to juvenile criminal records could affect the sentencing outcome of a bifurcated felony trial and could affect penalties imposed for violent offenses by potentially representing the defendant's criminal past incompletely; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission, in consultation with the Commission on Youth, be directed to study retention of juvenile criminal history records and to develop appropriate legislative recommendations for the 1996 Session of the General Assembly to address the issue of retention and access to certain juvenile conviction records for purposes of introduction at the sentencing phase of a bifurcated jury trial and for use in enhanced penalty sentencing under the sentencing guidelines.

The Crime Commission shall be provided technical assistance by the Office of the Attorney General, the State Police, the Department of Youth and Family Services, the Commonwealth Attorneys' Services Council, and the Office of the Executive Secretary of the Supreme Court.

The Crime Commission shall complete its work in time to submit the legislative proposals to the 1996 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

