

**REPORT OF THE
DEPARTMENT OF CRIMINAL JUSTICE SERVICES ON**

**THE CRIMINAL HISTORY RECORDS
IMPROVEMENT TASK FORCE**

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



SENATE DOCUMENT NO. 4

**COMMONWEALTH OF VIRGINIA
RICHMOND
1996**



COMMONWEALTH of VIRGINIA

Department of Criminal Justice Services

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February 17, 1995

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

On behalf of the Criminal History Records Improvement Task Force, I am pleased to provide you with the report called for by Senate Joint Resolution 98 adopted by the General Assembly in 1994.

The recommendations made by the CHRI Task Force reflect not only the review of current criminal history reporting law and practices in Virginia in response to SJR 98 but also the intensive work of the Task Force in this area for the past three years.

I believe that the recommendations are reasonable, achievable and consistent with the Task Force plan to improve criminal history record reporting in the Commonwealth.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "B. Morris".

Bruce C. Morris

**1994 SESSION
ENGROSSED**

1 LD8780728

SENATE JOINT RESOLUTION NO. 98

Senate Amendments in [] — February 8, 1994

4 *Requesting the Criminal History Records Improvement Task Force [of the Department of*
5 *Criminal Justice Services] to review criminal history record reporting.*

6
7 **Patron—Robb**
8

9 **Referred to the Committee on Rules**
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11 WHEREAS, the safety of law enforcement officers and the general public is heavily
12 dependent upon the availability of timely, accurate, and complete criminal history
13 information on offenders and those suspected of committing offenses; and

14 WHEREAS, many sections of the criminal code mandate increased penalties for repeat
15 offenders and enforcing these laws is contingent upon knowing the past records of
16 offenders; and

17 WHEREAS, Commonwealth's attorneys must have the accurate and complete past record
18 of an offender to properly prosecute an individual; and

19 WHEREAS, the Parole Board is dependent on its ability to access accurate and
20 complete criminal history records to ensure public safety through its risk based parole
21 decision-making process; and

22 WHEREAS, the correctional system utilizes criminal history records to assist with
23 inmate time computation of recidivism, and to determine the appropriate level of inmate
24 classification and custody level; and

25 WHEREAS, the judiciary must have the accurate and complete past record of an
26 offender to properly sentence an offender, including the completion of the forms associated
27 with the Commonwealth's sentencing guideline program; and

28 WHEREAS, the program that the Commonwealth established in 1989 to conduct an
29 instant background check on persons seeking to purchase certain firearms relies heavily on
30 knowing the exact past record of an offender; and

31 WHEREAS, unless probation and parole officers have complete criminal history made
32 available to them they must consume an inordinate amount of staff resources by manually
33 searching for these records; and

34 WHEREAS, it is recognized that concise offender records require the accurate, timely
35 and complete reporting of arrest, disposition and correctional status information to the
36 CCRE at State Police Headquarters; and

37 WHEREAS, a study by the Criminal History Records Improvement Task Force [of the
38 Department of Criminal Justice Services] relating to matters of data quality and
39 improvement of disposition and correctional status [has found problems related to the
40 reporting of arrests, disposition and correctional status] ; and

41 WHEREAS, it has been determined that some of the difficulties related to data quality
42 involve difficulties in current law related to reporting responsibilities; now therefore, be it

43 RESOLVED by the Senate, the House of Delegates concurring, That the Criminal
44 History Records Improvement Task Force [of the Department of Criminal Justice Services
45] review existing legislative reporting requirements related to criminal history records, and
46 make recommendations for improvement.

47 The Criminal History Records Improvement Task Force shall complete its work in time
48 to submit its findings and recommendation to the Governor and the 1995 Session of the
49 General Assembly as provided in the procedures of the Division of Legislative Automated
50 Systems for processing legislative documents.

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CRIMINAL HISTORY RECORDS IMPROVEMENT TASK FORCE MEMBERS

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"Let me emphasize that this (improving the quality of criminal history records) is not an academic exercise, undertaken to meet the appetite of the research community. There is a straight-line relationship between complete and accurate criminal records and an effective attack upon violent crime."

-former U.S. Attorney General Richard Thornburgh, (Jan. 1992)

THE CRIMINAL HISTORY RECORDS SYSTEM

The importance of criminal history records cannot be overstated. These records impact every level of the criminal justice system. They are used for decision-making in police investigations, bail, sentencing, for enhanced penalties, probation and parole, and, more frequently in the last few years, for background checks for the private sector.

It is important that criminal history records be complete, accurate and timely if they are to meet these varied needs. With the passage of "three strikes and you're out" legislation the availability of complete, accurate and timely criminal history records looms as an officer safety issue. The criminal knows how many felony convictions he has; it is imperative that the officer also know.

BACKGROUND: EARLIER EFFORTS TO IMPROVE THE CRIMINAL HISTORY RECORDS SYSTEM

In 1976 the General Assembly charged the Criminal Justice Services Commission (CJSC) - the precursor agency to the Dept. of Criminal Justice Services (DCJS) - to review State and local submissions to the Central Criminal Records Exchange (CCRE) to insure the accuracy and timeliness of information being submitted.

Historically, these audits have focused primarily on the areas of physical security; logging of record information and dissemination; comparison of source documents and rap sheets.

In 1980 the CJSC audit focused on submission and maintenance procedures, confidentiality issues and the need for record completeness.

In 1983 the Dept. of State Police initiated a study to ascertain the cause and extent of absence of disposition information. They found that 54% of missing dispositions were the consequence of failure of the courts to report them to the CCRE.

In 1988 the first comprehensive data quality audit was undertaken by DCJS. The audit was designed to ascertain if all pertinent information recorded on the CCRE form was included on the rap sheet; to see if erroneous information on the rap sheet was the result of data entry errors; to see if procedures for

entry of information from the CCRE form were appropriate for the data recorded on the form.

- It was concluded that errors in data receipt and data entry by Virginia State Police were minimal.
- The highest percentage (68.4%) of missing dispositions was for the year being studied-1988.
- Only 24% of dispositions were missing for 1987 and only 16.3% were missing for 1986.
- Samples for the years 1968 to 1985 resulted in an average of 13% missing dispositions per year. (Prior to 1968, disposition reporting was not mandatory)

Direct indictment reporting was, and continues to be, a major reporting problem area. The 1988 audit showed that 50% of direct indictments were not reported to the CCRE. A survey of 121 Commonwealth's Attorneys indicated that over 40,000 indictments were processed through grand juries that year and approximately 22% of them were direct indictments.

In 1989 DCJS undertook an analysis of the CCRE data base to see if CCRE forms were being submitted in a timely manner. Approximately 40% of the forms were not being submitted properly.

In most instances where the audits suggested a change in procedures, etc. these changes were initiated to try to improve reporting compliance. In most instance improvements were noted, but there is still too high a level non-compliance:

- Arrest information on CCRE forms is often not submitted, or, if submitted, is submitted late;
- Court disposition information is also often not reported, or reported late;
- Direct indictment information is significantly under-reported

BACKGROUND: THE CRIMINAL HISTORY RECORDS IMPROVEMENT TASK FORCE

The Edward R. Byrne Memorial Grant program requires each state which receives federal Anti-Drug funds to allocate at least five percent of these funds to improve criminal history records. A Criminal History Records Improvement (CHRI) Task Force was created in Virginia in the Fall of 1992.

The Bureau of Justice Assistance (BJA) provided guidance regarding goals for automation and for system improvements to assure completeness, accuracy and timeliness of these records. (See Appendix A-pps. 3 - 10)

In April, 1993, the CHRI Task Force completed and submitted to the BJA a plan to achieve these goals. The Task Force also facilitated implementation of an additional requirement to improve reporting criminal history record information to the Immigration and Naturalization Service (INS).

The CHRI Task Force reviewed earlier studies and data quality audits of the CHRI system, conducted an user needs survey and began a review of CHRI reporting deficiencies.

The 1992 data quality review revealed the following:

- compliance rates
 - arrest information 70% compliance
 - Circuit Court 60% compliance
 - General District Court 44% compliance
 - General District Appeals 49% compliance
- Separate samples drawn to examine direct indictment and cases with multiple charges disposed of in Circuit Court showed 60% and 64% compliance respectively.
- A sample of DOC inmates incarcerated in jails revealed that only 4% had final disposition information posted at the CCRE. Under 19.2-390 (E) correctional officials are currently responsible for submitting changes in status information to the CCRE.
- Samples of active probationers and parolees showed that 31% of the probationers and 38% of the parolees had no correctional status information in the CCRE.
- A sample of offenders whose parole had been revoked showed that 91% had no active status at the CCRE (which is the correct status category).
- It was demonstrated that many records were not useful for positive identification because they lacked fingerprint verification.
- It became increasingly clear that many persons were confused about what should be reported, when it should be reported and when fingerprints were to be taken. Two primary reasons were cited: (1) lack of training for contributors and (2) lack of clarity and specificity in the Code.

The 1992 user needs survey conducted by the Task Force had illustrated how dependent criminal justice practitioners were on having timely access to reliable criminal history record information. The Task Force plan recognized the need for improved training which would improve the level of compliance. But the Task Force members are also convinced that clarification of the Code reporting requirements will be necessary to insure full compliance.

In 1994 the Task Force appointed a subcommittee to specifically examine the Virginia Code to make recommendations to clarify existing law and be compatible with the Task Force's plan for criminal history records improvement.

The work and deliberations of the Task Force, supplemented by previous audits and surveys, had identified the problems areas in the existing Code. The Task Force had also identified a few specific instances where non-compliance with reporting rules was deliberate. The Task Force charged the subcommittee to consider various forms of sanctions to address these infrequent situations where repeated requests to comply were ignored.

The subcommittee adopted the following process to guide its deliberations:

1. Identify all criminal justice processing decisions or actions that are required to be reported to the repository.
2. Identify the official or agency responsible for reporting each reportable event.
3. Specify the time periods within which reporting to the repository and data entry by the repository must occur.
4. Consider sanctions for wilful non-reporting (administrative, financial, criminal)

The final draft of the subcommittee's recommendations were presented to the Task Force in July, 1994 and approved unanimously.

RECOMMENDATIONS

1. *The CHRI Task Force recommends amending § 19.2-390 ff. to address the following problem areas identified:*
(See Appendix C)

- clarify reporting requirements of Correctional officials
- specify that reports are required for anyone taken into custody for: (1) charges resulting from an indictment, presentment or information; (2) the service of a failure to appear warrant; (3) the service of a warrant for another jurisdiction
- clarify reporting requirements of clerks of courts
- to require a report on any commutation of sentence
- to clarify that the Dept. of Corrections is responsible for taking fingerprints of any person committed to the State's care, regardless of where the person is actually held
- to clarify the the Dept. of Corrections is responsible for providing status information for all inmates committed to it care, regardless of where the person is acutally held
- to provide a method for reporting any pardon, reprieve or executive clemency

2. *The Task Force also recommends the addition of a sanction (Class 2 misdemeanor) for those persons who wilfully refuse to comply with criminal history records requirements. Financial and administrative sanctions were debated but rejected for two primary reasons:*

1. They would be too complex to implement and administer and would conceivably result in a disproportionate cost to the criminal justice system.
2. There is precedent for CHRI-type criminal sanctions. There is already a Class 2 misdemeanor penalty for wilful, unlawful dissemination of criminal history information by law enforcement officials. It has only been used twice in the last three years.

(See Appendix C: adding §H under §19.2-390)

SECTION I

GUIDANCE FOR IMPROVEMENT OF CRIMINAL JUSTICE RECORDS

INTRODUCTION

Section I of this document was prepared by BJA, in consultation with BJS, with input from State and local criminal justice practitioners, to provide guidance to the States on the effective implementation of the improvement of criminal justice records provision added to the Omnibus Crime Control and Safe Streets Act of 1968 as amended in FY 1990.

REQUIREMENT

The Crime Control Act of 1990 amended Part E of the Omnibus Crime Control and Safe Streets Act to require that each State which receives Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant funds allocate at least five percent of its total award for the improvement of criminal justice records. The improvements include the following:

- o Completion of criminal histories to include the final dispositions of all arrests for felony offenses
- o Full automation of all criminal justice histories and fingerprint records
- o Frequency and quality of criminal history reports to the Federal Bureau of Investigation

This requirement for the five percent set-aside applies to the FY 1992 and subsequent Formula Grant awards.

In addition to the above improvements of criminal justice records, there are a variety of provisions which are of interest and concern to criminal justice practitioners as well as to public safety, such as criminal history checks for those wishing to purchase firearms or those who apply for jobs as day care workers. It is important to realize that the improvement of criminal justice records will lay the foundation for an increased reliance on these records for making decisions in the future. Section II of this document provides guidance for one such provision which was enacted into law in 1990.

IMPLEMENTATION

In order to make the most effective use of the five percent set-aside for the improvement of criminal justice records and to facilitate the implementation of both State and Federal legislation related to the use of

criminal justice records, States must have a clear understanding of the current condition of their records systems and the problems associated with incomplete or inaccurate data and must have a commitment to and plan for the improvement of criminal justice records. The States are required to develop a criminal justice records improvement plan which must include the steps described below, although not necessarily in the order outlined. Planning and records improvement activities initiated under the Criminal History Record Improvement Program or through State efforts should be built upon and incorporated into the planning process outlined below. States with an existing plan may submit that plan, with a supplement which addresses implementation of any new requirements not addressed in the current plan.

STEP I ESTABLISHMENT OF A CRIMINAL JUSTICE RECORDS IMPROVEMENT TASK FORCE

Since complete and accurate criminal history records can only be achieved through the cooperative efforts of all components of the criminal justice system, BJA recommends that the States establish a Criminal Justice Records Improvement Task Force to guide the development and implementation of the records improvement plan. The Task Force should include representatives from the central repository and source agencies including: State and local law enforcement, prosecuting attorneys, the courts, local jails, State correctional facilities, and probation and parole agencies.

A Task Force with wide representation from throughout the system will provide a forum for exploring the range of possible options for improving criminal justice records in the State. The Task Force should review the results of the assessment and the problem identification phases described in steps II and III and should develop recommendations for the achievement of complete and accurate criminal justice records. Current legislation and administrative procedures related to reporting, maintenance and use of criminal justice records should be reviewed to determine if they are adequate. The Task Force should also review the use of an identification number or other means of tying disposition information to the appropriate arrest.

A list of Task Force members and the agencies they represent should be included in the plan. If components of the system listed above are not included in the Task Force, the plan should describe how input and participation was achieved. If a Task Force is not established, the State should institute other mechanisms to provide for the input and participation of all affected components of the criminal justice system. These mechanisms must be described in the plan.

STEP II ASSESSMENT OF THE COMPLETENESS AND QUALITY OF CRIMINAL JUSTICE RECORDS

Each State must have a comprehensive data quality audit or assessment to serve as the basis for making informed decisions regarding improvements to the State's criminal justice records. The assessment must include a review of data quality and procedures related to the maintenance and reporting of criminal history information at the central repository and the source agencies, including law enforcement agencies, prosecuting attorneys, courts, probation, parole, departments of corrections and jails. In many States, the State Audit Office may be able to conduct the audit or assessment. Other States may want to consider contracting with an independent organization to perform the work. In some States the central repository may conduct all or part of the assessment under the guidance of the Criminal Justice Records Improvement Task Force. Information on conducting a data quality audit is available from BJS. Please refer to the list of reference documents found in Appendix B.

The assessment must result in a clear understanding of the following: how criminal history information is transmitted to the central repository; which agencies report regularly; how complete, accurate and timely the information is; and, what happens to it when it reaches the central repository. The assessment must be sufficient to show that the State has accurately measured the general level of data quality against the user requirements established by the Task Force and has identified the data quality problems. Complete criminal

history records must include the following types of information, which should be reviewed for completeness and accuracy during the assessment:

- o Arrests
- o Dispositions
- o Correctional Status
- o Felony Identification

To expedite this step, States which have an assessment completed under the Criminal History Records Improvement Program administered by the BJS or with State resources should use the assessment, if complete, or modify it to include new requirements.

For many States, the first step in the data quality assessment should be a users' needs assessment to identify the criminal history information requirements of criminal justice practitioners in the State. The users' needs assessment provides an opportunity for representatives from all components of the criminal justice system to become involved at the beginning of the planning process and offers them assurances that the enhancement of the records will enable them to obtain the information they need to do their jobs and that it will be complete and accurate. States which have not conducted a users' needs assessment within the past two years should incorporate this step into their required assessment.

BJA also recommends that throughout the assessment and planning process, States consider modifications and enhancements to their criminal records to implement the National Incident Based Reporting System (NIBRS) which will eventually replace the Uniform Crime Reporting (UCR) System administered by FBI.

STEP III IDENTIFICATION OF THE REASONS FOR INCOMPLETE OR INACCURATE RECORDS

Criminal justice records may be incomplete or inaccurate for a variety of reasons which must be identified before solutions can be developed. The reasons for a particular agency or component of the system not reporting information to the central repository may be as varied as: a lack of resources; manual records which make information retrieval difficult; a need to modify automated systems; a need for training those who submit the information; a failure to see the benefits of complete records or a concern that the information will be used to compare the performance of individuals or agencies. The State must identify the reasons for incomplete or inaccurate records so that they can be addressed in the plan.

STEP IV DEVELOPMENT OF A RECORDS IMPROVEMENT PLAN

Each State is required to develop a records improvement plan, which should serve as the blueprint for the implementation of the recommendations developed by the Task Force and as the basis for the distribution of funds. The plan must include the following elements:

- o Description of the present criminal history system and the current status of criminal justice records in the State in terms of completeness, accuracy and timeliness
- o Description of the problems and obstacles to complete criminal history records
- o Recommendations for improving criminal justice records and addressing problems and obstacles to complete records

- o **Implementation strategy and schedule**

The implementation strategy and schedule should specifically outline the steps that will be followed to implement the recommendations, the timeline for implementation and the allocation of resources. The plan should project the time and resources required to achieve complete criminal justice records and what will be accomplished each year until the goal is reached.

- o **Provisions to assure quality and timeliness in future data reporting.**

The plan should describe the mechanisms which will be put in place to assure that source agencies comply with reporting requirements, that the data is timely, accurate and complete, and that reported data is entered accurately and in a timely fashion by the repository. Such mechanisms may include establishment of clearly defined reporting and data entry procedures (including the automation of reporting and data entry processes), provision for training to persons responsible for reporting and entering data, regular audits of the repository and representative samples of source agencies, remedies or sanctions for non-reporting, and the provision of adequate resources for the reporting and timely entry and maintenance of information.

ADMINISTRATIVE ISSUES

The five percent set-aside is subject to the same requirements and restrictions as the balance of the Formula Grant funds. Matching funds must be provided in the same proportion as for other Formula Grant funds. Compliance with the pass-through requirement is determined on the entire Formula Grant award, including the five percent set-aside. Thus, funds used by state agencies must be taken out of the State's share of the funds, unless a waiver from local units of government is obtained.

A portion of set-aside funds may be used for expenses associated with the data quality audit or assessment, the planning process and/or the development of the records improvement plan. States may request approval from BJA to use a portion of the set-aside for these purposes as a part of the application for Formula Grant funds or as a separate request. The request should describe how the funds would be used and indicate the amount that will be needed.

The balance of the set-aside may not be used until the State has a criminal record improvement plan approved by BJA. If the plan is not approved prior to or with the State's application for Formula Grant funds, the award will be made subject to a special condition requiring that the funds be set aside until a plan has been approved.

DUE DATE FOR SUBMISSION OF THE PLAN

A specific due date for submission of the criminal justice records improvement plan to BJA has not been established. States are at different stages in the development and improvement of criminal justice records. Some States have existing task forces and have already completed the data quality assessment and/or much of the planning. Other States are just beginning the process. States are allowed the time necessary to complete a rational planning process, but may not expend the set-aside funds until a plan is accepted or funds have been approved by BJA for use in developing the plan.

CRITERIA AND PROCEDURES FOR WAIVER OF SET-ASIDE FOR CRIMINAL RECORDS IMPROVEMENT

The Improvement of Criminal Justice Records provisions authorizes the Director of BJA, at the request of a State, to:

- o Waive compliance with the five percent set-aside, or
- o Authorize the State to reduce the minimum amount the State is required to allocate for records improvement

A waiver can be approved if the Director finds that the quality of the State's criminal justice records does not warrant the expenditure of the five percent set-aside.

A request for a waiver must demonstrate compliance with the criteria described in the table which follows. The criteria were established to define the three criminal justice records improvement factors identified in the legislation. The demonstration of compliance must be supported by an independent data quality audit. Independent audit is defined as an audit performed or supervised by an agency or entity other than the repository, such as the legislative audit office.

LEGISLATIVE REQUIREMENTS

Completion of criminal histories to include the final dispositions of all arrests for felony offenses

CRITERIA TO DEFINE COMPLIANCE

Arrests

- o 95% of current felony arrest records and fingerprints are complete

(Current is defined throughout this table as records initiated with an arrest on or after the effective date of this provision which is October, 1991).

(Complete records are defined as fully and accurately reflecting the underlying criminal justice transactions (arrest, charging, court disposition, etc.)

- o A reasonable attempt should be made to improve the availability of past records with a goal of achieving complete records for 90% of felony arrests during the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.

Dispositions

- o 95% of current felony arrest records contain disposition information, if a disposition has been reached.

(Disposition is defined as case termination by release without charging, prosecutor declination or court adjudication)

- o A reasonable attempt should be made to improve the availability of disposition information in past records with a goal of achieving disposition information for 90% of felony arrest records for the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.

Correctional Status

- o 95% of current sentences to and releases from prison are available
- o A reasonable attempt should be made to improve the availability of incarceration information in past records with a goal of achieving incarceration information for 90% of felony arrest records for the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.

Felony Identification

- o 95% of current arrest records identify felonies
- o A reasonable attempt should be made to improve the flagging of felonies in existing records, with a goal of achieving felony identification for 90% of the offenses in the repository which occurred during the past five years. If that goal cannot be achieved, the State should outline the attempts made to improve past records and the reasons why this goal could not be achieved.

Full automation of all criminal justice histories and fingerprint records

- o All criminal history records from the past 5 years have been automated.
- o All master name index records from the past 5 years have been automated.
- o New records for offenders with prior manual records are entered into the automated files (including the manual record).
- o Procedures have been established to ensure that all records related to felony offenses are entered into the automated system within 30 days of receipt by the central repository and all other records are entered within 90 days.

Frequency and quality of criminal history reports to the Federal Bureau of Investigation

- o Fingerprints taken at arrest and/or confinement are submitted to the State repository and, when appropriate, to the FBI Identification Division (ID) within 24 hours. In single source States, the State repository shall forward fingerprints, when appropriate, to the FBI ID within two weeks of receipt.
- o Final dispositions are reported to the State repository and, when appropriate, to the FBI ID within 90 days after the disposition is known.

(The words "when appropriate" are included in the above two compliance criteria in recognition of the fact that, when the National Fingerprint File is implemented, States that participate in Interstate Identification Index (III) will no longer submit arrests and dispositions (other than first arrest) to the FBI)

FORMULA GRANT APPLICATION REQUIREMENTS

Beginning in FY 1992, the Formula Grant application from each State must contain:

- o A listing of programs to be funded with the five percent set-aside for criminal justice records improvement and a description of how they relate to the plan. If the State does not have an approved plan, the State's Formula Grant award will be made subject to a special condition

prohibiting the State from making awards from the set-aside until the plan has been submitted to and approved by BJA.

- o A description of progress made during the previous year toward addressing the factors used to measure compliance with the criminal justice records improvement provision. The factors are outlined in the section related to waivers of the set-aside for criminal justice records improvement. The description of progress should include an estimate of the beginning and current level of compliance with each factor.

An application for Formula Grant funds, which does not include a set-aside for the improvement of criminal justice records, will be considered an incomplete application, unless the State has requested and been granted a waiver.

Appendix B

RELEVANT CODE SECTIONS- DATA QUALITY STUDY (SJR 98)

9-183.3.	Licensing, regulation of Private Security Industry
9-195	Criminal penalty (wrongful dissemination of CHRI)
15.1-135	When Police authorized to take fingerprints, photos
16.1-299	Fingerprints, photos of children
16.1-300	Confidentiality of DYFS records
18.2-251	Fingerprinting: 1st offense marijuana possession
19.2-73.1	Warrant, summons: FTA
19.2-74	Summons in place of warrants: procedures
19.2-169.2, 3	Insanity dispositions: procedure
19.2-216	Presentments, Indictments, Informations
19.2-303	Taking fingerprints as condition of probation
19.2-310	Transfer of prisoners to DOC
19.2-310.1	Transmission of sentencing documents to DOC
19.2-390	Reports made by local Law Enforcement to CCRE
19.2-391	Records made available to CCRE by agencies
19.2-392	Fingerprints, photos by local police authorities
22.1-296.2	Fingerprinting of certain school board employees
53.1-20	Commitment of convicted persons to Director, DOC
53.1-23	Fingerprints, photos, descriptions by DOC
53.1-121	Sheriffs monthly reports to Director, DOC
53.1-125	Failure of Sheriff to comply w/ Board requirements
53.1-145	Powers, duties of Probation & Parole Officers
53.1-229	Executive clemency
58.1-4008	Fingerprints, background check: Lottery applicants
59.1-371	Fingerprints, background check: Racing Commission

ALPHABETIZED-RELEVANT CODE SECTIONS

CCRE: reports to	§ 19.2-390
Confidentiality of DYFS records	§ 16.1-300
Corrections: commitments to	§ 53.1-20
Criminal penalty: dissemination of CHRI	§ 9-195
Executive clemency: procedure	§ 53.1-229
Fingerprints, photos: when authorized	§ 15.1-135 § 19.2-392
Fingerprints, photos: of children	§ 6.1-299
Fingerprints as condition of probation	§ 19.2-303
Fingerprints: required by some school boards	§ 22.1-296.2
Fingerprints & background: Lottery Dept.	§ 58.1-4008
Fingerprints & background: Racing Commission	§ 59.1-371
Insanity: disposition procedure	§ 19.2-169.2, 3
Marijuana: fingerprints, 1st offense	§ 18.2-251
Probation & Parole officers: duties	§ 53.1-145
Presentments, Indictments, Informations	§ 19.2-216
Private Security: licensing, regulation	§ 9-183.3
Records made available by agencies to CCRE	§ 19.2-391
Reports made to CCRE	§ 19.2-390
Sheriffs monthly reports to DOC	§ 53.1-121
Sheriffs failure to comply w/Board reqts.	§ 53.1-125
Summons, warrants, FTA	§ 19.2-73.1
Summons in lieu of warrant	§ 19.2-74
Transfer of prisoners to DOC	§ 19.2-310
Transmission of sentencing documents to DOC	§ 19.2-310.1

CRIMINAL HISTORY DATA QUALITY
LEGISLATIVE DRAFT PROPOSAL

Submitted by the CHRI Task Force pursuant to SJR 98

1 § 19.2-390. Reports to be made by local law-enforcement
2 officers, conservators of the peace, and clerks of court and
3 corrections officials to State Police; material submitted by
4 other agencies.
5

6 A. 1. Every state official or agency having the power to
7 arrest, the sheriffs of counties, the police officials of
8 cities and towns, and any other local law-enforcement officer
9 or conservator of the peace having the power to arrest for a
10 felony shall make a report to the Central Criminal Records
11 Exchange, on forms provided by it, of any arrest on any of
12 the following charges:

13 ~~1.~~ a. Treason;
14 ~~2.~~ b. Any felony;
15 ~~3.~~ c. Any offense punishable as a misdemeanor under
16 Title 54.1; or

17 ~~4.~~ d. Any misdemeanor punishable by confinement in jail
18 under Title 18.2 or 19.2, except an arrest for a violation of
19 Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18 for
20 violation of Article 2 (§ 18.2-415 et seq.) of Chapter 9 of
21 Title 18.2, or § 18.2-119 or any similar ordinance of any
22 county, city or town.

23 For purposes of this section, arrest shall also include the
24 taking into custody or bringing before the court any person
25 under the following circumstances; on charges resulting from
26 any indictment, presentment or information; the service of a
27 capias; the service of a Failure to Appear warrant; the
28 service of a warrant for another jurisdiction for any
29 reportable charge as defined above.

30 The reports shall contain such information as is required by
31 the Exchange and shall be accompanied by fingerprints of the
32 individual arrested. Fingerprint cards prepared by a law
33 enforcement agency for inclusion in a national criminal
34 justice file shall be forwarded to the Exchange for
35 transmittal to the appropriate bureau.

36 2. For persons arrested and released on summonses in
37 accordance with § 19.2-74, such report shall not be required
38 until (i) after a conviction is entered and no appeal is noted
39 or if an appeal is noted, the conviction is upheld upon appeal
40 or the person convicted withdraws his appeal; (ii) the court
41 dismisses the proceeding pursuant to § 18.2-251; or (iii)
42 after a verdict of acquittal by reason of insanity pursuant
43 to § 19.2-182.2. Upon such conviction or acquittal, the court
44 shall remand the individual to the custody of the office of
45 the chief law-enforcement officer of the county or city. It

Appendix C.1

1 shall be the duty of the chief law-enforcement officer, or his
2 designee who may be the arresting officer, to ensure that such
3 report is completed after a determination of guilt or
4 acquittal by reason of insanity. The court shall require the
5 officer to complete the report immediately following his
6 conviction or acquittal, and the individual shall be
7 discharged from custody forthwith, unless the court has
8 imposed a jail sentence to be served by him or ordered him
9 committed to the custody of the Commissioner of the Department
10 of Mental Health, Mental Retardation and Substance Abuse
11 Services.

12 B. Within seventy-two hours following the receipt of a
13 warrant or capias for the arrest of any person on a charge of
14 a felony, the law enforcement agency which received the charge
15 shall enter the accused's name and other appropriate
16 information required by the Department of State Police into
17 the "information system", known as the Virginia Criminal
18 Information Network (VCIN), established and maintained by the
19 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title
20 52. The report shall include the person's name, date of birth,
21 social security number and such other known information which
22 the State Police may require. Any unexecuted criminal process
23 which has been entered into the VCIN system shall be removed
24 forthwith by the entering law-enforcement agency when the
25 criminal process has been ordered destroyed pursuant to
26 § 19.2-26 76.1.

27 C. The clerk of each circuit court and district court
28 shall make a report to the Central Criminal Records Exchange
29 of (i) any dismissal, indefinite postponement or continuance,
30 charge still pending due to mental incompetency, nolle
31 prosequi, acquittal, or conviction of, or failure of a grand
32 jury to return a true bill as to, any person charged with an
33 offense listed in subsection A of this section, including
34 charges which resulted from any indictment, information or
35 presentment and the imposition of any sentence and (ii) any
36 adjudication of delinquency based upon an act which would be a
37 felony if committed by an adult, provided fingerprints and
38 photographs of the juvenile were required to be taken pursuant
39 to subsection A of § 16.1-299. In the case of offenses not
40 required to be reported to the Exchange by subsection A of
41 this section, the reports of any of the foregoing dispositions
42 shall be filed by the law enforcement agency making the arrest
43 with the arrest record required to be maintained by § 15.1-135.1
44 Upon conviction of a felony in violation of §§ 18.2-61, 18.2-
45 63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5,
46 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is
47 physically helpless or mentally incapacitated as defined in
48 § 18.2-67.10, subsection B of 18.2-361 or subsection B of
49 § 18.2-366, including juveniles tried and convicted in the
50 circuit courts pursuant to § 16.1-269, whether sentenced as
51 adults or juveniles, the clerk shall also submit a report to
52 the Sex Offender Registry. The report to the Sex Offender

Appendix C.2

1 Registry shall include the name of the person convicted and
2 all aliases which he is known to have used, the date and
3 locality of the conviction for which registration is required,
4 his date of birth, social security number, last known address,
5 and specific reference to the offense for which he was con-
6 victed. No report of conviction or adjudication in a district
7 court shall be filed unless the period allowed for an appeal
8 has elapsed and no appeal has been perfected. In the event
9 that the records in the office of any clerk show that any
10 conviction or adjudication has been nullified in any manner,
11 he shall also make a report of that fact to the Exchange and,
12 appropriate, to the Registry, and each clerk of a circuit
13 court, upon receipt of certification thereof from the Supreme
14 Court, shall report to the Exchange or Registry, or to the
15 law-enforcement agency making the arrest in the case of
16 offenses not required to be reported to the Exchange, on forms
17 provided by the Exchange or Registry, as the case may be, any
18 reversal, commutation or other amendment to a prior sentence
19 or disposition previously reported. When criminal process is
20 ordered destroyed pursuant to § 19.2-76.1, the clerk shall
21 report such action to the law-enforcement agency that
22 entered the warrant or capias into the VCIN system.

23 D. In addition to those offenses enumerated in subsection
24 A of this section, the Central Criminal Records Exchange may
25 receive, classify and file any other fingerprints and records
26 of arrest or confinement submitted to it by any law
27 enforcement agency or any correctional institution.

28 E. Corrections officials, including sheriffs of all local
29 jails and jail superintendents of all regional jails,
30 responsible for maintaining correctional status information,
31 as required by the rules and regulations of the Department of
32 Criminal Justice Services, with respect to individuals about
33 whom reports have been made under the provisions of this
34 chapter shall make reports of changes in correctional status
35 information to the Central Criminal Records Exchange. The
36 reports to the Exchange shall include a commitment to or
37 escape from a state or local correctional facility, including
38 commitment to or release from a parole or probation agency.
39 The Department of Corrections shall be responsible for taking
40 the fingerprints of all persons committed to its care
41 regardless of where such persons are actually held and sending
42 the fingerprints to the Exchange in a timely manner. Depart-
43 ment of Corrections officials may by cooperative agreement
44 with local and regional jail officials have the fingerprints
45 taken locally and sent to the Exchange.

46 F. Any pardon, reprieve or executive commutation of sentence
47 by the Governor shall be reported to the Exchange by the
48 office of the Secretary of the Commonwealth.

49 E. F. Officials responsible for reporting disposition of
50 charges, and correctional changes of status of individuals
51 under this section shall adopt procedures reasonably designed
52 at a minimum (i) to ensure that such reports are accurately
53 made as soon as feasible by the most expeditious means and in

Appendix C.3

1 no instance later than thirty days after occurrence of the
2 disposition or correctional change of status; and (ii) to
3 report promptly any correction, deletion, or revision of the
4 information.

5 ~~F~~ G. Upon receiving a correction, deletion, or revision of
6 information, the Central Criminal Records Exchange shall
7 notify all criminal justice agencies known to have previously
8 received the information.

9 As used in this section, the term "chief law-enforcement
10 officer" means the chief of police of cities and towns and
11 sheriffs of counties, unless a political subdivision has
12 otherwise designated its chief law-enforcement officer by
13 appropriate resolution or ordinance, in which case the local
14 designation shall be controlling.

SANCTION FOR WILFUL NON-COMPLIANCE

The CHRI Task Force recommended that an additional amendment
be made to permit sanctions against those who wilfully do not
comply with CHRI reporting requirements.

19.2-390

1 H. Penalty for violation.--Any person who wilfully and
2 intentionally fails to comply with the reporting requirements
3 of this section, or of any other statutory criminal history
4 reporting requirement, shall be guilty of a Class 2
5 misdemeanor.

