REPORT OF THE VIRGINIA DEPARTMENT OF PERSONNEL AND TRAINING

A STUDY OF THE EFFECTIVENESS OF PRIVATIZING BACKGROUND INVESTIGATIONS AND SECURITY CLEARANCES ON EMPLOYEES AND CONTRACTORS

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA



HOUSE DOCUMENT NO. 37

COMMONWEALTH OF VIRGINIA RICHMOND 1999



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: The Honorable James Gilmore, III

Governor of Virginia

Members of the General Assembly

FROM: Sara R. Wilson Lara R. Wilson

RE: Chapter 464, Item 58.B. of the 1998 Appropriation Act

DATE: January 11, 1999

Chapter 464, Item 58.B. of the 1998 Appropriation Act specifies that:

The Department of Personnel and Training and the Department of State Police, in conjunction with the Commonwealth Competition Council, study the effectiveness of privatizing background investigations and security clearances on employees and contractors. The results of the study shall be reported to the Governor and the 1999 General Assembly.

Enclosed for your review and consideration is the report prepared in response to this requirement.

SRW:rcw

Enclosure

A Study of the Effectiveness of Privatizing Background Investigations and Security Clearances on Employees and Contractors

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Authority for Study

Chapter 464, Item 58.B. of the 1998 Appropriation Act mandated that the Department of Personnel and Training (DPT) and the Department of State Police (DSP), in conjunction with the Commonwealth Competition Council (CCC), study the effectiveness of privatizing background investigations and security dearances on employees and contractors. The results are to be reported to the Governor and the 1999 General Assembly.

Executive Summary

The purpose of this study was to determine the *effectiveness* of privatizing "background investigations and security clearance programs" on employees and contractors, hereafter referred to as BISC functions. The project coordinators from DPT, DSP, and CCC agreed at the outset, that because there was no program or operational benchmark in place to demonstrate how this function has been accomplished and how much it costs state agencies, there was no reliable method by which to evaluate the effectiveness of *any* kind of change, including privatization.

It was further agreed that the study would require the benchmarking of standard "indicators of efficiency" for each agency in order to develop a composite view. This information would also provide the basis for evaluating the feasibility, effectiveness, and overall benefit to the Commonwealth in considering privatization and other alternative options for administering BISC functions. To this end, an agency advisory group was formed to provide insight and information, and to assist in the design of a statewide survey of agency BISC functions (Appendix A).

A survey was designed to enable the collection and analysis of quantitative and qualitative data relative to the efficiency indicators (Appendix B). It was sent to all state agencies including independent agencies and authorities. Participants were asked to provide copies of agency BISC policies, state, federal, and other external requirements, and to comment on the effectiveness of current practices. They were also given an opportunity to address the effectiveness of privatization options for this function. Sixty-three (63) agencies responded to the survey, of which thirty-nine (39) reported administering BISC functions (Appendix C).

The survey data was intended to provide a detailed snapshot of current agency programs, their respective levels of operational activity, and cost. To some extent this has been accomplished. However, because administrative procedures vary widely, so did responses. For this reason, survey results could be summarized but not quantifiably evaluated in a reliable manner.

The survey indicated that agencies administering the largest and most complex BISC functions are generally satisfied with the status quo. They stated a preference for individual agency management of this function and offered few suggestions for operational improvements.

The agencies administering smaller BISC functions that are accessed on a less frequent basis indicated a preference for the development of uniform guidelines for conducting BISC activities. They also advanced numerous recommendations for operational improvements, primarily focusing on reducing processing time and easing restrictions on local direct access to databases.

Eight (8) agencies support privatization options for BISC functions; twenty-four (24) prefer to retain the status quo; and seven (7) indicated that either they could not offer an informed opinion or had no opinion.

The information derived from this study should be considered the *first* step in a process of assessing the feasibility of privatizing BISC functions. Options for continuing the assessment were presented by the CCC and are included at the end of this report. The Department of Personnel and Training can provide individual agency survey responses upon request.

Background

The purpose of the study was to determine the *effectiveness* of privatizing "background investigations and security clearance" programs, hereafter referred to as BISC functions.

Three general observations were noted upon initiating the study:

- There is no state policy or single reference in the Code of Virginia to define the term "background investigations and security clearances"; language usage with respect to these functions varies among agencies.
- These functions, where they exist, are guided by state and/or federal requirements, or by agency policy alone. Administrative and operational procedures are unique to each agency.
- Because there was no program or operational benchmark to demonstrate how this function has been accomplished and how much it costs state agencies, there was no reliable method by which to evaluate the effectiveness of *any* kind of change, including privatization.

Methodology

Standard indicators of "effectiveness" were identified. These included administrative costs, labor requirements, processing time, and how related agency programs are affected by BISC activities. An agency advisory group composed of security, program, and human resource representatives met with the DPT, DSP, and COC project staff to provide suggestions on the study's approach and methodology (Appendix A).

This communication process revealed that BISC functions are administered in a diverse manner and have been designed to meet the unique needs of individual agencies. The advisory group concluded that a statewide survey of BISC functions in all agencies was needed to adequately define the scope of the study and designate a common language for major BISC activities.

Agency Survey Design and Purpose

A survey was designed to enable the collection and analysis of quantitative and qualitative data relative to the following:

- How, when, and why agencies investigate individuals in certain state jobs or contractual arrangements;
- How much it costs;
- How long it takes;
- Who conducts the investigation or background review; and
- Who or what is served by this process.

The survey was sent to all state agencies (175)¹ including independent agencies and authorities. Participants were asked to provide copies of agency BISC policies, state, federal, and other external requirements, and to comment on the effectiveness of current practices. They were also given an opportunity to address the effectiveness of privatization options for this function (Appendix B).

The survey data was intended to provide a detailed snapshot of current program and operational activity, which could serve as the basis for evaluating the effectiveness of privatization options. To some extent, this has been accomplished. However, the survey requested corresponding information relative to the efficiency indicators. Because administrative procedures vary widely, so did responses. For this reason, results can be summarized but not quantifiably evaluated in a reliable manner.²

¹ This number represents all state agencies assigned an agency code, which includes "sub-agencies" such as correctional facilities, community colleges, mental health facilities, etc. These institutions are owned and operated by central "parent" agencies. Responses were coordinated through those "parent" agencies and were counted as single responses.

² All survey participants record BISC activities, but do not necessarily track them according to type (i.e., Background Check, Investigation, Credit Check, FBI, etc.), processing time, or cost. For this reason, many agencies were able to provide "total included" figures and/or estimates only.

Agency Survey Summary of Findings

- Sixty-three (63) of one hundred and seventy-five (175) agencies responded to the survey. Thirty-nine (39) administer BISC functions (Appendix C).
- Agencies that administer BISC functions do so to ensure the integrity and professionalism of their organizations. The statutory requirements or agency policies exist to safeguard agency clients, the general public, state property, and the work force.
- Eleven (11) of the survey participants reported that they are required by law to conduct BISC reviews on staff assigned to specific jobs. The remainder administer BISC functions that are guided by agency policy.
- BISC reviews typically include Criminal Records Checks, Criminal/ Background Investigations, Credit Checks, and FBI Background Checks. Other types of BISC reviews, to include Virginia's Child Protective Services Registry, DMV, Interpol, and the Federal Emergency Management Agency are conducted less frequently and are mandated by statute for certain agencies.
- A <u>Criminal Records Check</u> is the most frequent and common BISC transaction. Seventy-three percent (73%) are processed in less than thirty (30) days and are conducted by or in conjunction with, the Department of State Police (DSP). Requests limited to "Virginia records only" take the least amount of time or less than fifteen (15) days. Twenty-seven percent (27%) take forty-five days or longer.

- <u>Criminal Background Investigations</u> are less frequent and are conducted by fewer agencies. Sixty-nine percent (69%) are processed in less than thirty (30) days, with the remainder requiring thirty to forty-five (30-45) days or longer. Agency security or human resource staff in conjunction with DSP, the FBI, or Capitol Police typically conduct them.
- Credit Checks on the average are completed within fifteen (15) days.
- <u>FBI Investigations</u> are the most time consuming. Sixty-seven percent (67%) of the twelve (12) agencies that use this source reported an average turnaround time of forty-five (45) days or longer.
- Most BISC reviews are completed on full time classified and wage staff
 assigned to certain job categories to include health care, security, finance,
 public assistance, and faculty. Applicants for licensure by the Virginia
 Lottery and Virginia Racing Commission must undergo background
 investigations. Agency volunteers, interns, contract employees, and
 contractors may also be subject to some type of BISC review depending
 upon the job assignment and location.
- Approximately 24,000 BISC transactions (all types) were processed in recent twelve-month periods according to the surveys.³ Of these, nearly 5,000 were conducted on licensees of the Virginia Racing Commission and the Virginia Lottery.
- BISC activities generally are assigned to human resource or agency security staff. Eighty-five percent (85%) of the respondents stated that the work associated with BISC reviews comprises approximately 5% or less of the designated position's job duties. The remaining 15% of the respondents, who are the main users of this function, reported dedicated staff time from 1/3 to "several" FTE's.
- Eight (8) agencies support privatization options for BISC functions; twenty-four (24) prefer to retain the status quo; and seven (7) indicated that either they could not offer an informed opinion or had no opinion.
- Most agencies support the establishment of a uniform state policy to guide, but not control, BISC activities. Several agencies administering the largest

³ Agencies were asked to submit data for Fiscal Year 97-98. Due to variations in record keeping, some participants provided data from Calendar Year 1997 or, average annual estimates.

and most active BISC programs tended to disagree, citing that different agencies have different needs.

Costs Associated with BISC Functions

State agencies typically absorb all costs associated with BISC transactions conducted on prospective employees and for employees whose positions require subsequent checks in order to insure continued employment. The Virginia Racing Commission requires licensees to pay for costs incurred by this process.

In accordance with statute, DSP does not charge criminal justice and law enforcement agencies for BISC transactions. The following charges for BISC transactions were reported by agencies in general:

•	\$10.00	Criminal Records Checks conducted by, or in conjunction with, DSP
•	N/A	Background Investigations conducted by DSP

• \$4.00 - \$8.00 Credit Checks

• \$37.00

Thirty-three percent (33%) of the survey participants (13 agencies) stated that BISC expenditures are budgeted and tracked on an annual basis. The BISC budget items for these agencies ranged from \$50.00 to \$400,000 (Virginia Racing Commission) annually. Thirty-eight percent (38%) of the budgeted programs exceed \$30,000 annually. This represents possible expenditures of over one million dollars annually for the Commonwealth.

FBI Criminal Records Check

Service and other access fees paid by agencies having direct access to criminal records networks were not consistently reported. A total cost figure for BISC activities statewide is not available.

Role of DSP in Statewide BISC Activities

DSP provides BISC services, including complete background investigations, to state agencies, county governments, local law enforcement agencies, and state and local law enforcement agencies in other states. DSP has access to all federal, national, state, local, and Interpol criminal history network and national driving history files.

CENTRAL CRIMINAL RECORDS EXCHANGE (CCRE)

Criminal history record dissemination is governed by <u>Section 19.2-389 of the Code of Virginia</u>. Pursuant to this section, the following non-criminal justice entities are empowered to receive conviction data on criminal record name searches for the purpose of employment and/or licensure.

- Hospital Pharmacy Employees
- Adult Home Care Facilities
- Licensed Homes for Adults
- District Homes for Adults
- Adult Day Care Centers
- Licensed Child Care Centers
- Unlicensed Child Care Centers
- Cities/Counties Under a Duly Enacted Ordinance

The following agencies are entitled to receive complete criminal record information from CCRE as specified by law:

- Alcoholic Beverage Control Board
- Specific Volunteer Agencies
- Private/Parochial Schools*
- Foster Care Agencies*
- Domestic/International Adoption Agencies
- Gaming Commission
- Office of Interdepartmental Regulations*
- State Lottery*
- Armed & Unarmed Security Guard Companies

- Court Order/Subpoena
- Public School Boards*
- State Corporation Commission
- State Board of Elections
- Volunteer Fire & Rescue Depts.
- VISA/Passports for International Travel
- Virginia Racing Commission*
- Department of Social Services*
- Department of Mental Health/Retardation Substance Abuse*
- Hospital Pharmacies
- Virginia Power

* Statutes provide for submission of fingerprints for state and federal search of fingerprint files at a cost of \$13.00 for CCRE search and \$24.00 for search of Federal Bureau of Investigation file; total \$37.00 fee.

The Central Criminal Records Exchange became a section of the Virginia Department of State Police on July 1, 1970, pursuant to <u>Chapter 23 of Title 19.2</u>, Section 387, of the Code of Virginia. As of June 1, 1998, there were 1,155,545 individual criminal records on file. The Commonwealth of Virginia's Central Criminal Records Exchange is nationally recognized as a leader in maintaining a comprehensive criminal record database, including the development of aggressive programs to deliver the most complete and accurate criminal record information and automated support programs available.

The criminal records maintained in the Exchange are available to criminal justice entities on the state and national level on a 7 days a week, 24 hours a day basis. Criminal justice inquiries against the computerized file provide an immediate response of an individual's criminal history record that is supported by fingerprint records on file in the Exchange.

The Supreme Court/State Police disposition interface consists of 22 courts electronically transmitting court dispositions to CCRE. Since program implementation, 130,113 records have been updated.

Criminal history records are documents from which criminal justice authorities derive at prudent decisions that range from determining the propensity for violence an individual may have; a judge's review prior to sentencing; guiding a correctional official in assigning a custody level to an inmate; determining probation/parole status; and to efficiently support

computerized criminal justice programs such as the firearms transaction programs on the state/national level, etc.

NON-CRIMINAL JUSTICE

The Exchange conducts criminal record searches for non-criminal justice entities and/or individuals for employment purposes. The record searches are conducted pursuant to Section 19.2-389 of the Code of Virginia. Legislative mandates and employer awareness of obtaining record searches have created an overwhelming demand for the service. There were 238,349 non-criminal justice inquiries conducted in calendar year 1997, a 3% increase compared to 1996 and a 527% increase in the past 10-year period.

Criminal record searches are conducted to ensure suitability for employment in such environments as: licensed homes for adults, Virginia Power, district homes for adults, day care centers for children and adults, nursing homes, volunteers/employees of child welfare agencies, foster/adoptive cases, private security and employment by certain school boards, etc.

State agencies that conduct criminal records checks on applicants for employment are authorized to participate in the Non-Criminal Justice Interface (NCJI) system. NCJI significantly expedites the criminal records check process.

NCJI provides electronic confirmation within twenty-four to seventy-two hours when there are no name match identifiers in the computerized criminal history record file. In cases where there are matching identifiers in the database, a response is mailed to the agency within three (3) days.

Start-up costs for access to NCJI include \$25.00 for the software and any costs associated with installing a dedicated telephone line or additional equipment.

BACKGROUND INVESTIGATIONS

Complete background investigations are conducted by DSP when requested by other state agencies and out-of-state law enforcement agencies. These cases are assigned to sworn State Police personnel trained in background investigations and retired State Police sworn members working in part-time wage positions. DSP has utilized retired members in this capacity for twenty (20) years due to their knowledge of and experience in investigations, and their knowledge of State Police procedures and the law.

Background investigations can be time consuming and often involve travel outside the Commonwealth of Virginia. This is because the scope of the investigations goes beyond record checks that search for criminal convictions. Elements of the investigation typically include employment history, character and reputation checks, neighborhood checks, credit history, court and local law enforcement criminal history checks, and military history. These investigations are performed to ensure the integrity and professionalism of all employees of the Department of State Police and the other agencies for which the Department performs background investigations.

Examples of background investigations conducted by DSP in 1998 include:

- Department of State Police (705 applicants)
- Designated employees of the Department of Criminal Justice Services, Division of Forensic Science (36)
- Designated employees of the National White Collar Crime Center (11)
- Designated employees of the State Lottery Commission (7)
- Designated employees of the State Racing Commission (4)
- Federal Line of Duty Death Investigations (1)
- State Line of Duty Death Investigations (15)
- Prospective employees of out-of-state police agencies and other local Virginia police agencies (142)

Recommendations of Survey Participants

Fifty-one percent (51%) of the survey participants indicated that BISC operational procedures and services that are external to agencies, and/or statutory limitations, impede the effectiveness of BISC functions. The following changes were recommended for consideration:

- Examine and improve the procedures and requirements of external service providers specifically for the purpose of reducing "turnaround time".
- Expand routine criminal record checks to include national databases.
- Authorize all agencies for direct electronic access to criminal records networks.
- Reduce or eliminate external service fee requirements for agencies currently authorized for direct electronic access to criminal records networks.
- Establish statewide guidelines for conducting BISC activities and for related records management responsibilities.

Conclusions

BISC represents a significant investment in time and dollars. Agencies and institutions of the Commonwealth are aware of the importance of BISC to the public safety and welfare of Virginia citizens but need to examine a variety of alternatives to achieve optimum quality and service at the best price. Should the Commonwealth of Virginia decide to pursue alternative options for how it conducts "background investigations and security clearances" on employees and contractors, the CCC suggests that the following be considered:

- Examine the feasibility of a pilot program for selected aspects of BISC, such as out-of-state investigations, credit checks, or employment history. The pilot would occur in those agencies and institutions who have expressed a willingness to seek alternative solutions to BISC and would be conducted under the auspices of the Department of State Police, the Department of General Services (Division of Purchases and Supply), and the Department of Personnel and Training, with the Commonwealth Competition Council assisting.
- Provide all agencies and institutions of the Commonwealth with an alternative method of conducting BISC activities by establishing a statewide competitive contract with one or more qualified national firms agencies may use when determining the speed in which the BISC is required.
- Permit the agencies with the most requirements to have a choice of utilizing the State Police or State contract in order to allocate the workload and expedite the results of the BISC;
- That the Jamestown-Yorktown Foundation, who currently is conducting BISC through a private contractor, assist in the writing of any draft policies and procedures; and
- That the Jamestown-Yorktown Foundation be requested to provide continuing data on their experience with the BISC.
- That the Commonwealth consider developing a state policy on conducting background investigations and security clearances. This policy could address not only the conduct of the investigation, but the custody chain of access to the information, filing of that information,

and records management, to include the length of time a BISC is on file and where; and how those records are destroyed, duplicated, etc. The policy should address also the disposition of the BISC when a state employee moves from one agency to another or when the employee separates from state government, as well as the employee's or applicant's access to that information; and an appropriate fee schedule if fees are to be charged.

APPENDIX A

Agency Advisory Group

Department of Mental Health, Mental Retardation, and Substance Abuse Services

Department of Corrections

Department of Juvenile Justice

Department of Education

James Madison University

Department of Criminal Justice Services

- * Department of State Police
- * Commonwealth Competition Council
- * Department of Personnel and Training

^{*} Project Coordination

Background Investigation and Security Clearance Survey

•	Agency:		Agenc	y Code:	****
•		gency conduct backgrou No	nd investigat	ions/ Security	Clearances?
•	On whom?				
En	aployees:				
		Status	Yes	No	Appx. No. Per Fiscal Year
		Full Time			
		Part Time			<u></u>
		Contract			
		Wage			***************
		Restricted			
		Other			
Co	mments:				
<u>Co</u>	ntractors:				
		Status	Yes	No	Appx. No. Per Fiscal Year
		All Contractors			
		Selected			
		Contractors			
		(define)			
		Other			
Co	mments:				
<u>Su</u>	bcontractor	<u>s</u> :			
		Status	Yes	No	Appx. No. Per Fiscal Year
		All Subcontractors Selected			
		Subcontractors			
		(define) Other			
Co	omments:				

Other Employees/Staff:

Status		Yes	No	Appx. No. Per Fiscal Year
Volunteers				
Interns (paid)		 -	
Interns (unpa	•			
Governor's I				
Others (defin				
Others (defin	ic)			
Comments:				
 Why does your organization clearances? (please references) How is the appropriate type 	nce COV,	federal regulation	n, etc., if app	
Please indicate <u>by type</u> the (attach listing if necessary)		of investigations y	ou conduct	and <i>on whom</i> .
Туре	Appx.	Number per Year	Cond	ucted on which job classes?
Criminal Investigations	_			
Criminal Records Check				
Credit Checks				
FBI	_			

VA Records Only		
Other		
Who conducts the backg	round investigations/security clears	ances for your agency?
Normally, how long doe	s it take to complete this process?	
Туре	Ave. Length of Time	
Criminal Investigations	Less than 15 days Less than 30 days 30-45 days	
Criminal Records Check	Other (explain) Less than 15 days Less than 30 days 30-45 days Other (explain)	
Credit Checks	Less than 15 days Less than 30 days 30-45 days Other (explain)	
FBI	Less than 15 days Less than 30 days 30-45 days Other (explain)	
VA Records Only	Less than 15 days Less than 30 days 30-45 days Other (explain)	
Other	Less than 15 days Less than 30 days 30-45 days Other (explain)	
Who grants background	investigations/security clearances?	ı

•	At what point do you conduct background investigations/security clearances?
	Upon filing job application When the final employment offer is made Within first 6 months of employment At what time during the procurement cycle
	Other
•	Are background investigations/security clearances for a specific period of time? (explain)
•	Do you conduct background investigations/security clearances on employees for reasons other than initial employment (e.g., transfers from other state agencies, promotions to certain jobs, etc.)?
•	Where are the files on this activity retained and who (job classification) has responsibility for records management?
•	Please estimate the percentage of time the above individual(s) devotes to this function.
•	Who has access to these records and under what conditions?
_	
<u>C</u>	ost:
•	Is there a charge for background investigations/security clearances? If so, how much is the fee?

• W	Tho pays the fee?
• H	ow much is budgeted annually (fiscal year) for this service?
• <u>Is</u>	this service competitively bid?
Comi	ments:
	/hat, if anything, would you like to change about the way in which background evestigations/security clearances are conducted?
	low would you prefer to have this service managed? By each individual agency as it is now By a central service provider that can insure confidentiality of information Other options (explain)
	Ooes your agency consider this service to be one that can be effectively outsourced or rivatized? (Please elaborate)
	hould there be a state policy governing background investigations/security learances?
Nam	e of individual completing this survey
Tele	phone
rax.	.21
E-ma	ail

Please attach a copy of your agency's policy and procedure for conducting background investigations/security clearances. We thank you for assisting us with this effort.

APPENDIX C

Agencies Responding to BI/SC Survey

(Indicates survey participants that do not conduct any type of BI/SC)

122	Department of Planning and Budget
127	Department of Emergency Services
128	Virginia Veterans Care Center (through private contractor)
131	Department of Veterans' Affairs
133	Auditor of Public Accounts
137	Council on Information Management
138	Department of Information Technology
146	Science Museum of Virginia
148	Commission for the Arts
151	Department of Accounts
152	Department of Treasury
154	Division of Motor Vehicles
156	Department of State Police
157	Compensation Board
158	Virginia Retirement System
161	Department of Taxation
163	Department for the Aging
172	Virginia Lottery
181	Department of Labor
182	Virginia Employment Commission
191	Workers' Compensation Commission
194	Department of General Services
201	Department of Education
202	Library of Virginia
204	College William and Mary
207	University of Virginia
208	Virginia Polytechnic Institute and State University
213	Norfolk State University
214	Longwood College
215	Mary Washington College
216	James Madison University
217	Radford University
218	Virginia School for the Deaf and Blind - Staunton
219	Virginia School for the Deaf and Blind – Hampton
223	Department of Health Professions
232	Department of Minority Business Enterprises
236	Virginia Commonwealth University
238	Virginia Museum of Fine Arts
245	State Council of Higher Education
247	George Mason University
247	GMU-Child Care Facility
261	Virginia Community Colleges System
262	Department of Rehabilitative Services

APPENDIX C

301	Department of Agriculture
305	State Milk Commission
405	Virginia Racing Commission
407	Virginia Port Authority
408	Chesapeake Bay Local Assistance Department
409	Department of Mines, Minerals, and Energy
417	Gunston Hall
425	Jamestown-Yorktown Foundation (through private contractor)
440	Department of Environmental Quality
505	Rail and Public Transportation
601	Virginia Department of Health
602	Department of Medical Assistance Services
701	Virginia Department of Corrections
702	Department for the Visually Impaired
720	Department of Mental Health, Mental Retardation, and Substance Abuse Services
750	Department of Correctional Education
766	Virginia Parole Board
777	Department of Juvenile Justice
9/6	Governor's Employment and Training Department
957	Commonwealth's Attorneys' Services Council
962	Department of Employee Relations Counselors