

**REPORT OF
THE VIRGINIA STATE CRIME COMMISSION**

**CRIMINAL HISTORY RECORD
CHECKS FOR VOLUNTEER AND
CONTRACT SERVICE PROVIDERS**

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



HOUSE DOCUMENT NO. 64

**COMMONWEALTH OF VIRGINIA
RICHMOND
1999**



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

Senator Ken Stolle
Chairman

Rich Savage
Director

December 8, 1998

To: The Honorable James S. Gilmore III, and
Members of the Virginia General Assembly:

House Joint Resolution 534, agreed to by the 1998 General Assembly, directed the Virginia State Crime Commission to conduct a study on the need for criminal history record checks for volunteers and contract services providers that work with vulnerable populations and to submit its findings and recommendations to the Governor and 1999 session of the General Assembly.

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission in 1998. I have the honor of submitting herewith the study report.

Respectively submitted,

A handwritten signature in black ink, appearing to be "KWS", written over a faint, larger signature.

Kenneth W. Stolle
Chairman

KWS:hvk

VIRGINIA STATE CRIME COMMISSION
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The Honorable Robert J. Humphreys
The Honorable William G. Petty

Attorney General's Office

The Honorable Mark L. Earley



Virginia State Crime Commission

Criminal History Record Checks for Volunteer and Contract Service Providers

January 1999

In 1997, the Virginia General Assembly passed House Joint Resolution 534 directing the Virginia State Crime Commission to study criminal history record checks on volunteer and contract service providers who work with children, the elderly, the mentally and physically incapacitated and challenged, and other citizens in need of special services. Specifically, the Crime Commission evaluated:

- The requirements of the National Child Protection Act of 1993 as amended by the Violent Crime Control and Law Enforcement Act of 1994 relating to criminal history records;

- Current Virginia statutes governing criminal history record checks;
- The costs associated with state and national criminal history record checks; and
- Alternative screening mechanisms for applicants of positions involving work with vulnerable populations.

Findings

Generally, the Crime Commission found:

- Federal law allows for, but does not mandate, the enacting of state legislation requiring those who hire employees to work with vulnerable populations to do national, fingerprint-based criminal history record checks.
- According to national survey data, there is a substantial number of people with adverse criminal histories employed to care for vulnerable populations.
- Minimal Virginia specific data is available regarding the criminal histories of those working with vulnerable populations in the Commonwealth.

Executive Summary

- The stigma and cost associated with finger printing and criminal history record checks is likely to reduce the size of the pool of people willing to volunteer for work with vulnerable populations.
- The Virginia State Police currently has a system for disseminating criminal history information contained in the Central Criminal Records Exchange. Virginia law requires that this information be provided free to volunteer organizations.
- Information contained in Virginia's Central Criminal Records Exchange is sometimes incomplete and inaccurate.
- The use of volunteers and contract service providers for the care of vulnerable populations has increased in recent years.
- Some states, including Florida and Texas, have open criminal history record systems. Under the laws of these states, criminal history records are provided to any member of the public for a small fee.

Recommendations

Based on these findings, the Crime Commission recommends:

- No legislation be passed at this time requiring all businesses and organizations that work with vulnerable populations to perform national criminal history background checks.
- The **Code of Virginia** be amended to allow any member of the public to access the conviction records of individuals who were convicted as adults.
- Additional training should be provided for the clerks of courts who enter criminal conviction data so as to insure the accuracy of the Central Criminal Records Exchange.
- The audit of public accounts be expanded to require random checks of the accuracy of criminal history records information sent by court clerks to the Virginia State Police.



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Authority for Study

During the 1997 legislative session, Delegate Vivian Watts sponsored House Joint Resolution 534 directing the Virginia State Crime Commission to study criminal history record checks on volunteer and contract service providers. *See Appendix A.*

Section 9-125 of the **Code of Virginia** establishes and directs the Virginia State Crime Commission “to study, report, and make recommendations on all areas of public safety and protection.” Section 9-127 of the **Code of Virginia** 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.” Section 9-134 of the **Code of Virginia** 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 criminal history record checks.

II. Members Appointed to Serve

At the May 19, 1998 meeting of the Crime Commission, Chairman Senator Kenneth W. Stolle of Virginia Beach selected Senator Thomas K. Norment, Jr. to chair the Public Safety Subcommittee studying criminal history record checks on volunteer and contract service providers. The following members were selected to serve on the Subcommittee:

Sheriff Terry W. Hawkins

Senator Janet D. Howell

The Hon. Robert J. Humphreys

Delegate Clifton A. Woodrum

Senator Kenneth W. Stolle, ex-officio



Introduction

Report Organization

The remaining sections of this report present the results of the Virginia State Crime Commission's analysis of the criminal records history system in Virginia. Section II provides an overview of the reports study design. Section III-A presents background information concerning the impact of federal criminal history requirements. Section III-B provides background on the state of criminal history records in Virginia. Study objectives and issues are discussed in Section IV, and the report's findings and recommendations are laid out in Section V.



Study Design

A workgroup was convened to study, report and make recommendations to the Crime Commission on criminal history record checks on volunteer and contract service providers. The workgroup was chaired by the Honorable Robert J. Humphreys, Commonwealth's Attorney for the City of Virginia Beach. The membership of the workgroup included representation from the Department of Juvenile Justice, the Department of Social Services, the Office of Interdepartmental Regulation of Children's Residential Facilities, the Department of Correctional Education, the Department of Criminal Justice Services, the Virginia State Police, the Department of Education, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Virginia Association of Community Service Boards, the Robert E. Lee Council of Boy Scouts of America and the Campagna Center.

Given the nature of this inquiry, staff relied on a well-developed research design, grounded in qualitative data collection methods with the goal of enhancing both the reliability and validity of this report's findings and recommendations. Staff began by conducting a broad literature review. This review was combined with a comparative analysis of the laws of Virginia and those of other states. Virginia's compliance with federal current federal law was also assessed.

With this foundation in place, staff developed questions and hypothesis which served as the basis for both discussion and interviews with those able to comment knowledgeably on the subject area. Periodic meetings with the study's workgroup followed. From the literature review, comparative analysis, discussions, interviews, and workgroup meetings, findings and recommendations were generated. These findings and recommendations on the need for criminal history record checks were presented to the members of the Virginia State Crime Commission for consideration in the 1999 General Assembly.



Background

FEDERAL LEGISLATION

National Child Protection Act

Under the National Child Protection Act (herein after referred to as NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act), a state is encouraged to have in effect national background check procedures that enable a qualified entity¹ to determine whether an individual applicant is fit to care² for the safety and well-being of children, the elderly, or individuals with disabilities³. The procedures would permit a qualified entity to ask an authorized agency⁴ to request a nationwide background check on an applicant provider⁵. The authorized agency would access and review state and federal criminal history records through the national criminal history background check system⁶ and shall make reasonable efforts to respond to an inquiry within 15 business days. The NCPA was enacted to, among other things, encourage states to require nationwide background checks to determine the suitability of a potential child care provider. The NCPA was amended by the Crime Control Act to include care providers for the elderly and individuals with disabilities. The Crime Control Act also directed the United States Attorney General to develop and disseminate guidelines for protecting children, the elderly, or individuals with disabilities from abuse to state and local officials and to

¹ The term "qualified entity" means a business or organization, whether public, private, for profit, not-for-profit, or voluntary, that provides care or placement services for children, the elderly, or individuals with disabilities, including a business or organization that licenses or certifies others to provide care or placement services.

² The term "care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

³ The term "individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.

⁴ The term "authorized agency" means a division or office of a state designated by a state to report, receive, or disseminate information under the NCPA.

⁵ The term "provider" means:

- a. a person who is employed by or volunteers with a qualified entity, owns or operates a qualified entity, or has or may have unsupervised access to children, the elderly, or individuals with disabilities; and
- b. a person who seeks to be employed or volunteer with a qualified entity, seeks to own or operate a qualified entity or seeks to have or may have unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care.

⁶ The term "national criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.



Background

public and private care providers. Information regarding the implementation of the national background check procedures for care providers is set forth below.

*Background Check Guidelines*⁷

1. Procedures established by a state must require that no qualified entity may request a background check of a provider unless the provider first furnishes a complete set of fingerprints and completes and signs a statement that:
 - a. contains name, address, and date of birth appearing on a valid identification document issued by a governmental entity;
 - b. the provider has not been convicted of a crime or, if so, furnishes a description of the crime and the particulars of the conviction;
 - c. notifies the provider
 - i. that the qualified entity may request a background check;
 - ii. of the provider's rights (see paragraph 2 below); and
 - iii. that prior to the completion of the background check, the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care.
2. Each provider who is subject to a background check is entitled to:
 - a. obtain a copy of any background check report; and
 - b. challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made by the authorized agency.
3. An authorized agency shall:
 - a. upon receipt of a background check report lacking disposition data, conduct research in whatever state and local record-keeping systems are available in order to obtain complete data; and
 - b. make a determination whether the provider has been convicted of or is under pending indictment for a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities, and convey that determination to the qualified entity.
4. Any nationwide background check and its results shall be handled in accordance with the requirements of Public Law (Pub. L.) 92-544.

⁷The guidelines produced by the United States Attorney General - as directed by the Crime Control Act of 1994 - relating to the implementation of national background check procedures for care providers.



Public Law 92-544 Requirements

The authority for the FBI to conduct a criminal record check for a non-criminal justice licensing or employment purpose is based upon Pub. L. 92-544. Pursuant to Pub. L. 92-544, the FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General's authority to approve the statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j). The standards employed by the FBI in approving Pub. L. 92-544 authorizations have been established by a series of memoranda issued by the Office of Legal Counsel, Department of Justice. As contained in these memoranda, the standards follow:

1. The authorization must exist as the result of legislative enactment (or its functional equivalent);
2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy; and
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicants/licensees.

Fingerprint card submissions to the FBI under Pub. L. 92-544 must be forwarded through the state identification bureau (hereinafter referred to as SIB). The state must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment or licensing.

Regulations

Section 3(c) of the NCPA states that the Attorney General may by regulation prescribe measures as may be required to carry out the purposes of the NCPA,



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including measures relating to the security, confidentiality, accuracy, use, misuse and dissemination of information, and audits and record-keeping. Since NCPA background checks are to be handled in accordance with the requirements of Pub. L. 92-544, the FBI - as the federal agency empowered by Pub.L.92-544 - is of the view that the regulations called for by Section 3 (c) of the NCPA are adequate. The standards used to approve state statutes for access to criminal history record information (hereinafter referred to as CHRI) under Pub. L. 92-544 and the regulations set out below demonstrate a concern for the proper use, security and confidentiality of such information. Both Pub. L. 92-544 and Title 28, Code of Federal Regulations (CFR), Section 20.33 provide that dissemination of FBI CHRI outside the receiving governmental department or related agency is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made. Regulations found at Section 50.12 of Title 28 contain additional requirements regarding the use and dissemination of CHRI. Section 50.12 provides, in part, that:

The CHRI may be used only for the purpose requested. Officials authorized to submit fingerprints and receive CHRI must notify the individual fingerprinted that the fingerprints will be used to check the criminal history records maintained by the FBI. Officials making the determination of suitability for employment or licensing must provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials should not deny employment or the license based on information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so. If the applicant wishes to challenge the accuracy or completeness of the record, the official must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28, CFR, Section 16.34.

A caveat incorporating the above use and dissemination restrictions and challenge requirements is placed on each FBI identification record disseminated for employment and licensing purposes. Further, because updates to the records are made on a continuous basis, an authorized agency should obtain a current background check any time the individual applies for a new job.



Fees For Processing National Background Checks

The FBI routinely charges \$24 (\$22 for billing states) for processing each fingerprint card submission under Pub. L. 92-544. Payment is made either by direct payment or billed to the SIB, depending on arrangements made between the FBI and each SIB, such as the execution of a Memorandum of Understanding for billing. With respect to the user fee for processing the fingerprints of a “volunteer” care provider, Section 3(e) of the NCPA was amended by the Crime Control Act to read, “In the case of a background check pursuant to a state requirement adopted after the date of the enactment of this Act conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized state agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less.” The FBI has interpreted this language to allow both the FBI and the states to charge the \$18 or actual cost, whichever is less. Based on a recommendation from the Department of Justice and for purposes of uniformity and consistency in administering this provision of the NCPA, the FBI has decided to also apply the \$18 fee to a volunteer care provider’s fingerprints processed under the authority of a state statute adopted before the date of enactment of the NCPA.

VIRGINIA LAW

Virginia maintains a state database of criminal history record information known as the Central Criminal Records Exchange (herein after referred to as CCRE). When applying for licensure, all child welfare agencies, including child day centers, child placing agencies, child-caring institutions, family day homes, and independent foster homes, that are not otherwise exempt from licensure, shall be subject to a criminal history records check by name only. The applicant, his agents or board members who are involved in the day-to-day operations of the child welfare agency or who are alone



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with, in control of, or supervising one or more children, and any other adult living in the home of an applicant for licensure or registration as a family day home shall obtain the check from the CCRE and forward the original notification of criminal record clearance to the Commissioner's representative prior to issuance of a license or approval of a registration. The applicant must also submit a sworn statement that none of the above has ever been convicted or is the subject of pending charges for any offense specified in **Code of Virginia** §63.1-198.1⁸ within or outside the Commonwealth. In addition, a child welfare agency shall not hire for compensated or voluntary employment nor shall private child-placing agencies approve as foster or adoptive parents or family day systems approve as caretakers any persons who have been convicted of such offenses or are the subject of pending charges. Any person desiring to work or volunteer at a child welfare agency shall provide the hiring or approving agency with a sworn statement. Any person guilty of making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. As the above discussion makes clear, though encouraged by the NCPA to institute national background check procedures, child welfare agencies and their employees in Virginia are not currently subject to either a state or nationwide FBI fingerprint check.

Conversely, residential facilities for juveniles which are regulated or operated by the Department of Social Services, the Department of Education or the Department of Mental Health, Mental Retardation and Substance Abuse Services, however, do require employees, volunteers and contract service providers who will be alone with a juvenile on a regular basis to submit to fingerprinting and to provide personal descriptive information, to be forwarded with the applicant's fingerprints through the CCRE to the FBI for the purpose of obtaining criminal history record information pursuant to **Code of Virginia** §63.1-248.7:2. The processing of the fingerprint checks for the above-

⁸ Persons who have been convicted of murder, abduction for immoral purposes as set out in §18.2-48, sexual assault as set out in Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2, pandering as set out in §18.2-355, crimes against nature involving children as set out in §18.2-361, taking indecent liberties with children as set out in §18.2-370 or §18.2-370.1, abuse and neglect of children as set out in §18.2-374.1, or abuse and neglect of incapacitated adults as set out in §18.2-369 or convicted under §18.2-379.

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referenced departments is carried out through the Office of Interdepartmental Regulation in coordination with the Virginia State Police.

Fees for Processing State Background Checks

Larger jurisdictions in Virginia have direct computer access to FBI fingerprint files, whereas smaller jurisdictions do not have such access and must submit fingerprints by mail. The FBI is now experiencing a 6 - 8 week backlog with respect to fingerprint-based national criminal history record check requests submitted by mail. These fingerprint-based FBI checks cost \$18 for volunteers and \$24 for non-volunteers. Fingerprint-based CCRE checks conducted by the Virginia State Police (hereinafter referred to as VSP) take about three weeks to process and cost \$13, whereas name-based state criminal history record checks require 15 working days and cost \$15. However, **Code of Virginia §19.2-389** provides that criminal history record information shall be provided through the CCRE at no charge to certain volunteer organizations, including Big Brothers/Big Sisters of America, volunteer fire companies and rescue squads and the Volunteer Emergency Families for Children. Other costs associated with criminal history record checks may include a fee required to have fingerprints taken and a processing fee incurred at the agency level.

The VSP is implementing a system that will provide for the electronic submission of fingerprints statewide and will speed up the process to as little as six hours for fingerprint-based checks within the CCRE. It is anticipated that nationwide electronic submission of fingerprints to the FBI and fully electronic FBI fingerprint-based criminal record checks will be in place by the year 2000.



Study Objectives & Issues

HJR 534 directed the Crime Commission to study criminal history record checks on volunteer and contract service providers with the goal of developing consistent state policy in this area. The Commission determined that any legislative proposal intended to accomplish this objective should take into consideration the following issues:

- requirements of the NCPA as amended by the Violent Crime Control and Law Enforcement Act of 1994;
- current Virginia statutes which provide for criminal history record checks but may be inconsistent with respect to
 - threshold crimes;
 - breadth of record (state and/or national);
 - length of time since crime or violation was committed;
 - level of discretion used by the employing or appointing authority; and
 - possible complications associated with criminal record expungement
- cost associated with state and/or national criminal history record checks and the appropriate bearer of such costs; and
- screening mechanism options currently in use



Findings & Recommendations

Working from the background information discussed above and the interviews and discussions with workgroup members that followed, the workgroup - and subsequently - the Crime Commission supported the findings laid out below.

Finding 1

The National Child Protection Act of 1993 as amended by the Violent Crime Control and Law Enforcement Act of 1994 allows but does not mandate that states enact legislation to have businesses and organizations that work with children, the elderly or individuals with disabilities to do national, fingerprint-based criminal history record checks on care provider applicants.

State statutes enacted with the purpose of enabling states to access the national criminal history background check system maintained by the FBI are subject to the approval of the U.S. Attorney General. Pursuant to standards issued by the U.S. Department of Justice's Office of Legal Counsel, state statutes must require fingerprinting of the applicant and authorize the use of FBI records for the screening of applicants.

A 1994 study performed at the request of the U.S. Department of Health and Human Services by the FBI's National Crime Information Center looked at the criminal backgrounds of 500 child-care providers in Nevada, Wisconsin, Missouri and South Carolina. The Center found that 39 people had a total of 440 arrests, resulting in 181 convictions, for crimes that included endangering the life of a child, indecency with a child, lewdness, prostitution, theft, illegal possession of drugs or alcohol, assault and battery, robbery and arson. In all, 61 people were identified as having arrests or convictions. Other crimes included shoplifting, writing bad checks and welfare fraud. The workers were employed in day-care centers, Head Start centers and foster-care homes.

While there is little Virginia-specific statistical data to substantiate the need for national criminal history record checks; however, supporting anecdotal information is



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abundant. State criminal history record checks are particularly inadequate in border jurisdictions in Virginia. Evidence suggest that the ease with which persons can migrate into Virginia from other states and the District of Columbia contributes to this problem.

In 1997, the Virginia State Police completed a total of 255,492 non-criminal justice criminal history record checks. Of the 16,906 that were fingerprint-based checks, 4,225, or approximately twenty-five percent, resulted in "hits," a finding that the individuals did in fact have criminal records. During the same time period, 5,000 criminal history record checks were conducted on volunteers with 750, or fifteen percent, resulting in "hits."

The Office of Interdepartmental Regulation conducts background investigations on potential employees and volunteers for the Departments of Education, the Department of Mental Health, the Department of Mental Retardation and the Department of Substance Abuse Services and Social Services. During FY97-98, the Office closed a combined total of 3,222 cases. Of these, 2,790 applicants met the statutory criteria to have responsibility for the safety and well-being of children, whereas 101 did not meet that criteria. Seventy-three of 1,798 (4.1 percent) applicants to the Department of Mental Health, Mental Retardation and Substance Abuse Services did not meet that criteria; of these, sixty-nine were potential employees and four were potential volunteers. Twenty of 809 (2.5 percent) applicants to the Department of Social Services failed to meet the criteria; of this number, nineteen were potential employees and one was a potential volunteer. Eight of 615 (1.3 percent) employee applicants to the Department of Education did not meet the criteria.

It should be noted with respect to volunteers, the major drawbacks to fingerprinting appear to be the stigma, costs of the fingerprinting and criminal history record checks, location of where the fingerprinting will occur and the concern that broadly drafted statutes could require entire church congregations to be fingerprinted. A related issue is the appropriate bearer of the costs of fingerprinting and conducting

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the checks--whether the agency or organization, the potential volunteer or the Commonwealth should assume the cost.

Recommendation 1

Until such time as information Virginia specific data is available to better establish the need for national criminal history record checks, the Crime Commission should not recommend legislation to allow all businesses and organizations that work with children, the elderly or individuals with disabilities to perform such checks on potential care providers. However, businesses and organizations that work with vulnerable populations and have documented their need for national checks should still pursue access to the national criminal history record check system on an individual basis.

Finding 2

Pursuant to **Code of Virginia §19.2-389**, the VSP disseminates criminal history record information contained in the CCRE to various individuals, agencies, political subdivisions, organizations and other entities referred to in the statute. The statute requires the VSP to provide different information to different agencies and organizations. For instance, under this statute, some entities are entitled to receive arrest and conviction information whereas others may only receive conviction data. This requires the VSP to review the section of the statute applicable to the requesting entity and determine exactly what information that entity is permitted to receive. The VSP must then screen the information - in an effort to delete anything the requesting entity is not permitted to receive - before completing the request.

In addition, **Code of Virginia §19.2-389** provides that criminal history record information shall be furnished at no charge to certain volunteer organizations, including Big Brothers/Big Sisters of America, volunteer fire companies and rescue



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squads and the Volunteer Emergency Families for Children, while other entities must pay a fee for such information.

Finding 3

In recent years, there has been a marked increase in the use of volunteer and contract service providers in areas previously reserved for state governmental agencies.⁹ In many instances, these care providers have unsupervised contact with vulnerable populations, including children, the elderly and persons with disabilities. While there are a variety of mechanisms in addition to state criminal history record checks that should be employed by individuals, agencies and other entities to screen potential care providers, the information that can be provided by such checks is often crucial to the hiring decision.¹⁰

Finding 4

Some states, including Texas and Florida, have open criminal history record systems. Under this model, any member of the public is permitted to request a name-based state criminal history record check on any individual. Both Texas and Florida provide for written as well as automated requests.

Florida's open records system is maintained by the Florida Department of Law Enforcement and has been in place for over a decade. Florida provides information on all misdemeanor and felony arrests and dispositions, including convictions and dismissals, unless the record has been judicially sealed or expunged. No study was

⁹ For instance, according to the Virginia Association of Community Services Boards, over the last several years, changes relating to funding mechanisms--specifically changes in the magnitude of the Medicaid dependent population--have resulted in a substantial increase in the number of private contract providers. Consequently, Community Services Boards are no longer able to monitor such providers as closely as before.

¹⁰ The agencies and organizations represented on the Commission's workgroup are currently performing employment reference checks, personal reference checks and personal interviews; confirming education; requiring a written application; observing the volunteer in the work environment; performing state criminal records checks and requiring abuse and sex offender registry and motor vehicle records checks.



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conducted prior to implementation of the system, and no evaluation has been undertaken since it became operational.

Texas' open records system is maintained by the Texas Department of Public Safety and has been operational since March 1998. Unlike Florida, Texas provides conviction data only. No study preceded the enactment of legislation to open these records to the public, and no evaluations concerning the impact of the system are expected. In fact, upon the advice of the Texas Attorney General, the Texas Department of Public Safety does not collect any information as to who is using the system, why they are using it or what they are learning from it. The Department is not even permitted to calculate "hit" rates.

Recommendation 2

The **Code of Virginia** should be amended to allow any member of the public, for a fee, to receive upon request, or to otherwise access electronically, all conviction data on individuals who were convicted as adults as revealed by a name-based search of the state criminal history record system maintained by the Virginia State Police.

Finding 5

The information contained in state criminal history records may be incomplete and/or inaccurate. Inaccuracies such as missing information and incorrect or incomplete disposition data commonly occur in the CCRE records maintained by the Virginia State Police. These inaccuracies can be attributed in part to the fact that some jurisdictions in Virginia do not report disposition information to the VSP even though clerks of court are required by statute to do so.

Name-based criminal history record checks occasionally do not produce reliable results because it is impossible to positively ascertain the identity of an individual based on identifiers such as name, gender, race, and date of birth. Fingerprints are the only



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means of positively identifying the individual being checked and are required for all FBI checks. Fingerprint-based searches insure that the criminal history record information obtained is that which pertains to the person for whom it is sought.

There is concern that too much credence will be placed in the results of criminal history record checks and that this will result in a false sense of security on the part of potential employers. Even with a check that reveals no past offenses, potential employers should proceed with caution because the individual may commit a crime after the check is completed, the record may be incomplete, the record may have been expunged or, in the case of a name-based search, the individual may not be accurately identified. In other cases, even with fingerprint-based checks, lack of evidence or other circumstances may have resulted in the dismissal of serious past charges against a defendant.

Recommendation 3

Additional training should be provided to the clerks of courts who enter criminal conviction data on the CCRE forms so as to insure the accuracy of the Central Criminal Records Exchange.

Recommendation 4

The Auditor of Public Accounts, in conjunction with the Executive Secretary of the Supreme Court, should perform an audit of the accuracy of criminal history record information sent by the clerks of court to the Virginia State Police.

Acknowledgements

The members and staff of the Virginia State Crime Commission extend special thanks to the following individuals, agencies and organizations for their cooperation and valuable assistance in connection with this study:

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Mary Ann Bergeron, Virginia Association of Community Services Boards

Karen Cary, Department of Mental Health, Mental Retardation and Substance Abuse
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George Gotschalk, Department of Criminal Justice Services

John J. Harold, Virginia Association of Community Services Boards

Kathie Hintenach, The Campagna Center

Maureen P. Marshall, Department of Social Services

Connie E. McHale, Department of Juvenile Justice

Jim Thur, Fairfax-Falls Church Community Services Board

Robert A. "Alf" Tuggle, Robert E. Lee Council of Boy Scouts of America

Thomas W. Turner, Virginia Department of State Police

Charlene Vincent, Office of Interdepartmental Regulation of Children's Residential
Facilities

The Honorable Vivian E. Watts, Virginia House of Delegates



HOUSE JOINT RESOLUTION NO. 534

Directing the Virginia State Crime Commission to study criminal history records checks on volunteer and contract service providers.

Agreed to by the House of Delegates, February 20, 1997

Agreed to by the Senate, February 19, 1997

WHEREAS, there has been an increase in recent years in the use of volunteer and contract service providers in many areas previously reserved for state governmental agencies; and

WHEREAS, of special interest and concern to policy makers are those service providers working with children, the elderly, the mentally and physically incapacitated and challenged, and other citizens in need of specialized services; and

WHEREAS, Virginia law provides for criminal history background checks on some of these providers, but to varying degrees in terms of threshold crimes, breadth of record check on state or national level, length of time since crime or violation was committed, level of discretion used by the employing or appointing authority, and the possible complication of criminal record expungement; and

WHEREAS, there is a need to establish a clear policy for requiring criminal history record background checks for use in regulating, employing or appointing volunteer and contract service providers in various service positions throughout state government; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study criminal history records checks on volunteer and contract service providers, with the goal of developing state policy in this area.

The Commission shall confer, in the course of its study, with the relevant state agencies charged to administer policies and regulations governing criminal history records checks of clients and volunteers. Such agencies shall include, but not be limited to, the Department of Social Services, the Department of State Police, the Department of Criminal Justice Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and the State Office of Volunteerism. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.



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