



FINGERPRINTING OF DEFENDANTS

Study Highlights

January 2019

For an offense to be applied to a criminal history record, fingerprints must be taken during the criminal justice process and submitted, along with a record of the charge and disposition, to the Central Criminal Records Exchange (CCRE).

The following offenses must be reported to the CCRE:

- Any felony;
- Jailable misdemeanors in Titles 18.2 or 19.2;
- All misdemeanors in Title 54.1 (Professions);
- Protective order violations; and,
- Non-payment of spousal and child support.

VSP maintains a “hold file” that includes over 700,000 offenses that have not been applied to criminal history records, primarily because the CCRE did not receive the defendant’s fingerprints. Of these unapplied offenses, at least:

- 134,000 are felony convictions; and,
- 289,000 are misdemeanor convictions.

Study Findings

The Central Criminal Records Exchange (CCRE) is administered by the Virginia State Police (VSP). Information in the CCRE is used to generate an individual’s criminal history record. Staff discovered that a “hold file” exists within the CCRE which contains over 700,000 criminal offenses that have not been applied to the criminal history records of defendants. The vast majority of these offenses have not been applied because the defendant’s fingerprints were not collected or submitted to the CCRE. Analysis of the hold file reveals:

- The offenses include both felonies and misdemeanors;
- The majority of felony offenses are for probation violations, followed by fraud, larceny, drug, and assault offenses;
- The largest categories of misdemeanor offenses include assault, narcotics, contempt of court, larceny, and failure to appear offenses;
- A majority of the offenses are for arrests made from 2010 onward;
- While the dispositions of the offenses vary, approximately 60% of the offenses resulted in a guilty finding (conviction);
- The file contains at least 55,000 unique individual convicted felons; and,
- The offenses are from jurisdictions across the entire Commonwealth.

Law enforcement agencies are responsible for taking the fingerprints of a defendant following an arrest. The chief law enforcement officer of a city or county is required to take the fingerprints following conviction of a defendant charged on a summons. Clerks of court are required to transmit case disposition information to the CCRE. Additionally, the Department of Corrections (DOC) takes fingerprints of defendants placed in a DOC facility or on state probation and transmits those fingerprints to VSP.

Staff identified several factors that contribute to fingerprints not being taken during the criminal justice process. These factors include (i) varying procedures for how and when fingerprints are taken, (ii) lack of personnel and resources, (iii) taking fingerprints for only some offenses when the defendant is arrested on multiple charges, (iv) not fingerprinting defendants who are in custody following a direct indictment, and (v) misunderstandings about which offenses require fingerprints. Staff identified solutions to retroactively apply some of the missing offenses to criminal history records and to prospectively ensure that future offenses are applied to criminal history records. Crime Commission members unanimously endorsed the following modifications to the Code of Virginia to:

1. Define “unapplied criminal history record information” (§ 9.1-101);
2. Require VSP to submit periodic reports to stakeholders, an annual report to the Governor and General Assembly, and to reconcile information regarding unapplied criminal history record information (§ 19.2-388);



Felony convictions that have not been applied to criminal history records include offenses such as murder, rape, robbery, assault, kidnapping, DWI, and weapons violations.

Criminal history records are used for several criminal justice purposes, including:

- First offender eligibility;
- Bail determinations;
- Sentencing guidelines;
- Predicate offenses;
- Expungements; and,
- Latent fingerprint comparison.

Criminal history records are also used for many non-criminal justice purposes, including:

- Sex Offender Registry;
- Firearms purchases;
- Barrier crimes exclusions;
- Professional licensing;
- DNA databank; and,
- Employment eligibility.

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3. Mandate that fingerprints be taken upon finding that a defendant is in violation of the terms of a suspended sentence, probation, or parole, if the underlying offense was a felony (§ 19.2-390);
4. Require that charges of domestic assault and battery and property offenses that are deferred and dismissed be reported to the CCRE (§ 19.2-390);
5. Require that courts determine whether fingerprints have been submitted at the time a charge is deferred and to ensure that fingerprints have been taken prior to dismissing the charge (§§ 19.2-74, 18.2-57.3, 18.2-251, 19.2-303.2, 19.2-390, and 19.2-392);
6. Require that fingerprints of defendants who are in custody following a direct indictment be taken after the first appearance (§§ 19.2-232 and 19.2-390);
7. Order that a defendant's fingerprints be taken as a condition of a suspended sentence or probation (§ 19.2-303);
8. Permit VSP to classify and file information received from DOC as criminal history record information, unless otherwise prohibited by law, and require DOC provide such information to VSP (§§ 53.1-23 and 19.2-390);
9. Require state probation officers to verify that the conviction for which a defendant is being supervised appears on their criminal history record before releasing them from probation, and if it does not, to take the fingerprints of the defendant (§ 53.1-145);
10. Require local probation officers to verify that the conviction for which a defendant is being supervised appears on their criminal history record before releasing them from probation, and if it does not, to order the defendant's fingerprints be taken by VSP (§ 9.1-176);
11. Require the court to review a defendant's criminal history record at each restitution review hearing where a defendant was convicted of a felony or placed on supervised probation, and if the offense for which restitution was ordered does not appear on the criminal history record, order that the fingerprints of the defendant be taken (§ 19.2-305.1);
12. Clarify the CCRE reporting requirements for clerks of court based upon whether a charge was initiated by an arrest or summons (§ 19.2-390); and,
13. Expand the list of offenses that require a report to the CCRE (§ 19.2-390).
14. Require VSP to develop and disseminate a model policy to law enforcement agencies on the collection of fingerprints and reporting of criminal history record information to the CCRE (§ 19.2-390.03 – new section);
15. Allow the court to modify the terms of a suspended sentence or probation at any time during the period of suspension or probation to order that the fingerprints of a defendant be taken (§ 19.2-303.02 – new section); and,
16. Require VSP to work with state and local agencies and the courts to ensure that unapplied criminal history record information is applied to criminal history records (2nd Enactment Clause).

Crime Commission members unanimously endorsed the following administrative recommendations and will send letters requesting that:

17. VSP develop a brief reference guide of CCRE reportable offenses for use by law enforcement agencies and develop policies and procedures for referencing the CCRE "Hold File" when conducting criminal history records checks in certain circumstances;
18. State and local agencies, along with corresponding associations, provide training on the collection and submission of fingerprints and the relationship between fingerprints and criminal history records; and,
19. Office of the Executive Secretary of the Supreme Court of Virginia, in coordination with other users of the Uniform Statute Table, update and implement a revised table by July 2019.



SEX TRAFFICKING IN VIRGINIA

Study Highlights

January 2019

Commercial sex trafficking is occurring in Virginia. The commercial sex industry does not involve any type of consensual sexual contact.

Sex trafficking intersects with numerous other problems facing Virginia, such as:

- Child physical and sexual abuse;
- Missing or runaway youth;
- Drug addiction and the opioid crisis;
- Behavioral issues in schools;
- Juvenile delinquency and status offenses;
- Social services and foster care placement;
- Suicide;
- Mental health;
- Health care (e.g., pregnancy, STI's);
- Gangs; and,
- Domestic violence.

Study Findings

Staff found that sex trafficking is a serious problem in Virginia. However, due to a lack of data, the full extent of the problem could not be determined. Commercial sex trafficking is difficult to identify and address due to its unique characteristics and intersection with numerous other problems facing Virginia. The use of the traditional criminal justice process alone to address sex trafficking is not working. Combating sex trafficking in Virginia requires a proactive, collaborative, and multi-disciplinary approach in order to:

- Identify and provide intervention services to at-risk youth;
- Increase awareness, education, and training;
- Identify, recover, and treat victims; and,
- Reduce recruitment and demand.

What is commercial sex trafficking?

Commercial sex trafficking is the exchange of money or some other item of value in return for sexual contact. The commercial sex industry involves at least three distinct parties - the trafficker, the buyer, and the trafficked person (victim).

How does a victim become involved in commercial sex?

Victims are often induced into the commercial sex industry by traffickers who exploit their vulnerabilities. Such vulnerabilities may include dysfunctional families, past abuse, low self-esteem, and drug dependence. Traffickers prey on victims' desire for love, hope, and sense of belonging. These vulnerabilities make at-risk youth particularly susceptible to trafficking.

Why is it difficult to identify victims of sex trafficking?

Victims often do not identify themselves as victims and often do not realize they are being trafficked. This is because victims of sex trafficking may form an emotional and psychological bond with their trafficker. As a result, victims are not easily identified and the criminal justice system often treats them as criminals.

What challenges do victims face when leaving the sex industry?

It typically takes a victim numerous attempts to successfully leave the industry due to a multitude of challenges, such as lack of a support structure, limited basic life skills due to reliance on their trafficker, a criminal record, difficulty securing housing or employment, and health issues due to inadequate medical care. Resources for both adults and juveniles attempting to leave the commercial sex industry are extremely limited in Virginia.



Study Recommendations

Virginia must focus efforts on addressing the root causes of sex trafficking by identifying at-risk youth and increasing awareness, education, and training on the issue across numerous disciplines.

The internet and social media allow for the recruitment of victims and sale of sex across the United States.

Common types of commercial sex traffickers include:

- Pimps
- Gangs
- Family Members

The demand for commercial sex is high and therefore steps must be taken to:

- Deter the purchase of sex;
- Hold sex buyers accountable; and,
- Educate sex buyers on the impact to victims.

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Crime Commission members unanimously endorsed the following recommendations to combat sex trafficking in Virginia:

Recommendation 1: Amend the Virginia Code to (i) clarify that traffickers do not have to be a victim's parent or guardian in order to trigger Department of Social Services (DSS) involvement, (ii) allow DSS to take emergency custody of children who are victims of sex trafficking, (iii) require DSS to conduct a family assessment when a juvenile sex trafficking victim is identified, and (iv) clarify the jurisdiction of local DSS agencies (§§ 63.2-1506, 63.2-1508, and 63.2-1517).

Recommendation 2: Amend the Virginia Code to authorize charging commercial sex traffickers for each individual act of promoting sex trafficking (§ 18.2-357.1).

Recommendation 3: Amend the Virginia Code to increase penalties for aiding in prostitution or using a vehicle to promote prostitution where the victim is a minor. Include these enhanced offenses in other statutes relating to felony commercial sex trafficking, such as sex offender registration, violent felony offenses, gang offenses, racketeering offenses, the multi-jurisdictional grand jury, and barrier crimes (§§ 9.1-902, 17.1-805, 18.2-46.1, 18.2-348, 18.2-349, 18.2-513, 19.2-215.1, and 19.2-392.02).

Recommendation 4: Amend the Virginia Code to prohibit manual stimulation of another's genitals (§§ 18.2-346, 18.2-348, and 18.2-356).

Recommendation 5: Enact a Virginia Code section to create a statewide Sex Trafficking Response Coordinator position at the Department of Criminal Justice Services (DCJS) (§ 9.1-116.4).

Recommendation 6: Request that the Criminal Injuries Compensation Fund (Virginia Victim Fund) work with stakeholders to develop and distribute informational material regarding claims by sex trafficking victims.

Recommendation 7: Enact a Virginia Code section to create a Virginia Prevention of Sex Trafficking Fund administered by DCJS to promote training, education, and awareness of sex trafficking (§§ 9.1-116.5, 16.1-69.48:6 and 17.1-275.13).

Recommendation 8: Amend the Virginia Code to allow juvenile victims and witnesses of sex trafficking to testify via two-way closed-circuit television (§ 18.2-67.9).

Recommendation 9: Request that the DCJS Committee on Training establish compulsory minimum entry-level, in-service, and advanced training standards for law enforcement officers on the awareness and identification of sex trafficking.

Recommendation 10: Request that DCJS continue to allocate a portion of the Victims of Crime Act funding for treatment and services for victims of sex trafficking.

Recommendation 11: Request that Crime Commission staff continue work on this study for an additional year and consult with stakeholders to examine further areas of concern and identify potential solutions.



PRE-TRIAL IN VIRGINIA

Study Highlights

January 2019

The Pre-Trial Data Project consists of two phases:

1. Development of the cohort; and
2. Tracking of case outcomes:
 - Final case disposition;
 - Public safety; and,
 - Failure to appear.

DCJS data showed that 59% (16,964 of 28,711) of placements made to pretrial services agency supervision in FY18 were in conjunction with a secured bond.

- The remaining 41% (11,747 of 28,711) of placements were in conjunction with a personal recognizance or unsecured bond.

The number of indigent defendants in Virginia's criminal justice system is currently unknown.

Virginia Pre-Trial Data Project

The Virginia Pre-Trial Data Project is an unprecedented, collaborative effort between all three branches of government and numerous state and local agencies, including the Virginia State Crime Commission, Virginia Criminal Sentencing Commission, Alexandria Circuit Court, Compensation Board, Department of Criminal Justice Services, Department of Corrections, Fairfax Circuit Court, Office of the Executive Secretary of the Supreme Court of Virginia, and the Virginia State Police.

The Crime Commission requested that staff answer the question of how effective various pre-trial release mechanisms are at ensuring public safety and appearance at court proceedings. Data was obtained from numerous sources to develop a cohort of nearly 23,000 adult defendants charged across Virginia during a one-month period (October 2017) whose final case dispositions were tracked through December 31, 2018. Release mechanisms to be examined include summons, personal recognizance bond, unsecured bond, and secured bond, along with certain conditions of release. The data will allow for comparisons to be made between type of release mechanism, type of offense, and locality across similarly situated defendants, including risk level.

The dataset will inform policy-making throughout the pre-trial process on such topics as (i) the effectiveness of various pre-trial release mechanisms, (ii) judicial officer decision-making in relation to bond and conditions of release, (iii) accuracy of the current pretrial risk assessment instrument (VPRAI-R), and (iv) the role of a pre-trial risk assessment instrument. It is anticipated that final results of this Project will be presented in 2019.

Crime Commission members endorsed the following recommendations relating to the Pre-Trial Data Project:

Recommendation 1: Amend the Virginia Code to create a new charge for contempt of court specifically for failure to appear (§§ 16.1-69.24 and 18.2-456).

Recommendation 2: Request that Crime Commission staff convene stakeholders to develop a plan for statewide case tracking across the criminal justice system and any other related systems. Recommendations to implement the plan will be provided by December 2019.

Recommendation 3: Request that the Office of the Executive Secretary of the Supreme Court of Virginia be included as part of Recommendation 2 in order to determine a method for tracking the number of criminal defendants statewide who are found to be indigent pursuant to Virginia Code § 19.2-159.



Pretrial Services Agencies Update

Per DCJS data, of the 28,735 defendants placed on pretrial services agency supervision during FY18:

- 17,568 were placed without an investigation; and,
- 11,167 were placed following an investigation.

Following arrest, nearly all defendants are taken before a magistrate, where the first bond hearing is conducted and a decision to detain or set the conditions of pre-trial release is made.

There are currently 375 bail bondsmen in Virginia with an active license.

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During 2018, Crime Commission staff worked closely with the Department of Criminal Justice Services (DCJS) and stakeholders to address concerns identified with the administration and operation of pretrial services agencies. Staff provided oversight of the DCJS Pretrial Stakeholder Work Group and developed and disseminated over 2,000 surveys as part of a stakeholder needs assessment. While there continues to be broad support among local stakeholders for the use of pretrial services agencies, many of the concerns that staff identified during the previous year's study persisted, including (i) investigations not being conducted for all defendants eligible for pretrial services, (ii) release recommendations provided to judges being inconsistent at times with the facts and circumstances of an offense, and (iii) information not being provided to all judicial officers, including magistrates, as intended in the Pretrial Services Act. Staff withheld any recommendations pending the findings of the Pre-Trial Data Project.

Pre-Trial Process

The pre-trial process encompasses the various stages of a case from the time a defendant is charged with an offense until the trial and/or sentencing of the matter. This time period includes the initial charge, any appearances before a magistrate or the court, bond hearings, and the determination of pre-trial release conditions. Staff found that while procedures at magistrate offices are generally uniform across the Commonwealth, pre-trial procedures relating to first appearance and bond hearings before the court vary by locality and can differ even amongst courts within the same locality. Staff also found that statewide regulations do not exist for the pre-trial use of GPS or similar tracking devices.

Bail bondsmen have a large presence during the pre-trial process. They guarantee a defendant's appearance at court proceedings, but are not responsible for supervising court-ordered conditions of release. DCJS has oversight of all bail bondsmen. In addition, the State Corporation Commission has oversight of surety bail bondsmen, who must also be licensed as property and casualty insurance agents. The criminal background licensing restrictions are less stringent for bail bondsmen than for other occupations regulated by DCJS. Additionally, a surety can obtain a *capias* from a judicial officer for the arrest of a defendant (principle) for any reason.

Crime Commission members unanimously endorsed the following recommendations relating to the pre-trial process:

Recommendation 1: Amend the Virginia Code to require magistrates to complete the existing "Checking For Bail Determinations" form and transmit it to the court (§ 19.2-121). This codifies current practice by magistrates.

Recommendation 2: Amend the Virginia Code to require that the basis of arrest must be stated by a surety when requesting a *capias* (§ 19.2-149).

Recommendation 3: Amend the Virginia Code to increase the penalty for carnal knowledge of a defendant by a bail bond company owner or agent from a Class 1 misdemeanor to a Class 6 felony (§ 18.2-64.2).

Recommendation 4: Request that Crime Commission staff continue to examine issues of uniformity within the pre-trial process.