

AUTOMATED OUT-OF-STATE RECORD CHECKS

Progress on Development Feasibility and Cost

A Report to the Virginia State Crime Commission



October 2021

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TO: The Honorable Charniele L. Herring
Chair of the Virginia State Crime Commission

Pursuant to House Bill 2113ER2 and Senate Bill 1339ER2, Chapter 542 Enactment Clause 11 of the 2021 Acts of Assembly, I am respectfully submitting herewith a report concerning the Department's progress on determining the feasibility and cost associated with automated out-of-state record checks.

Respectfully,

A handwritten signature in cursive script that reads "Gary T. Settle".

Superintendent

GTS/MTP/bkl

Enclosure

Preface

Chapter 542 enactment clause #11 of the 2021 Acts of Assembly directs the Department of State Police (the Department) to “determine the feasibility and cost of implementing an automated system to review out-of-state criminal history records and report to the Virginia State Crime Commission by November 1, 2021, and November 1 of each year thereafter until such determination has been made.” Pursuant to this requirement, the Department’s Criminal Justice Information Services Division has reviewed its current progress in determining the feasibility and cost associated with developing an automated system that will provide the query and review of out-of-state criminal history information.

Executive Summary

In the last five years, the Department has processed, on average, 4,097 expungements of criminal history information each year. As the demand for expungement of criminal history information has increased over the years, the Department has continually reviewed its expungement process to determine and implement ways to meet the increased demand. As originally established, the expungement process is one that is manual in nature, requiring personnel to review and process each expungement petition and order received by the Department. However, newly passed legislation during the 2021 Special Session has opened additional opportunities for individuals to expunge and/or seal criminal history information that is retained by the Department and criminal justice agencies by means of petitioning the court, or in an automatic process.

This report examines the Department’s current expungement process and the steps that are currently underway to develop a Computerized Criminal History (CCH) system that will meet the needs of an automated and automatic criminal history expungement and sealing process. Furthermore, an examination of the requirement to review out-of-state criminal history information will be presented in the context of current procedures to query and review the record information. The report concludes with information on the next steps in the path of developing the new CCH system to meet the needs of an automated and automatic expungement and sealing process.

Background

The Department, through its Central Criminal Records Exchange (CCRE), is responsible for the reception, retention and reporting of all reportable criminal history information.¹ Records contained within the CCRE are made available to criminal justice agencies for law enforcement purposes and non-criminal justice agencies for pre-employment screening purposes. As of August 2021, the CCRE retains 11,508,326 individual offenses that have been applied to 2,312,579 individual computerized criminal

¹ See Virginia Code § 19.2-390.

history records. The Department's CCRE section is the sole repository of criminal history information within the Commonwealth of Virginia.

As the sole repository of criminal history information, the CCRE was tasked with the processing of criminal history expungement petitions and orders that are received by the courts. Originally, the criminal history petitions and orders for expungement were low in volume, however with the increase of pre-employment, licensing and educational program vetting requiring criminal history background checks, the demand for criminal history expungements has increased. This increase in criminal history petitions and orders for expungement has resulted in increased demands on a manual and labor intensive process.

Expungement Section Processes

Under the current criminal history expungement process, petitions for expungements are received in the CCRE by mail along with a complete set of the petitioner's fingerprints on an FD-258 Applicant Fingerprint Card. Once the petition package is received, the fingerprint card is sent to the Biometric Records Section (BRS) to be used in identifying the petitioner's criminal history record and corresponding State Identification (SID) number. Once the criminal history record is identified, the fingerprint card and SID number is sent back to the Expungement Section for processing.

After receipt of the fingerprint card and SID number from the BRS, the Expungement Section staff members query the Virginia Criminal Information Network (VCIN) to retrieve a copy of the petitioner's criminal history information. The criminal history information is reviewed to locate the offense and disposition information associated with the petition. The criminal history source documents are then located either on microfilm or electronic images and printed off to be included in the petition package.² Furthermore, any court disposition updates that are needed prior to the petition package being sent will take place. Once the petition package is completed, the information is then sent back to the court to be used in the expungement decision-making process.

In the second phase of the expungement process, the expungement order is received by the CCRE Expungement Section for processing. Once the order is received, it is reviewed by an Expungement Section staff member to ensure that the criminal history information that is to be expunged is not contrary to what is eligible to be expunged by law.³ If the information to be expunged is not eligible, the order, along with any supporting documentation, is sent to the Office of Attorney General for review and legal action.⁴ Furthermore, the expungement order package is reviewed to ensure that the order received clearly indicates the information that is to be expunged. If the order is not clear,

² Criminal history source documents are those documents received by the CCRE from the booking agency or court that supports the entry on the criminal history record.

³ See § 19.2-392.2

⁴ Legal action may include filing a motion to vacate the expungement order.

the Expungement Section staff member will contact the court to receive clarification on the order.

Expungement order packages that are complete are processed by removing the criminal history information from the CCH system. The associated source documents are identified and sealed accordingly. Notification is made to the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division requesting removal of the expunged information from the criminal history report that is located at the federal level. In addition, a compliance request notification along with a copy of the expungement order is sent to any agency that is involved with the information to be expunged, e.g. courts, law enforcement, probation and parole, etc. The agencies are requested to comply with the expungement order and make notification to the Expungement Section once compliance has been met. Once all compliance notifications are received by the Expungement Section, a notification that the expungement has been completed is sent to the court.

In addition to this process, an Expungement Section staff member will query the VCIN system to obtain contact information for those who have requested the individual's criminal history information within the past two years. Letters are then sent out to the users, notifying them of the expungement and informing them to request a new criminal record if the information is still needed since the criminal history information has changed. As illustrated, the expungement process can be time-consuming in nature as it relates to the manual processes that are involved.

Legislative Changes

In an effort to streamline the expungement process and increase the eligibility of additional criminal history information that can be sealed or expunged, House Bill 2113ER2 and Senate Bill 1339ER2 set forth a new expungement and sealing process and the associated eligibility criteria. Found within the new legislation is an automatic sealing process that will allow certain offense information to be automatically sealed if certain criteria are met. Under § 19.2-392.6(C) Code of Virginia, one of the eligibility criteria to have offense information sealed requires that the individual *has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, the United States or any territory thereof, excluding traffic infractions under Title 46.2 during that time period.* The time period that must be met is seven years since the date of dismissal or conviction of the offense that is to be sealed.

In the automatic sealing process the Department is required on at least a monthly basis to determine which offenses meet the criteria for automatic sealing. Once the list is compiled it is electronically forwarded to the Executive Secretary of the Supreme Court of Virginia to be electronically distributed to each circuit court clerk in the jurisdiction where the case was finalized. The clerk of the circuit court then prepares a sealing order to be reviewed and entered by the chief judge sealing the offense information. The order is then

electronically sent back to the Department for the sealing process to take place. In order for this process to begin, the Department must first generate the list of eligible offense information to be sealed. This process will require the Department to check the eligibility required for each individual that has a sealable offense, which can be a difficult task when requiring an out-of-state criminal history record check.

Out-of-State Records Checks

Under current functionality, for criminal justice purposes, criminal history checks are conducted via the VCIN system. These types of criminal history checks can be for Virginia criminal history only, Virginia and out-of-state criminal history, or just out-of-state criminal history. Criminal history information is queried by name, sex, race, date of birth, and social security number if available. This identifying information is then electronically sent via VCIN to the FBI CJIS Division (NCIC) to be checked against the Interstate Identification Index (III) criminal history name file. If an indexed record is located on the III criminal history name file, the corresponding FBI and out-of-state SID number(s) are returned back to the VCIN user.

At this time, the VCIN user queries the out-of-state SID number via VCIN to retrieve an electronic copy of the criminal history record from the III network. However, if the individual has a Virginia criminal history record retained in the CCRE, the corresponding Virginia SID number can be used to complete the out-of-state criminal history record retrieval from III. This is due to states having the ability to link criminal history SID numbers to one FBI CJIS Universal Control Number (UCN) and corresponding FBI national criminal history record. Once the Virginia SID number is queried in the III network, the linked FBI national criminal history record and all linked out-of-state record information will be returned.

What is common across this process is the manual entry of identifying information or Virginia SID number to check and retrieve the out-of-state criminal history information. Furthermore, in order to determine if the individual qualifies to have the offense information sealed, a manual review of the out-of-state record will be required.⁵ In order to reduce the Department's need to manually review out-of-state criminal history information, an automated process would be the best option to accomplish this task.

Progress Towards Automated Out-of-State Record Checks

In April 2020, the Department began collecting high-level business requirements in order to develop a new computerized criminal history system to be known as the Criminal and Rap Back Information System (CRIS). The new CRIS will provide state of the art technology and functionality as it relates to capturing and reporting criminal history information in the Commonwealth of Virginia. Furthermore, the CRIS will provide several

⁵ A manual review of the out-of-state record to ensure no out-of-state convictions within the last seven years from date of dismissal or conviction of the offense that is to be sealed exist.

modules that will be used to process non-criminal justice criminal background checks, civil commitment entries and reporting, and Rap Back retention and notification reporting.⁶

As part of the CRIS, functionality related to the expungement and sealing of criminal history information will be developed. It is anticipated that the CRIS will provide automated functionality to search and develop the list of offenses and individuals that qualify to have eligible offense information sealed within the criminal history database as illustrated in the automatic sealing process. Within the scope of the CRIS providing automated functionality to generate the electronic automatic sealing list, it is the intention of the Department to automate the query, capture and review of out-of-state record information as required by § 19.2-392.6(C) Code of Virginia. The development of this type of computer system functionality will have to be reviewed and analyzed by the prospective CRIS information technology vendor that is selected for the project to determine the feasibility and associated cost of developing the technology.

Currently, the CRIS project has been posted in the Commonwealth of Virginia procurement system as a Request for Information (RFI). This posting will allow prospective vendors the chance to review the CRIS high-level business requirements, ask questions related to the requirements, and provide responses as to their ability to meet the system development needs of the CRIS. Responses received from the prospective vendors will be reviewed and scored in October 2021. It is anticipated that the review of vendor responses will provide more insight into the capabilities of developing the CRIS and its associated automated processes.

Conclusion

In review of the information provided in this report, it is clearly understood that the expungement and sealing process of criminal history information is a highly involved manual process in achieving the desired outcome. With the passage of new legislation in the 2021 legislative session, a new procedure provides an opportunity to automate processes that are currently manual, and introduce measures that will allow the ability for the public to expunge or seal additional criminal history information. The new legislation has also provided the Department with an opportunity to examine its current CCH system to determine the information technology needed to upgrade and meet the newly established criminal history expungement and sealing requirements.

In 2020, the Department began its journey in replacing the current CCH system with a more modern and robust system that will be capable of meeting the automated expungement and sealing requirements. As the Department begins to collect valuable computer system development information from vendors across the United States, a clear picture will present itself as to the ability to develop an automated out-of-state records check process, along with additional automated expungement and sealing processes. It

⁶ Rap Back provides a notification to subscribers when an employee has criminal information applied to their criminal history record or when a criminal history record is established. This is a fee based criminal history monitoring system.

is anticipated that as the Department moves through the process of replacing the current CCH system, additional insight will be provided in developing the CRIS that will achieve the newly established expungement and sealing process.