

AUTOMATED SYSTEMS TO EXCHANGE INFORMATION

Progress on System Development

A Report to the Virginia State Crime Commission



October 2021

**Colonel Gary T. Settle
Superintendent**

Colonel Gary T. Settle
Superintendent

(804) 674-2000



Lt. Colonel Tracy S. Russillo
Deputy Superintendent

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
P. O. Box 27472, Richmond, VA 23261-7472

October 1, 2021

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 10 of the 2021 Acts of Assembly, I am respectfully submitting herewith a report concerning the Department's progress on implementing automated systems to exchange information.

Respectfully,

A handwritten signature in blue ink that reads "Gary T. Settle".

Superintendent

GTS/MTP/bkl

Enclosure

Preface

Chapter 542 enactment clause #10 of the 2021 Acts of Assembly directs the Department of State Police (the Department) to “provide a report to the Virginia State Crime Commission on the progress of implementing automated systems to exchange information as required by §§ 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12 of the Code of Virginia, as created by this act, by November 1, 2021, and by November 1 of each year thereafter until the automated systems have been fully implemented.” Pursuant to this requirement, the Department’s Criminal Justice Information Services Division has reviewed its current progress in implementing automated systems to exchange information.

Executive Summary

The expungement process in the Commonwealth of Virginia is often time-consuming and tedious due to the several manual processes that are involved. In the past five years, on average, the Department has processed over 4,097 expungements of criminal history information. Over the years, the Department has seen an increase in the number of petitions and corresponding court orders directing the expungement of criminal history information. Legislation passed during the 2021 Special Session provided new opportunities for the expungement and sealing of additional criminal offense information. Furthermore, the new legislation provides new automated processes in the electronic transfer of expungement and sealing information between key agencies involved in the expungement and sealing process. The new legislation provides an opportunity to streamline the expungement and sealing process by reducing the manual aspects that are involved.

This report will review the steps that the Department has taken to begin the development of a new Computerized Criminal History (CCH) system that will meet the requirements for new criminal history record expungement and sealing processes. Furthermore, an examination of the current expungement process will be provided to illustrate the numerous steps and manual processes involved in its current state. The new expungement and sealing legislation provides key measures to the automation and electronic transfer of expungement and sealing information, which will be outlined in this report. All of the new expungement and sealing requirements provide an opportunity for the Department to establish a CCH system that is at the forefront of current information technology.

Background

Through the Central Criminal Records Exchange (CCRE) the Department is the sole repository of criminal record information and is responsible for its reception, retention and reporting.¹ As of August 2021, the CCRE retains 11,508,326 individual offenses within the criminal history database. Criminal history record information contained in the

¹ See Virginia Code § 19.2-390.

repository is provided to criminal justice and non-criminal justice agencies. This information is used for a variety of purposes to include law enforcement, threat assessments, pre-sentencing reports, and pre-employment suitability to name a few.

Over the years, pre-employment background checks to determine the suitability of candidates for a position have increased. This is especially true for positions that provide services for the elderly, children and at-risk populations. As the demand for pre-employment background checks have increased so has the demand for the expungement of criminal history information. This increase in expungement petitions and orders has developed a strain on a process that is highly manual and time consuming in its current state.

Expungements in the Commonwealth

Since its inception, the criminal history expungement process in the Commonwealth of Virginia has been one with a degree of manual and labor intensive processes. Once an individual files a petition with the court to have eligible criminal history information removed from the criminal history record, the petition and associated documentation is forwarded to the Department's CCRE Expungement Section for processing.² When the petition documents are received, the petitioner's fingerprint card is sent to the Biometric Records Section (BRS) for fingerprint pattern identification and matching to a criminal history record and corresponding State Identification (SID) number. Once the criminal history record and corresponding SID number is identified, the fingerprint card and information is sent back to the Expungement Section for processing.

Once the fingerprint card and corresponding SID information is received by the Expungement Section staff member, a query and printout of the petitioner's criminal history information is conducted through the Virginia Criminal Information Network (VCIN). The petitioner's criminal history record information is reviewed to locate the offense and disposition information associated with the petition. Once reviewed, the criminal history source documents are then located either on microfilm, or electronic images, and printed off to be included in the petition package.³ In addition, court disposition information that has not been applied to the criminal history record is researched and applied prior to the record information being included in the petition package. After the petition documents have been collected and reviewed, the petition package is sent back to the court to be used in the expungement decision-making process.

The second phase of the expungement process begins when the granted order for expungement is received and processed by the Department's Expungement Section. 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

² See § 19.2-392.2

³ 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.

is eligible to be expunged by law. 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 In addition, the expungement order is reviewed by the Department staff member to ensure that the order is clear on identifying the information to be expunged. If the information on the order is not clear, the staff member contacts the court clerk for clarification.

Once the staff member determines that the expungement order is complete and accurate, they begin processing the order by removing the criminal history information from the CCH system. The source documents that are associated with the expunged information are identified and sealed. 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.

It is important to mention that the Department's Expungement Section acts as the distributor of the expungement order and recipient of compliance notifications. In this process, 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 an effort to notify VCIN users of the changes to the criminal history record, an Expungement Section staff member will query the VCIN system to obtain contact information for those users who have requested the individual's criminal history information within the past two years. A letter is then sent out to each identified user notifying them of the expungement and informing them to request a new criminal record if the information is still needed as the criminal history information has changed. As identified in this section, the expungement of criminal history record information can be quite labor intensive, as it involves manual processes to obtain the end goal of removing eligible criminal history information from a record.

Legislative Changes

In the 2021 legislative session, an effort was put forth to streamline the expungement process and add additional criminal history information that is eligible to be expunged or sealed. Furthermore, under House Bill 2113ER2 and Senate Bill 1339ER2, processes have been outlined to automate the exchange of eligible information that can be sealed, and the receipt of information that has been ordered to be sealed either by petition or by automatic processing. Under § 19.2-392.7(A) and § 19.2-392.10(A), a list

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

of offenses eligible to be sealed must be electronically generated on at least a monthly basis and forwarded to the Executive Secretary of the Supreme Court of Virginia to be distributed to each circuit court clerk in the jurisdiction where the case was finalized.

In the same manner, § 19.2-392.11(A) requires the same type of automated list to be generated and distributed to the Executive Secretary of the Supreme Court of Virginia. However, the list is required to be generated on an annual basis. Under § 19.2-392.12(I), upon the granting of a seal order based on an individual's petition, the clerk of the court is to send the seal order electronically to the Department for processing. Furthermore, the Department is to electronically notify the Office of the Executive Secretary of the Supreme Court of Virginia, and any other agency or individual known to maintain or to have obtained the record information, that the record has been ordered sealed.

This requirement singles out the Department's need to produce electronic notifications beyond communications between the Office of the Executive Secretary of the Supreme Court of Virginia. As illustrated in this section, there are several requirements to produce the automated and electronic exchange of criminal history record expungement and sealing information. These requirements give the Department the opportunity to streamline the expungement and sealing process.

Progress Towards The Electronic Automated Exchange of Information

Prior to the passage of House Bill 2113ER2 and Senate Bill 1339ER2, the Department determined that there was a need to replace the current CCH system with a more robust system that would add additional features and provide automation of processes that are currently manual. In April 2020, the Department began writing high-level business requirements for a CCH replacement system to be known as the Criminal and Rap Back Information System (CRIS). The 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 include several modules that will be used to process non-criminal justice and criminal justice background checks, civil commitment entries and reporting, and Rap Back retention and notification reporting.⁵ In addition, the CRIS will be compliant with federal requirements related to Extensible Markup Language (XML)⁶ Version 4.1 formatting for National Information Exchange Model (NIEM)⁷ compliance, National Crime Information Center (NCIC) crime code⁸ reporting and National Fingerprint File requirements.

⁵ 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.

⁶ XML is a programming language used to create flexible information formats that can be electronically shared.

⁷ NIEM is designed to develop, disseminate, and support enterprise-wide information exchange standards and processes that will enable jurisdictions to automate information sharing.

⁸ NCIC Crime Codes are uniform offense codes used to track offense information in the federal central database administered by the Federal Bureau of Investigation.

As the Department progressed with writing the high-level business requirements for the CRIS, it began working internally to develop the Investment Business Case (IBC) that outlined the opportunities, alternatives, projected costs and overall need for the CRIS project. Once finalized, the IBC was sent to the Virginia Information Technologies Agency (VITA), Chief Information Officer (CIO) for review and approval. The Department gained IBC approval for the CRIS project in August 2020. Furthermore, during this time period the Department submitted a Procurement Governance Request (PGR) to VITA in an effort to ensure that the CRIS project aligns with the VITA enterprise technology architecture, strategy for procurement and funding sources. The Department received PGR approval from the VITA CIO in September 2020.

Originally, the Department began consultation with its Procurement Section to develop the Request for Proposal (RFP) that incorporates the project scope and high-level business requirements related to the system. Once completed, the RFP package was sent to the VITA and the Virginia Office of the Attorney General (OAG) for review. In the fall of 2020, edits were incorporated into the RFP based on the feedback provided by the VITA and the OAG. In March 2021, the CRIS RFP was put on hold to await the outcome of new expungement and sealing legislation that was proposed during the 2021 legislative session. With the passage of House Bill 2113ER2 and Senate Bill 1339ER2, in April 2021 the Department began reviewing the new expungement and sealing requirements and incorporated them into the CRIS high-level business requirements in the RFP package.

Furthermore, enactment clause eight of House Bill 2113ER2 and Senate Bill 1339ER2 directs the Department to purchase the necessary solutions and services required to meet the implementation of the provisions within the bill. Due to this enactment clause, the RFP was converted into a Request for Information (RFI) on the recommendation of the Department's Procurement Section. In May 2021, separate meetings were held with the VITA and OAG to discuss the new legislative impacts on the CRIS project. During this time period, the new CRIS RFI was sent to the OAG for review and comment with the VITA review and comment following in June 2021. The feedback received from the VITA and OAG was incorporated into the CRIS RFI package prior to its posting in the eVA procurement system in August 2021.

The CRIS RFI will allow prospective vendors the opportunity to review the high-level CRIS business requirements, ask questions about the system and provide supplier responses on their capability to develop the system. The Department is set to receive the supplier responses by October 4, 2021. The suppliers' responses will be reviewed by the subject matter experts and CRIS project team members and scored as to their ability to meet the needs of developing the CRIS functionality. It is important to note that the Department has reached out to the Office of the Executive Secretary of the Supreme Court of Virginia to begin the initial discussions on the CRIS interfaces that will electronically transfer criminal history record expungement, sealing and other relevant data between the two agencies. The Department continues to build a positive and

productive working relationship with all agencies impacted by the new expungement and sealing requirements.

As the Department continues to progress with the CRIS project, potential vendors selected through the RFI process will be brought onsite to provide a demonstration of their current CCH system, and field questions related to the feasibility of customizing their system to meet the functionality needs as outlined within House Bill 2113ER2 and Senate Bill 1339ER2. With the information provided in the RFI vendor responses and onsite demonstrations, a vendor will be selected from the group, and contract negotiations on the CRIS project will begin.

Additional next steps in this process will include meeting with key stakeholders to identify and document the interface functionality required to automate the exchange of criminal history information between agencies. Furthermore, project timelines will be developed by both the vendor and key stakeholders in an effort to project anticipated CRIS functionality testing and module implementation dates. Even though the Department has moved swiftly with the CRIS project, it is important to note that several factors outside of the Department's control can impede future progress. These factors include the duration of contract negotiations, the timeliness of project oversight approvals, the selected vendor's project completion timeline, and the ability for partner agencies to develop data exchange interfaces within prescribed periods. In the absence of such impediments, the Department anticipates deploying the automated criminal history expungement and sealing functionality by December 31, 2024.

Conclusion

Development of this report has given the Department the opportunity to illustrate the current expungement process and the time consuming manual processes that are involved. Furthermore, an example of how the new expungement and sealing process under House Bill 2113ER2 and Senate Bill 1339ER2 were provided in an effort to show how the Department proactively took steps to streamline and meet the new requirements. With the collection of high-level business requirements, which began in April 2020, the Department has been provided with a head start in building the CRIS project and preparing the necessary information required for system development. This process includes the automated and electronic transfer of criminal history record expungement and sealing information. Moreover, with this early start, it is the Department's intent to begin development of the CRIS with an early focus on new expungement and sealing processes.

As the Department begins to collect valuable system development information from potential vendors under the RFI process, it will begin to identify those vendors that best meet the needs of the CRIS business requirements. Furthermore, outreach to the Executive Secretary of the Supreme Court of Virginia to begin the initial discussions on the CRIS interfaces will ensure that requirements for data transfer between the agencies will be incorporated and implemented. As the CRIS project progresses through the future

stages of the project lifecycle, it is the intent that the final product will meet and exceed established criminal history retention and reporting requirements.