AUTOMATED OUT-OF-STATE RECORD CHECKS

Progress on Development Feasibility and Cost

A Report to the Virginia State Crime Commission

October 2023

Colonel Gary T. Settle
Superintendent

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TO: The Honorable John S. Edwards
      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,

Superintendent

GTS/MTP/ajw

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

With an increase in pre-employment and licensing background checks, there has been a relative increase in the demand for expungements of criminal history record information. The Department has received, on average, over 4,000 expungement orders a year over the last 5 years. The expungement process, as originally developed, is very manual in nature and requires Department personnel to review and process each petition and order that is received. The legislation passed during the 2021 Special Session has created an opportunity for individuals to expunge or seal criminal history record information retained by the Virginia State Police Central Criminal Records Exchange (CCRE), through an automatic process, as well as by petition.

This report will provide an overview of the Department's current expungement process as well as the progress made towards development of a new Computerized Criminal History (CCH) System that will fulfill the requirements of an automatic expungement and sealing process. This report will also include an analysis of the requirement to query and review out-of-state criminal history record information with the purpose of determining eligibility for sealing and expungement under this new legislation.

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 September 2023, the CCRE retains 12,264,714 individual offenses that have been applied to 2,583,476 individual computerized criminal history records. The Department's CCRE section is the sole repository of criminal history record information within the Commonwealth of Virginia.

As the sole repository of criminal history record information, the CCRE was tasked with the processing of criminal history expungement petitions and orders that are received by the courts. 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. When 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 to the criminal history record 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, 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). 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 the 2021 Special Session, House Bill 2113ER2 and Senate Bill 1339ER2 created new sealing and expungement processes in order to streamline expungement procedures and increase the criminal history record information that is eligible to be sealed in Virginia. For certain offenses to be eligible under the automatic sealing process set forth in these bills, the eligibility criteria 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 for eligibility is seven years since the date of dismissal or conviction for 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. 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 to the VCIN user.

Currently, 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, a manual review of the out-of-state record will be required to determine if the individual qualifies to have the offense information sealed.[5]

Progress Towards Automated Out-of-State Record Checks

In April 2020, the Department began collecting high-level business requirements to develop a new computerized criminal history system to be known as the Criminal and Rap Back Information System (CRIS). By October 2021, the CRIS project was posted in the Commonwealth of Virginia procurement system as a Request for Information (RFI). After several months of receiving approvals and contract negotiations, a contract was signed for the CRIS Project with the selected vendor, GCOM[6], in July 2022. As of September 2023, the Department has completed the knowledge transfer of legislative and systems requirements to GCOM. The goal of the new CRIS is to provide state-of-the-art technology capable of establishing, maintaining, disseminating, and removing Virginia criminal history record information, as well as background checks and civil commitment entries and reporting in corresponding modules.

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.

A known impediment to the development of an automated method for determining eligibility is the variability and availability of standardized criminal history record information among state criminal history repositories. State repositories vary significantly in the type of criminal history record information disseminated or displayed. After consultation with

GCOM, the Department has determined that using the Single Source indicator (SSO) or Multi-Source indicator (MSO) on the criminal history record may provide the most automated means of identifying records that contain out-of-state record information to be reviewed. The SSO indicates that the criminal history record only contains Virginia information. An MSO would indicate that there is criminal history record information in another state, or federal information, in addition to Virginia. Records with a MSO would need to be manually reviewed by an analyst to determine eligibility for sealing under the statute due to this variability among state repositories.

As more states transition to the Interstate Identification Index (III) - National Fingerprint File (NFF) and develop Extensible Markup Language (XML) standardized rap sheets, there will be improved ease with which an automated process can be developed that determines the eligibility for expungement and sealing under this new legislation. Currently, 24 states in the United States participate in the III-NFF. Additionally, 7 states and the District of Columbia are fully compliant with XML Standardization, while 12 states are in progress as tracked by Nlets[7]. While more states eventually become compliant with XML Standardization, it is the intent of the Department to continue to work with GCOM to develop an automated, electronic method to review these out-of-state records for determination for sealing.

Conclusion

As described in this report, the expungement and sealing of criminal history record information is a highly involved manual process. 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 resources needed to upgrade and meet the newly established criminal history expungement and sealing requirements.

In 2020, the Department began its journey to replace the current CCH system with a more modern and robust system that will be capable of meeting the automated expungement and sealing requirements. The Department will continue to work with GCOM to implement the expungement and sealing features in CRIS, including the criteria for an automated process to query out-of-state records. However, at the initial implementation of the CRIS project, the Department has made the determination that analysts will be needed to manually review the queried out-of-state records for the criteria required for sealing. As more states join the III-NFF and adopt standardized rap sheet formats, an automated method to achieve the outcome of reviewing out-of-state record information will likely become more apparent.

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[1] See Virginia Code § 19.2-390.

[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.

[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.

[6] GCOM Software is a leading provider of software solutions and IT services to state and local government and federal government customers.

[7] 7 Nlets, the International Justice and Public Safety Network, is a not-for-profit computer-based message switching system that links together and supports every state, local, and federal law enforcement, justice, and public safety agency for the purposes of sharing and exchanging critical information.