

2024 ANNUAL REPORT



VIRGINIA STATE CRIME COMMISSION



Delegate Charniele L. Herring, Chair • Senator Scott S. Surovell, Vice-Chair
Kristen J. Howard, Executive Director

June 30, 2025

TO: The Honorable Glenn Youngkin, Governor of Virginia
The Honorable Members of the General Assembly of Virginia

Pursuant to the provisions of the Code of Virginia §§ 30-156 through 30-164 establishing the Virginia State Crime Commission and setting forth its purpose, I have the honor of submitting the Commission's 2024 Annual Report.

Very truly yours,

A handwritten signature in dark ink that reads "Charniele L. Herring". The signature is written in a cursive, flowing style.

Delegate Charniele L. Herring

2024 ANNUAL REPORT



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AUTHORITY OF THE CRIME COMMISSION

The Virginia State Crime Commission (“Crime Commission”) was established as a legislative agency in 1966. The Crime Commission is a criminal justice agency in accordance with Virginia Code § 9.1-101. The purpose of the Crime Commission is to study, report, and make recommendations on all areas of public safety and protection (Virginia Code § 30-156 et seq.). In doing so, the Crime Commission endeavors to:

- ascertain the causes of crime and recommend ways to reduce and prevent it;
- explore and recommend methods of rehabilitating convicted individuals;
- study compensation of persons in law enforcement and related fields; and,
- study other related matters, including apprehension, trial, and punishment of criminal offenders.

The Crime Commission makes recommendations and assists other commissions, agencies, and legislators on matters related to Virginia’s criminal justice system. The Crime Commission cooperates with the executive branch of state government, the Office of the Attorney, and the judiciary, who are in turn encouraged to cooperate with the Crime Commission. The Crime Commission also consults with other states and the federal government on matters related to law enforcement.

The Crime Commission consists of 13 members – 6 members of the House of Delegates, 3 members of the Senate, 3 non-legislative citizen members appointed by the Governor, and the Attorney General or their designee. Delegates are appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. Senators are appointed by the Senate Committee on Rules.

MEMBERS OF THE CRIME COMMISSION

HOUSE OF DELEGATES APPOINTEES

The Honorable Charniele L. Herring, *Chair*
The Honorable Karrie K. Delaney
The Honorable C. Todd Gilbert
The Honorable Patrick A. Hope
The Honorable Don L. Scott, Jr., *Speaker of the House*
The Honorable Wren M. Williams

SENATE APPOINTEES

The Honorable Scott A. Surovell, *Vice-Chair*
The Honorable L. Louise Lucas
The Honorable Mark J. Peake

ATTORNEY GENERAL

Theo Stamos, *Deputy Attorney General, Office of the Attorney General,*
Designee for Attorney General Jason S. Miyares

GUBERNATORIAL APPOINTEES

Marsha L. Garst, *Commonwealth's Attorney for Rockingham County*
Colin Stolle, *Commonwealth's Attorney for the City of Virginia Beach*
Nicole Wittmann, *Chief Deputy Commonwealth's Attorney for Loudoun County*

CRIME COMMISSION STAFF

Kristen J. Howard, *Executive Director*
Christina Barnes Arrington, Ph.D., *Senior Methodologist*
Caitlin A. Dorsch, *Research Analyst*
Colin L. Drabert, *Deputy Director*
Kashea P. Kovacs, Ph.D., *Research Analyst*
Jacob M. Lubetkin, *Attorney*
Amanda M. Muncy, *Attorney*
Tracy M. Roe, *Research Analyst*

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2024 EXECUTIVE SUMMARY OF ACTIVITIES

The Crime Commission undertook several new studies, including law enforcement use of (i) automatic license plate recognition (ALPR), (ii) surveillance technology, and (iii) artificial intelligence. As a result of budget language enacted during the 2024 Session of the General Assembly, the Crime Commission was directed to identify cases where Mary Jane Burton, a forensic examiner at the Virginia Department of Forensic Science (DFS) from 1973 to 1988, performed testing or analysis. The budget language was enacted in response to allegations that Ms. Burton engaged in misconduct during her employment with DFS, including errors and alterations of test results and misleading testimony. Staff also continued work on legislation regarding the sealing of criminal history records.

Crime Commission staff also assisted the Senate Finance Committee in a review of costs, fines, and fees for juveniles, and consulted with the Department of Criminal Justice Services (DCJS) on a sex trafficked youth pilot program. Finally, staff served as a member of the Virginia Pretrial Advancement Team, which was established as part of the DCJS pilot of the Public Safety Assessment.

The Crime Commission met in 2024 on October 22nd, November 14th, and December 16th, and on January 17, 2025. At the October meeting, DFS provided a presentation on measures taken as a result of the allegations against Ms. Burton, along with its ongoing process to notify convicted individuals in her cases. Commission staff also provided an overview of the progress on the case review as directed by the 2024 budget language, as well as potential next steps to address the allegations against Ms. Burton. At the November meeting, members received updates from stakeholders on the implementation of the criminal record sealing processes and a presentation from Commission staff on the ALPR study. At the December meeting, DCJS presented findings from its 2024 Surveillance Technology Equipment Reporting Survey and the Joint Commission on Technology and Science (JCOTS) provided an overview of its 2025 legislative package.

At the January meeting, members endorsed the following legislation, all of which was introduced and enacted into law during the 2025 Regular Session of the General Assembly:

- Amendments to criminal record sealing (HB 2723 and SB 1466);
- Clarifications to the reporting of surveillance technology by law enforcement (HB 2725);
- Panel review of certain DFS cases of Ms. Burton (HB 2730 and SB 1465); and,
- Statewide regulation of law enforcement use of ALPR (HB 2724).

The Chair of the Crime Commission, or Executive Director as the Chair's designee, serves on the Forensic Science Board, Indigent Defense Commission, and Advisory Committee on Sexual and Domestic Violence.



LAW ENFORCEMENT USE OF AUTOMATIC LICENSE PLATE RECOGNITION (ALPR)

LAW ENFORCEMENT USE OF AUTOMATIC LICENSE PLATE RECOGNITION (ALPR)

EXECUTIVE SUMMARY

Automatic license plate recognition (ALPR) is being used by law enforcement, private entities, and other governmental entities across the United States. While definitions of ALPR vary, a common characterization is a system of one or more high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data. ALPR captures an image of a vehicle and its license plate, along with the location, date, and time the image was captured. While ALPR captures images, the ALPR system itself does not contain any personally identifiable information. Recent advancements in technology have enhanced the capabilities of ALPR, such as using artificial intelligence to analyze large quantities of data or powering ALPR devices by solar panels.

Law enforcement use of ALPR has grown considerably over the past 20 years, particularly across larger agencies. Numerous law enforcement agencies across Virginia are using ALPR. Law enforcement uses ALPR for two main purposes: alerts and investigations. Alerts are real-time notifications of license plates and vehicles of interest; whereas investigations involve searches of real-time or historical ALPR data to identify or locate vehicles of interest.

Most of the information on ALPR successes, errors, and misuses is anecdotal. A review of available research suggests that (i) ALPR may be particularly effective in identifying stolen vehicles and license plates, increasing the recovery of stolen vehicles and the arrests of individuals linked to those thefts, and assisting law enforcement as an investigatory tool across various types of cases, (ii) additional research is needed to more thoroughly evaluate the effectiveness of ALPR use on public safety and community outcomes, and (iii) any research measuring effectiveness may vary based on how ALPR is deployed and used.

There are various benefits and concerns relating to law enforcement use of ALPR. For example, ALPR can aid law enforcement with investigations into various crimes, stolen vehicles, and missing persons, increases the speed and efficiency of investigations, and may result in fewer citizen encounters with law enforcement. A variety of concerns have been raised over privacy, transparency, data sharing and protection, and potential disparate impacts.

At the time of this study, Virginia law did not place any restrictions on how law enforcement could use ALPR, or any limitations on how ALPR data could be accessed, retained, or shared. Staff identified 18 states that regulate law enforcement use of ALPR at a statewide level. Statewide regulations vary widely on a number of matters, such as data retention periods, whether a search

warrant is required to access ALPR data, and whether a permit is needed to install an ALPR device on a highway right-of-way. States that do not regulate ALPR at the statewide level, including Virginia, may regulate its use at the local level.

At the January 2025 Crime Commission meeting, members endorsed legislation to (i) regulate law enforcement use of ALPR in Virginia at a statewide level, (ii) create a vendor approval process, (iii) provide data sharing protections, (iv) require annual reports and public posting of data, and (v) allow Virginia's land use permit regulations to be amended so that the Virginia Department of Transportation can issue permits for the installation of ALPR devices on state highway right-of-ways.

The legislation endorsed by the Commission was introduced during the 2025 Regular Session of the General Assembly (House Bill 2724), which was amended during the legislative process and signed into law. The legislation imposes numerous safeguards on law enforcement use of ALPR that are meant to limit its use to specific purposes, promotes transparency and public awareness, and protects individual privacy and civil liberties. The majority of these safeguards will take effect on July 1, 2025. However, the provisions to create a permit process for the installation of ALPR devices on state highway right-of-ways must be reenacted during the 2026 Regular Session of the General Assembly, with the exception of ALPR devices that were installed prior to July 1, 2025, which must be retroactively permitted by August 1, 2025. The legislation also directs the Crime Commission to report on law enforcement use of ALPR for the next seven years.

BACKGROUND AND METHODOLOGY

During the 2024 Regular Session of the General Assembly, House Bill 775 was referred to the Crime Commission by the Senate Courts of Justice Committee.¹ The Executive Committee of the Crime Commission directed staff to study the use of ALPR by law enforcement in Virginia and the United States. Staff performed the following activities as part of this study:

- Conducted a literature review on the use and effectiveness of ALPR;
- Analyzed statewide regulation of ALPR use by law enforcement agencies in other states;²
- Examined Virginia laws that regulate other technologies at a statewide level;³
- Tracked Virginia case law regarding ALPR and search warrants;⁴
- Reviewed Virginia laws related to permitting ALPR devices on state highway right-of-ways;

¹ House Bill 775, 2024 Regular Session of the Virginia General Assembly. (Del. Charniele L. Herring). <https://legacylis.virginia.gov/cgi-bin/legp604.exe?ses=241&typ=bil&val=hb775>.

² See Appendices B, C, and D.

³ See VA. CODE ANN. §§ 15.2-1723.2 (facial recognition technology), 18.2-267 (preliminary breath test devices), 18.2-268.9 (breath test devices), 18.2-270.1 (ignition interlock systems), 19.2-188.1 (drug field tests), 19.2-270.7 (decibel level devices), and 46.2-882 (speed monitoring devices) (2024).

⁴ See Appendix A. Staff legal analysis as of November 14, 2024.

- Identified incidents where ALPR proved helpful to Virginia law enforcement,⁵ as well as news reports of ALPR errors and misuses from outside of Virginia;⁶
- Met with ALPR vendors (Flock Safety, Axon, and Motorola Solutions);⁷
- Consulted with numerous practitioners, stakeholders, and advocates;⁸
- Visited two real-time crime centers in Virginia (Fairfax County and Newport News); and,
- Attended the International Association of Chiefs of Police Technology Conference.⁹

While definitions of ALPR vary, a common characterization is a system of one or more high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.¹⁰ ALPR is designed to capture an image of a vehicle and its license plate, along with the location, date, and time the image was captured.¹¹ ALPR devices can be fixed, mobile, or portable.¹² While ALPR captures images, the ALPR system itself does not contain any personally identifiable information. Therefore, a separate database must be accessed to identify the registered owner(s) of any vehicle in an image that is captured by ALPR.¹³

⁵ The Virginia Association of Chiefs of Police & Foundation provided Crime Commission members with a handout at the November 14, 2024, meeting that details numerous ALPR success stories from law enforcement agencies across Virginia.

⁶ See Appendix E. While staff found a variety of new stories on ALPR errors and misuses in other states, staff did not identify any stories of errors or misuses in Virginia (as of November 14, 2024).

⁷ Stakeholder meetings with representatives from Flock Safety (personal communication, June 27, 2024), Axon (personal communication, August 13, 2024), and Motorola Solutions (personal communication, August 20, 2024).

⁸ Staff met with the following practitioners, stakeholders, and advocates: ACLU of Virginia, Americans for Prosperity – Virginia, Fairfax County Police Department, Justice Forward Virginia, Legal Aid Justice Center, Newport News Police Department, The Policing Project at NYU School of Law, Virginia Association of Chiefs of Police & Foundation, Virginia Association of Commonwealth’s Attorneys, Virginia Coalition for Immigrant Rights, Virginia Commonwealth University Police Department, Virginia Department of State Police, Virginia Indigent Defense Commission, and the Virginia Sheriffs’ Association.

⁹ Staff attended the International Association of Chiefs of Police (IACP) Technology Conference, which was held in Charlotte, North Carolina, May 21-23, 2024.

¹⁰ See Appendix B. Staff legal analysis as of September 8, 2024. Alabama, Arkansas, Florida, Georgia, Maine, Maryland, Nebraska, North Carolina, Tennessee, Utah, and Vermont have defined ALPR in a similar manner.

¹¹ Stakeholder meetings with representatives from Flock Safety (personal communication, June 27, 2024), Axon (personal communication, August 13, 2024), and Motorola Solutions (personal communication, August 20, 2024). ALPR imaging capabilities vary by vendor.

¹² See, e.g., Major Cities Chiefs Association. (2023, February). *Automated license plate reader technology in law enforcement: Recommendations and considerations*. <https://majorcitieschiefs.com/wp-content/uploads/2023/02/MCCA-Automated-License-Plate-Reader-Technology-in-Law-Enforcement.pdf>. Electronic Frontier Foundation. (2023, October 1). *Automated license plate readers*. <https://sls.eff.org/technologies/automated-license-plate-readers-alprs>. A fixed ALPR device is permanently mounted in a stationary location (e.g. traffic signals, bridges, or light poles). A mobile ALPR device is mounted on or in a patrol vehicle. A portable ALPR device is movable (e.g. mobile ALPR trailer) and can be used in a variety of locations based on operational needs.

¹³ Stakeholder meetings with representatives from Flock Safety (personal communication, June 27, 2024), Axon (personal communication, August 13, 2024), and Motorola Solutions (personal communication, August 20, 2024). See also Neal v. Fairfax County Police Department, 299 Va. 253, 849 S.E.2d 123 (Va. Sup. Ct., Oct. 22, 2020). The other databases which can be accessed to obtain information on the registered owner(s) of the vehicle may vary but can include such databases as the Virginia Department of Motor Vehicles (DMV), the Virginia Criminal Information Network (VCIN), or the National Crime Information Center (NCIC).

While this study focused on law enforcement use of ALPR, it is important to note that ALPR is being used regularly by private parties and other governmental entities for a variety of reasons, such as home and business security monitoring, business operations, insurance investigations, vehicle repossessions, toll collections, and weigh station operations.¹⁴

LAW ENFORCEMENT USE OF AUTOMATIC LICENSE PLATE RECOGNITION

❖ **LAW ENFORCEMENT USE OF ALPR HAS GROWN CONSIDERABLY OVER THE PAST 20 YEARS, PARTICULARLY ACROSS LARGER AGENCIES.**

Nationally representative surveys of U.S. law enforcement agencies conducted by the Bureau of Justice Statistics (BJS) between 2007 and 2020 have consistently estimated that around 20% of local police departments and sheriff's offices regularly use ALPR.¹⁵ Similar estimates were found in other national or large-scale surveys by researchers across this same time frame.¹⁶

However, ALPR use by larger law enforcement agencies has grown considerably across this time period.¹⁷ Specifically, the 2007 BJS survey of law enforcement reported that almost half of agencies

¹⁴ See, e.g., Díaz, Á., & Levinson-Waldman, R. (2020, September 10). *Automatic license plate readers: Legal status and policy recommendations for law enforcement use*. Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations>. See also Major Cities Chiefs Association. (2023, February). *Automated license plate reader technology in law enforcement: Recommendations and considerations*. <https://majorcitieschiefs.com/wp-content/uploads/2023/02/MCCA-Automated-License-Plate-Reader-Technology-in-Law-Enforcement.pdf>.

¹⁵ These nationally representative surveys of U.S. law enforcement are collectively known as part of the Law Enforcement Management and Administrative Statistics (LEMAS) survey series. LEMAS surveys are conducted every three to four years. Around 3,500 state and local police departments and sheriff's offices are sampled for each survey. A question about regular ALPR use was included in the 2007, 2012, 2016, and 2020 versions of the LEMAS survey. See Bureau of Justice Statistics (BJS). *Law Enforcement Management and Administrative Statistics (LEMAS)*. "Methodology." <https://bjs.ojp.gov/data-collection/law-enforcement-management-and-administrative-statistics-lemas#0-0>; Roberts, D. J., & Casanova, M. (2012). *Automated license plate recognition systems: Policy and operational guidance for law enforcement* (No. 239604). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/automated-license-plate-recognition-systems-policy-and-operational>; Brooks, C. (2023, November). *Sheriffs' offices, procedures, policies, and technology, 2020 – Statistical tables*. U.S.

Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/document/soppt20st.pdf>; and, Goodison, S.E. & Brooks, C. (2023, November). *Local police departments, procedures, policies, and technology, 2020 – Statistical tables*. U.S. Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/document/lpdppt20st.pdf>.

¹⁶ See, e.g., Lum, C., Merola, L., Willis, J., & Cave, B. (2010, September). *License plate recognition technology (LPR): Impact evaluation and community assessment. Final report*. https://cebcp.org/wp-content/uploads/2019/09/LPR_FINAL.pdf; Roberts, D. J., & Casanova, M. (2012). *Automated license plate recognition systems: Policy and operational guidance for law enforcement* (No. 239604). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/automated-license-plate-recognition-systems-policy-and-operational>.

¹⁷ Roberts, D. J., & Casanova, M. (2012). *Automated license plate recognition systems: Policy and operational guidance for law enforcement* (No. 239604). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/automated-license-plate-recognition-systems-policy-and-operational>; Brooks, C. (2023, November). *Sheriffs' offices, procedures, policies, and technology, 2020 – Statistical tables*. U.S. Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/document/soppt20st.pdf>; Finklea, K. (2024, August 19). *Law enforcement and technology: Use of automated license plate readers*. (CRS Report No. R48160). <https://crsreports.congress.gov/product/pdf/R/R48160>; Goodison, S.E., & Brooks, C. (2023, November). *Local police departments, procedures, policies, and technology, 2020 – Statistical tables*. U.S. Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/document/lpdppt20st.pdf>;

with more than 1,000 sworn officers and almost one-third of agencies with 501 to 1,000 sworn officers regularly used ALPR;¹⁸ whereas, by 2020, BJS estimates grew significantly, with almost 90% of sheriff's offices with 500 or more sworn deputies, 90% of local police departments serving at least 500,000 but fewer than one million residents, and all of local police departments serving one million or more residents regularly using ALPR.¹⁹ Using a broader categorization of agency size, surveys of law enforcement by other researchers also emphasize the rapid increase in ALPR usage across larger-sized agencies. For instance, one group of researchers estimated that slightly more than one-third of larger agencies (i.e., those with 100 or more sworn officers) used ALPR in 2009, as compared to more than two-thirds of such law enforcement agencies that would likely use ALPR by the end of 2016.²⁰

VIRGINIA

Findings from Virginia's first statewide survey of surveillance technologies procured by law enforcement, which was conducted by the Virginia Department of Criminal Justice Services (DCJS) in 2024, showed that numerous law enforcement agencies across Virginia are using ALPR with varying usage across department size.²¹ Of the 275 agencies that responded to the DCJS survey, 82% (14 of 17) of responding *large* departments and 74% (71 of 96) of responding *medium* departments reported they had procured ALPR.²² Conversely, only 35% (56 of 160) of *small* departments reported they had procured ALPR.²³

and, Lum, C., Koper, C.S., Willis, J.J., Happeny, S., Vovak, H., & Nichols, J. (2019). The rapid diffusion of license plate readers in US law enforcement agencies. *Policing: An International Journal of Police Strategies and Management*, 42(3), 376-393.

¹⁸ Roberts, D. J., & Casanova, M. (2012). *Automated license plate recognition systems: Policy and operational guidance for law enforcement* (No. 239604). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/automated-license-plate-recognition-systems-policy-and-operational>.

¹⁹ Brooks, C. (2023, November). *Sheriffs' offices, procedures, policies, and technology, 2020 – Statistical tables*. U.S. Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/document/soppt20st.pdf>; Goodison, S.E. & Brooks, C. (2023, November). *Local police departments, procedures, policies, and technology, 2020 – Statistical tables*. U.S. Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/document/lpdpt20st.pdf>.

²⁰ See Lum, C., Merola, L., Willis, J., & Cave, B. (2010, September). *License plate recognition technology (LPR): Impact evaluation and community assessment. Final report*. https://cebcp.org/wp-content/uploads/2019/09/LPR_FINAL.pdf; Lum, C. Koper, S., Willis, J., Happeny, S., Vovak, H., & Nichols, J. (2016, December). *The rapid diffusion of license plate readers in U.S. law enforcement agencies: A national survey*. Center for Evidence-Based Crime Policy, George Mason University. <https://cebcp.org/wp-content/uploads/2019/09/LPR-National-Survey-Report-2016.pdf>. See also Police Executive Research Forum (PERF). (2012, January). *Critical Issues in Policing Series: "How are innovated in technology transforming policing?"* In this 2011 survey conducted by PERF, 71% of agencies "with an average of 949 sworn officers serving a population of 531,000" reported having ALPR, at p.1.

²¹ Virginia Department of Criminal Justice Services. (2024, December 16). *Findings from the 2024 surveillance technology equipment reporting*. [Slides 6 and 11]. Presentation at the December 16, 2024 Virginia State Crime Commission meeting (Richmond, VA). <https://vsc.virginia.gov/2024/Dec16Mtg/DCJS%20-%20Findings%20from%202024%20Surveillance%20Technology%20Equipment%20Reporting.pdf>.

²² *Id.* Large departments were defined as agencies with 200 or more sworn officers. Medium departments were defined as agencies with 30 to 199 sworn officers.

²³ *Id.* Small departments were defined as agencies with 29 or fewer sworn officers.

In sum, survey estimates across both the United States and Virginia illustrate that ALPR use is far more commonly reported amongst the largest law enforcement agencies than amongst smaller law enforcement agencies.

❖ **LAW ENFORCEMENT USES ALPR FOR TWO MAIN PURPOSES: ALERTS (REAL-TIME NOTIFICATIONS) AND INVESTIGATIONS (SEARCHES OF REAL-TIME OR HISTORICAL DATA).**²⁴

ALERTS

Alerts are real-time notifications of license plates and vehicles of interest based on a “hot list.”²⁵ A hot list includes information on stolen vehicles and license plates, vehicles associated with individuals who are known to be or potentially involved in criminal activity, and vehicles associated with missing or wanted individuals.²⁶ Hot lists may be generated based on information derived from a variety of sources, such as the National Crime Information Center (NCIC) maintained by the Federal Bureau of Investigation (FBI), individual state lists, or customized lists assembled by a law enforcement agency.²⁷ For example, the FBI extracts vehicle data from the following NCIC files that can be used to generate hot lists:²⁸

- Vehicle
- License Plate
- Wanted Person
- Protection Order
- Extreme Risk Protection Order
- Missing Person
- Gang
- Threat Screening Center
- Supervised Release
- National Sex Offender Registry
- Immigration Violator
- Protective Interest
- Violent Person

²⁴ See, e.g., Finklea, K. (2024, August 19). *Law enforcement and technology: Use of automated license plate readers*. (CRS Report No. R48160). <https://crsreports.congress.gov/product/pdf/R/R48160>; Roberts, D. J., & Casanova, M. (2012). *Automated license plate recognition systems: Policy and operational guidance for law enforcement* (No. 239604). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/automated-license-plate-recognition-systems-policy-and-operational>; Major Cities Chiefs Association. (2023, February). *Automated license plate reader technology in law enforcement: Recommendations and considerations*. <https://majorcitieschiefs.com/wp-content/uploads/2023/02/MCCA-Automated-License-Plate-Reader-Technology-in-Law-Enforcement.pdf>; Electronic Frontier Foundation. (2023, October 1). *Street level surveillance*. “Automated license plate readers.” <https://sfs.eff.org/technologies/automated-license-plate-readers-alprs>.

²⁵ See, e.g., Axon Enterprise, Inc. (2025, April 11). *Hotlists in Axon Evidence – ALPR*. <https://my.axon.com/apex/MyAxonArticlePDF?id=ka0RI000000RIQfIAO>; Charlottesville Police Department (2024, August 27). *General policy order 427 -Automated License Plate Readers*. <https://charlottesville.gov/DocumentCenter/View/12584/Automated-License-Plate-Reader-FLOCK-Policy-8272024>; Henrico County Police. (2024, July 1). *Line procedure LP-59-24: Automatic license plate reader*. <https://henrico.gov/public-data/police-policy-automatic-license-plate-reader/>; United States Department of Justice, Bureau of Justice Statistics. (1986, November). *Criminal justice “hot” files*. <https://bjs.ojp.gov/content/pub/pdf/cjhf.pdf>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ FBI CJIS Division. (2024, June 4). *License plate reader data extract in NCIC*. <https://le.fbi.gov/cjis-division/cjis-link/license-plate-reader-data-extract-in-ncic>.

An alert is a tool meant to assist law enforcement. When a law enforcement officer receives an alert, the officer should verify that the alert matches the license plate and vehicle information contained in the hot list before conducting a traffic stop of the vehicle.²⁹

INVESTIGATIONS

An investigation is a search of real-time or historical ALPR data to identify or locate vehicles of interest.³⁰ This search can be conducted using data captured from a single ALPR device or a network of devices to develop leads when attempting to solve crimes or to locate missing persons, wanted individuals, or vehicles of interest.³¹ The network of devices can include ALPR data shared between law enforcement agencies, as well as ALPR data captured by another private or government entity and shared with law enforcement.

ALPR database search capabilities vary by vendor, but can include such categories as license plate number (full or partial), temporary license plate, issuing state, vehicle information (make, model, color, or other characteristics), vehicles that appear in the same location at the same time, or location(s) where a vehicle commonly appears.³²

❖ LIMITED RESEARCH EXISTS ON THE EFFECTIVENESS OF ALPR.

Most of the information on ALPR successes, errors, and misuses is anecdotal. There is a relatively limited body of research that rigorously evaluates its effectiveness across various public safety outcomes.³³ Nevertheless, there are three areas of agreement across the existing body of research. First, the limited research suggests that ALPR may be particularly effective in identifying stolen vehicles and license plates, increasing the recovery of stolen vehicles and the arrests of individuals linked to those thefts, and assisting law enforcement as an investigatory tool across various types of

²⁹ See, e.g., IACP National Law Enforcement Policy Center. (2010, August). *License plate readers model policy, part (IV)(C)(4)*. <https://www.ncpea.org/wp-content/uploads/ICP-LPR-Policy-Sample.pdf>.

³⁰ See, e.g., Finklea, K. (2024, August 19). *Law enforcement and technology: Use of automated license plate readers*. (CRS Report No. R48160). <https://crsreports.congress.gov/product/pdf/R/R48160>; Policing Project at NYU School of Law. *Automated license plate readers: A roadmap for regulation*. <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/65e72148b0a5da750e03346f/1709646380237/2024+ALPRs+-+A+Roadmap+for+Regulation.pdf>.

³¹ *Id.*

³² Stakeholder meetings with representatives from Flock Safety (personal communication, June 27, 2024), Axon (personal communication, August 13, 2024), and Motorola Solutions (personal communication, August 20, 2024). See also International Association of Chiefs of Police. (2024). *License plate reader (LPR) systems: Use cases*. <https://www.theiacp.org/sites/default/files/LPRUseCases%202024.01.pdf>.

³³ See, e.g., Koper et al. (2022). Do license plate readers enhance the initial and residual deterrent effects of police patrol? A quasi-randomized test. *Journal of Experimental Criminology*, 18, 725-746; Koper, C., & Lum, C. (2019). The impacts of large-scale license plate reader deployment on criminal investigations. *Police Quarterly*, 22(3), 305-329; and, Shjarback, J.A. (2024). Examining police officers' perceptions of automated license plate readers before technology explanation. *Criminal Justice Policy Review*, 35(1), 3-21.

cases.³⁴ Second, there is clear agreement that additional research is needed to more thoroughly evaluate the effectiveness of ALPR use on public safety and community outcomes, such as its impact on crime rates, clearance rates, deterrence, displacement, and community perceptions and concerns, as well as logistics relating to costs, benefits, privacy, and data protection.³⁵ Third, any research measuring the effectiveness of ALPR may vary based on several factors, such as the number and concentration of ALPR devices deployed, the type of ALPR devices deployed,³⁶ the location and position of ALPR devices,³⁷ the integration of ALPR with other law enforcement tools and technologies,³⁸ and the deployment and operation of ALPR by officers in the field.³⁹

³⁴ See, e.g., Koper, C., & Lum, C. (2019). The impacts of large-scale license plate reader deployment on criminal investigations. *Police Quarterly*, 22(3), 305-329; Koper et al. (2022). Do license plate readers enhance the initial and residual deterrent effects of police patrol? A quasi-randomized test. *Journal of Experimental Criminology*, 18, 725-746; Koper et al. (2019). Optimizing the geographic deployment of hot spot patrols with license plate readers. *Journal of Experimental Criminology*, 15, 641-650; Shjarback, J. A., & Sarkos, J. A. (2025). An evaluation of a major expansion in automated license plate reader (ALPR) technology. *Justice Evaluation Journal*, 1-18. <https://doi.org/10.1080/24751979.2025.2473363>; Taylor, B., Koper, C., & Woods, D. (2012). Combating vehicle theft in Arizona: A randomized experiment with license plate recognition technology. *Criminal Justice Review*, 37 (1), 24-50; and, Willis, J.J., Koper, C., & Lum, C. (2018). The adaptation of license-plate readers for investigative purposes: Police technology and innovation re-invention. *Justice Quarterly*, 35(4), 614-638.

³⁵ See, e.g., Koper et al. (2022). Do license plate readers enhance the initial and residual deterrent effects of police patrol? A quasi-randomized test. *Journal of Experimental Criminology*, 18, 725-746; Koper et al. (2019). Optimizing the geographic deployment of hot spot patrols with license plate readers. *Journal of Experimental Criminology*, 15, 641-650; Shjarback, J.A. (2024). Examining police officers' perceptions of automated license plate readers before technology explanation. *Criminal Justice Policy Review*, 35(1), 3-21.

³⁶ An agency may deploy various types of ALPR devices, such as fixed, mobile, or a combination thereof.

³⁷ Vendors can assist law enforcement in strategically determining the location and position of ALPR devices. For a list of considerations for ALPR device placement, see La Vigne, N., Lowery, S., Dwyer, A., & Markman, J. (2011) *Using public surveillance systems for crime control and prevention*. U.S. Department of Justice, Office of Community Oriented Policing Services. <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p211-pub.pdf>, at pp.31-36.

³⁸ For instance, additional technology and tools that could be considered include CCTV, law enforcement body worn cameras, gunshot detection systems, and forensic technology advancements.

³⁹ Koper, C., & Lum, C. (2019). The impacts of large-scale license plate reader deployment on criminal investigations. *Police Quarterly*, 22(3), 305-329; Koper et al. (2022). Do license plate readers enhance the initial and residual deterrent effects of police patrol? A quasi-randomized test. *Journal of Experimental Criminology*, 18, 725-746; Koper et al. (2019). Optimizing the geographic deployment of hot spot patrols with license plate readers. *Journal of Experimental Criminology*, 15, 641-650; Lum, C., Hibdon, J., Cave, B., Koper, C.S., & Merola, L. (2011). License plate reader (LPR) police patrols in crime hot spots: An experimental evaluation in two adjacent jurisdictions. *Journal of Experimental Criminology*, 7(4), 321-345; Taylor, B., Koper, C., & Woods, D. (2012). Combating vehicle theft in Arizona: A randomized experiment with license plate recognition technology. *Criminal Justice Review*, 37 (1), 24-50; and, Shjarback, J.A. (2024). Examining police officers' perceptions of automated license plate readers before technology explanation. *Criminal Justice Policy Review*, 35(1), 3-21. Further, it should be noted that a national multi-site, quasi-experimental study by the National Policing Institute is currently underway that will capture the following key issues in their national ALPR evaluation: "the crime reduction impact of LPRs, the investigative value of LPRs, cost benefits, how to optimize use and placement of fixed-location LPRs, and best practices for privacy and data collection," at <https://www.policinginstitute.org/projects/a-multi-site-evaluation-of-automated-license-plate-readers/>.

❖ **THERE ARE BENEFITS AND CONCERNS RELATING TO LAW ENFORCEMENT USE OF ALPR.**

Various benefits and concerns exist in relation to law enforcement use of ALPR.⁴⁰ Staff met with numerous practitioners and advocates over the course of the study to learn more about these benefits and concerns.⁴¹ Some of the benefits identified were that ALPR:

- Helps to locate stolen vehicles and vehicles linked to missing or wanted persons;
- Develops leads and corroborates evidence;
- Increases the speed and efficiency of investigations;
- Results in fewer interactions with the public while conducting investigations; and,
- Produces evidence for use in court.

Conversely, concerns were raised that ALPR:

- Collects and retains data on a vast number of vehicles, regardless of whether the driver or any occupants are engaged in criminal activity;
- Lacks transparency and uniformity in the collection and retention of data;⁴²
- Advancements in artificial intelligence allow it to track a vehicle in real time or analyze vehicle movements and patterns of behavior;
- May result in erroneous license plate reads or misuse of data;

⁴⁰ See, e.g., Duong, M. (2024, May). *In detail: Automated license plate readers (ALPR)*. Colorado Division of Criminal Justice. https://cdpsdocs.state.co.us/ors/Docs/Briefs/2024-05_InDetail-ALPR.pdf; Gierlack, K., Williams, S., LaTourrette, T., Anderson, J.M., Mayer, L.A., & Zmud, J. (2014). *License plate readers for law enforcement: Opportunities and obstacles*. Rand Corporation. <https://www.ojp.gov/pdffiles1/nij/grants/247283.pdf>, at pp. 13-21; Klawans, J. (2023, December 17). The pros and cons of license-plate reader technology. *The Week*. <https://theweek.com/tech/automatic-license-plate-readers>. But see, e.g., American Civil Liberties Union. (2013, July). *You are being tracked*. <https://www.aclu.org/you-are-being-tracked>; Policing Project at NYU School of Law. *Automated license plate readers*. <https://www.policingproject.org/automated-license-plate-readers#:~:text=Absent%20regulation%2C%20the%20use%20of,resulting%20in%20unnecessary%20police%20contact>; Rushton, B. (2023, November 20). License plate readers target minority neighborhoods. *Investigative Post*. <https://www.investigativepost.org/2023/11/20/license-plate-readers-target-minority-neighborhoods/>.

⁴¹ Staff met with the following practitioners, stakeholders, and advocates: ACLU of Virginia, Americans for Prosperity – Virginia, Fairfax County Police Department, Justice Forward Virginia, Legal Aid Justice Center, Newport News Police Department, The Policing Project at NYU School of Law, Virginia Association of Chiefs of Police & Foundation, Virginia Association of Commonwealth’s Attorneys, Virginia Coalition for Immigrant Rights, Virginia Commonwealth University Police Department, Virginia State Police, Virginia Indigent Defense Commission, and the Virginia Sheriffs’ Association.

⁴² See, e.g., “Policy concerns: Lack of transparency and access controls” section in Díaz, Á. & Levinson-Waldman, R. (2020, September 10). *Automatic license plate readers: Legal status and policy recommendations for law enforcement use*. Brennan Center for Justice. <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations>; See also Lum, C., Koper, C. S., Willis, J., Happeney, S., Vovak, H., & Nichols, J. (2019). The rapid diffusion of license plate readers in U.S. law enforcement agencies. *Policing: An International Journal*, 42(3), 376-393. <https://cebcp.org/wp-content/lpr/LPR-National-Survey-Report-2016.pdf>. As discussed in this body of literature, large amounts of data on vehicle characteristics and patterns can be captured by ALPR systems for use by law enforcement agencies; however, the lack of public access to this data fuels concerns about its transparency and general usage. Data captured by ALPR systems is accessible to the law enforcement agency that procured the system, to any other law enforcement agency that has been given permission to access the system, and to any other entities with whom the procuring agency shares the data. An agency’s internal accessibility of the data depends on the types of hot lists and any other data sources downloaded into the system.

- May lead to disparate impacts on communities of color, disadvantaged communities, and other vulnerable populations;⁴³ and,
- Gives rise to certain privacy and data protection issues, such as what data is collected, how long data is retained, and whether data is sold or shared.⁴⁴

To promote data transparency, some states, such as Nebraska and Vermont, enacted legislation requiring law enforcement agencies to annually report on ALPR usage.⁴⁵ In addition, ALPR system vendors may host a webpage or portal for local law enforcement agencies to report this information in a publicly accessible format.⁴⁶

STATEWIDE REGULATION OF ALPR USE BY LAW ENFORCEMENT

❖ **MOST STATES DO NOT REGULATE ALPR USE BY LAW ENFORCEMENT AT A STATEWIDE LEVEL.**

At the time of the study, Virginia did not have any statewide policies or laws that governed law enforcement use of ALPR; therefore, law enforcement could collect and search ALPR data for any purpose, keep data for an indefinite time period, and share data without any restrictions. Staff found

⁴³ See, e.g., Major Cities Chiefs Association. (2023, February). *Automated license plate reader technology in law enforcement: Recommendations and considerations*. <https://majorcitieschiefs.com/wp-content/uploads/2023/02/MCCA-Automated-License-Plate-Reader-Technology-in-Law-Enforcement.pdf>, at p. 12. Joh, E. E. (2022). The unexpected consequences of automation in policing, *Southern Methodist University Law Review*, 75(3). <https://scholar.smu.edu/smulr/vol75/iss3/3>; Maass, D., & Gillula, J. (2015, January 21). What you can learn from Oakland's raw ALPR data. Electronic Frontier Foundation. <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>. For instance, research that has examined disparate impacts of ALPR use by law enforcement often lacks generalizability and fails to isolate the impacts related to ALPR deployment and usage from the impacts of other crime reduction or prevention strategies, such as gunshot detection technologies, which may also disproportionately affect communities of color, disadvantaged communities, and other vulnerable populations.

⁴⁴ These concerns associated with ALPR use are similar to those of other technologies, like facial recognition and unmanned aircraft systems.

⁴⁵ See NEB. REV. STAT. ANN. § 60-3206(3)(a) (2024) and VT. STAT. ANN. TIT. 23 § 1607(e)(1) (2024). Reports on aggregated statewide ALPR usage by law enforcement are mandated by these statutes. See also Nebraska Commission on Law Enforcement and Criminal Justice. *Automatic License Plate Reader resources: Agency reports*. <https://ncc.nebraska.gov/automatic-license-plate-reader-resources>. Retrieved March 10, 2025; Loan, S. Vermont Intelligence Center (n.d.). *2020 annual report to the Vermont Senate and House Committees on Judiciary and Transportation as required by: 23 V.S.A. § 1607 automated license plate recognition systems*. <https://legislature.vermont.gov/assets/Legislative-Reports/2020-ALPR-report.pdf>; and, Loan, S. Vermont Intelligence Center (n.d.). *2021 annual report to the Vermont Senate and House Committees on Judiciary and Transportation as required by: 23 V.S.A. § 1607 automated license plate recognition systems*. <https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Judiciary/Reports%20and%20Resources/W~Department%20of%20Public%20Safety~2021%20Annual%20Report-23%20V.S.A.%20C2%A7%201607%20Automated%20Licence%20Place%20Recognition%20Systems~3-11-2022.pdf>. It should also be noted that governmental entities of other states, such as the Maine Information and Analysis Center, may include ALPR use in their broader annual reports. See Stevenson, T. Maine Information and Analysis Center (2022, March 15). *The Maine Information and Analysis Center annual report 2021*. <https://legislature.maine.gov/doc/8513>, at p.4.

⁴⁶ See Dayton (Ohio) Police Department (2022, June 8). *ALPR impact report*. <https://www.daytonohio.gov/DocumentCenter/View/12471/ALPR-Impact-6-8-22>. See, e.g., Flock Safety. (2024, December 10). *Transparency portal - Richmond VA PD*, last viewed May 22, 2025, <https://transparency.flocksafety.com/richmond-va-pd>.

that at least 18 states have statewide regulations governing law enforcement use of ALPR.⁴⁷ In the remaining states, including Virginia, ALPR use is regulated at the local level, with policies adopted by the locality or by the individual law enforcement agency.

Staff also analyzed and compared the laws of the 18 states that have statewide regulations on ALPR use,⁴⁸ with a particular focus on three issues that were raised with House Bill 775 during the 2024 session, including (i) data retention periods, (ii) search warrant requirements, and (iii) permits to install ALPR on state highway right-of-ways.⁴⁹

DATA RETENTION PERIODS

❖ *DATA RETENTION PERIODS VARY SIGNIFICANTLY IN STATES THAT REGULATE LAW ENFORCEMENT USE OF ALPR AT A STATEWIDE LEVEL.*

Virginia law does not limit the length of time that law enforcement can retain ALPR data.⁵⁰ However, as illustrated in the following table, 16 of the 18 states that regulate ALPR at a statewide level place restrictions on the time period that law enforcement can retain ALPR data.⁵¹ These retention periods range from minutes to years; however, ALPR data can generally be retained beyond the retention period if it is needed as part of an ongoing investigation or prosecution.⁵²

⁴⁷ See Appendix B. Staff legal analysis as of September 8, 2024.

⁴⁸ See Appendix C. Specifically, staff examined how ALPR was regulated at a statewide level for these states (e.g., statute, administrative code, etc.), data retention periods, whether ALPR use was limited to criminal justice and public safety purposes, whether agency policy was required for use, whether an audit trail was required, whether routine updates to databases (hot list) was required, whether there were data sale and sharing restrictions, whether ALPR data is confidential or not subject to public record laws, whether a report on ALPR use is required, whether there is a criminal penalty or civil cause of action for misuse, whether a verification of an alert is required before a traffic stop, whether a search warrant is required for ALPR data, and whether a permit must be obtained prior to installation of an ALPR device on a roadway.

⁴⁹ ALPR encompasses cameras and any other items necessary to place or mount the cameras in the right-of-way.

⁵⁰ See *Neal v. Fairfax County Police Department*, 299 Va. 253, 849 S.E.2d 123 (Va. Sup. Ct., Oct. 22, 2020). While there is no statewide regulation of ALPR data retention periods in Virginia, there are local and state law enforcement agencies that do limit the length of time their agency retains ALPR data per internal policies. ALPR data retention time varied widely across Virginia law enforcement agencies with such internal policies at the time of this study. For example, the Virginia State Police limited ALPR data retention to 24 hours (e.g., [https://charlottesville.org/DocumentCenter/View/12584/Automated-License-Plate-Reader-FLOCK-Policy-8272024](https://www.wtvr.com/news/local-news/automated-license-plate-readers-dec-2-2024#:~:text=A%20Virginia%20State%20Police%20(VSP,connected%20to%20a%20criminal%20case.%22); the Charlottesville Police Department limited ALPR data retention to 7 days (e.g., <a href=)); and, the Henrico County Police Department limited ALPR data retention to 30 days for non-vehicle mounted ALPRs and 90 days for mobile (vehicle mounted) ALPRs (e.g., <https://henrico.gov/assets/LP-59-24-Automatic-License-Plate-Reader-7-1-24.pdf>).

⁵¹ See Appendix B for state laws. Staff legal analysis as of September 8, 2024. Illinois and Maryland are the two states (of the 18) not included in Table 1, as no statewide ALPR data retention period was identified.

⁵² What constitutes an ongoing or active investigation may vary by law enforcement agency.

Table 1: Statewide ALPR Data Retention Periods

STATE	RETENTION PERIOD
New Hampshire	3 minutes
Utah	14 days
Maine	21 days
Georgia	30 days
California	60 days
Minnesota	60 days
Montana	90 days
North Carolina	90 days
Tennessee	90 days
Arkansas	150 days
Nebraska	180 days
Vermont	1 year 6 months
Colorado	3 years
Florida	3 years
New Jersey	3 years
Alabama	5 years

Source: Virginia State Crime Commission. Staff legal analysis as of September 8, 2024.

SEARCH WARRANT

❖ ***STATES THAT REGULATE ALPR USE BY LAW ENFORCEMENT AT A STATEWIDE LEVEL
GENERALLY DO NOT REQUIRE LAW ENFORCEMENT TO OBTAIN A SEARCH WARRANT TO
ACCESS ALPR DATA.***

During the 2024 Regular Session, there was debate about whether House Bill 775 should include a requirement for law enforcement to obtain a search warrant to access ALPR data. The Fourth Amendment of the U.S. Constitution protects individuals from unreasonable searches and seizures by the government.⁵³ The U.S. Supreme Court has held that a search warrant is required if a search involves a physical intrusion or an invasion of a reasonable expectation of privacy.⁵⁴

⁵³ U.S. Const. amend. IV.

⁵⁴ *Katz v. United States*, 389 U.S. 347 (1967).

When House Bill 775 was referred to the Crime Commission in Feb. 2024, no court in Virginia had issued a ruling on whether a search warrant was required for law enforcement to access ALPR data. However, prior to the November 2024 Crime Commission meeting, at least four circuit courts and one federal district court in Virginia denied motions to suppress warrantless searches of ALPR data, while one circuit court granted such a motion.⁵⁵ The courts that denied the motions to suppress generally found that the defendant did not have a reasonable expectation of privacy as it relates to the ALPR data collected while driving on a public road. Based on these rulings, staff concluded that a search warrant was not necessary as part of any ALPR legislation; nevertheless, such a requirement could be included in a bill.

When reviewing the 18 states that regulate ALPR at a statewide level, none of these states generally require law enforcement to obtain a search warrant before accessing ALPR data. However, three states require a search warrant for ALPR data in specific circumstances:

- Minnesota: a search warrant is required to monitor or track an individual who is the subject of an active criminal investigation.⁵⁶
- Montana: a search warrant or judicial exception is required to use ALPR data for an investigation or as evidence if it was collected by the Department of Transportation or a city or town for planning purposes.⁵⁷
- Utah: a search warrant or court order is required for a governmental entity to obtain, receive, or use captured plate data from a nongovernmental entity.⁵⁸

PERMITS TO INSTALL ALPR DEVICES ON STATE HIGHWAY RIGHT-OF-WAYS

❖ ***VIRGINIA LAW DOES NOT EXPLICITLY AUTHORIZE PERMITS TO BE ISSUED TO INSTALL ALPR DEVICES ON STATE HIGHWAY RIGHT-OF-WAYS.***

In October 2022, Virginia's Attorney General issued an opinion that the Virginia Code does not explicitly authorize the Commonwealth Transportation Board (CTB) to amend its land use permit regulations to allow for permits to be issued to install ALPR devices on state highway right-of ways when requested by a law enforcement agency or local government.⁵⁹ According to this opinion, the Virginia General Assembly would have to specifically delegate authority to the CTB to allow for the

⁵⁵ See Appendix A. Staff legal analysis as of November 14, 2024.

⁵⁶ MINN. STAT. § 13.824(2)(d) (2024).

⁵⁷ MONT. CODE ANN. § 46-5-117(2)(a)(i) (2024).

⁵⁸ UTAH CODE ANN. § 41-6a-2005(5) (2024).

⁵⁹ Virginia Attorney General Opinion 22-033 (2022, October 14). <https://www.oag.state.va.us/files/Opinions/2022/22-033-Pillion-issued.pdf>.

installation of ALPR devices on state highway right-of-ways.⁶⁰ The lack of a permitting process for ALPR devices is significant because Virginia has the third largest state-maintained highway system in the nation (59,672 miles), of which approximately 1,100 miles are categorized as interstate.⁶¹

The Virginia Department of Transportation (VDOT) maintains state highway right-of-ways and issues land use permits to perform work or install certain items on such right-of-ways.⁶² Based on the October 2022 Attorney General opinion, VDOT will not issue land use permits to install ALPR devices on state highway right-of-ways.⁶³ Determining whether an ALPR device is installed on a state highway right-of-way can be challenging because such right-of-ways are not always clearly marked and may require a review of historical land records or a property survey to accurately identify.⁶⁴ VDOT has identified numerous ALPR devices installed on state highway right-of-ways.⁶⁵

It is important to note that the October 2022 Attorney General Opinion only applies to the issuance of land use permits for ALPR devices on state maintained highway right-of-ways. Therefore, ALPR devices can be installed on city- or county-maintained roadways or on private property without obtaining a permit from VDOT.

Of the 18 states that regulate ALPR at a statewide level, staff determined that at least six of these states require some type of permit or authorization for the installation of an ALPR device on a right-of-way or highway.⁶⁶

CRIME COMMISSION LEGISLATION

At the January 2025 Crime Commission meeting, members endorsed a policy option to enact legislation to (i) regulate law enforcement use of ALPR in Virginia at a statewide level, (ii) create a vendor approval process, (iii) provide data sharing protections, (iv) require annual reports and public posting of data, and (v) allow Virginia's land use permit regulations to be amended so that VDOT can issue permits for the installation of ALPR devices on state highway right-of-ways.

⁶⁰ *Id.*

⁶¹ Virginia Department of Transportation. *Highways*. <https://www.vdot.virginia.gov/about/our-system/highways/#:~:text=VDOT%20operates%20the%20third%20largest,connect%20states%20and%20major%20cities>.

⁶² See Virginia Department of Transportation. *Land use permits*. <https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/land-use-and-development/land-use-permits/>.

⁶³ Meeting with representatives from the Virginia Department of Transportation (personal communication, June 11, 2024).

⁶⁴ Meetings with representatives from the Virginia Department of Transportation (personal communication, June 11, 2024), and Flock Safety (personal communication, June 26, 2024).

⁶⁵ *Id.* Meeting with representatives from the Virginia Department of Transportation (personal communication, November 1, 2024).

⁶⁶ See Appendix D. Staff legal analysis as of February 11, 2025.

As a result of this study, House Bill 2724 was introduced during the 2025 Regular Session of the General Assembly, which was amended during the legislative process and signed into law.⁶⁷ The bill imposes numerous safeguards on law enforcement use of ALPR that limit its use to specific purposes, promotes transparency and public awareness, and protects individual privacy and civil liberties. Specifically, the ALPR legislation:

- Limits law enforcement use of ALPR to (i) criminal investigations into violations under the Code of Virginia or any county, city, or town ordinance, (ii) active investigations into missing or endangered persons and persons associated with human trafficking, and (iii) alerts for missing or endangered persons, wanted persons, persons associated with human trafficking, and stolen vehicles and license plates;
- Requires that ALPR data be destroyed after 21 days, which is one of the shortest retention times in the country (unless it is needed for an ongoing investigation or prosecution);
- Directs law enforcement to maintain an audit trail of the ALPR system for 2 years;
- Exempts ALPR from the Virginia Freedom of Information Act,⁶⁸ prohibits the sale of ALPR data, and imposes restrictions on ALPR data sharing;
- Requires law enforcement agencies that use ALPR to adopt a policy on such use;
- Mandates ALPR data collection and reporting by law enforcement, including an amendment to the Virginia Community Policing Act to better capture data based on ALPR-related traffic stops;
- Directs law enforcement to publicly post its ALPR policy and data;
- Punishes unauthorized use of an ALPR system or disclosure of ALPR data as a Class 1 misdemeanor;
- Excludes evidence that was obtained in violation of the ALPR statute from use by the Commonwealth in criminal and civil proceedings;
- Requires law enforcement to develop independent reasonable suspicion or to verify an ALPR alert before conducting a traffic stop;

⁶⁷ House Bill 2724, 2025 Regular Session of the General Assembly. (Del. Charniele L. Herring). <https://lis.virginia.gov/bill-details/20251/HB2724>.

⁶⁸ See, e.g., Beyer, E. (2025, March 13). City of Roanoke, Botetourt County sheriff go to court over FOIA request. *Cardinal News*. <https://cardinalnews.org/2025/03/13/city-of-roanoke-botetourt-county-sheriff-go-to-court-over-foia-request/>; Schwaner, J. (2025, March 28). I drove 300 miles in rural Virginia, then asked police to send me their public surveillance footage of my car. Here's what I learned. *Cardinal News*. <https://cardinalnews.org/2025/03/28/i-drove-300-miles-in-rural-virginia-then-asked-police-to-send-me-their-public-surveillance-footage-of-my-car-heres-what-i-learned/>; Verrelli, S. (2025, April 25). Cardinal News wins FOIA battle for Flock footage in Roanoke circuit court. *Cardinal News*. <https://cardinalnews.org/2025/04/25/cardinal-news-wins-foia-battle-for-flock-footage-in-roanoke-circuit-court/#:~:text=Posted%20inRedbird-.Cardinal%20News%20wins%20FOIA%20battle%20for%20Flock%20footage%20in%20Roanoke,any%20existing%20exemptions%20by%20police.>

- Prohibits law enforcement from using ALPR to interfere with lawful activities and protected speech;
- Creates a process for the Division of Purchases and Supply to approve ALPR systems for statewide use in Virginia;
- Requires that law enforcement undertake measures to promote public awareness when implementing the use of an ALPR system;
- Directs vendors to notify the contracting law enforcement agencies upon receipt of a subpoena duces tecum, execution of a search warrant, or any other request from a third party for any ALPR system data or audit trail data, unless disclosure is prohibited by law; and,
- Authorizes VDOT to retroactively permit ALPR devices that were installed on state highway right-of-ways prior to July 1, 2025 (retroactive permitting must be completed by August 1, 2025).

Most of the provisions of the bill will take effect July 1, 2025; however, there are three significant delays in the enactment clauses:

- The Division of Purchases and Supply will have until January 1, 2026, to approve ALPR devices for statewide use in Virginia;
- The new data collection requirement under the Virginia Community Policing Act will take effect on January 1, 2026, to provide VSP time to reprogram its data collection and reporting systems; and,
- Law enforcement will be required to use ALPR devices that have been approved for statewide use by the Division of Purchases and Supply by July 1, 2026.

Lastly, the portion of the bill that allows VDOT to issue permits to law enforcement agencies for the installation of new ALPR devices on state right-of-ways is subject to reenactment during the 2026 Regular Session. The law provides that the Virginia State Police has the sole and exclusive authority to install ALPR in the right-of-way on any limited access highways or any bridge, tunnel, or special structure under the jurisdiction of the Commonwealth Transportation Board or the Department of Transportation.

As part of 2025 Reconvened Session, the Governor proposed two amendments which were not taken up by the General Assembly that would have increased the data retention period from 21 days to 30 days, and converted the 2026 reenactment clause to a delayed enactment clause until July 1, 2026.⁶⁹ The House of Delegates voted to pass by the Governor's proposed amendments for the day, thus

⁶⁹ House Bill 2724, 2025 Regular Session of the General Assembly, Governor's Recommendation. <https://lis.virginia.gov/bill-details/20251/HB2724>.

returning House Bill 2724 to the Governor in the same form that it passed the General Assembly.⁷⁰ The Governor ultimately signed the bill as it originally passed the General Assembly outlined above.⁷¹

CONCLUSION

Law enforcement, private parties, and other government entities can use ALPR to collect and analyze large amounts of vehicle data. While ALPR systems do not contain personally identifiable information about the registered owner(s) of a vehicle, such systems can capture images and location information on many vehicles.

Law enforcement agencies in Virginia and across the United States are using ALPR as a tool to solve crimes, locate stolen vehicles, and recover missing persons. Law enforcement primarily uses ALPR to receive alerts (real-time notifications) and conduct investigations (searches of real-time or historical data). Limited research exists on the effectiveness of ALPR; however, national studies on ALPR use by law enforcement are currently being conducted. Various benefits and concerns have been cited with regard to law enforcement use of ALPR.

While Virginia did not have any statewide laws or policies governing ALPR use by law enforcement at the time of this study, at least 18 states were identified with some level of statewide regulation. As a result of the study, the Crime Commission endorsed legislation to regulate law enforcement use of ALPR in Virginia at a statewide level. Legislation was introduced and enacted into law during the 2025 Regular Session of the General Assembly. Thus, ALPR use by law enforcement in Virginia will be regulated statewide beginning July 1, 2025. Virginia now has one of the most comprehensive ALPR laws in the nation.

The Crime Commission will continue to examine law enforcement use of ALPR in Virginia and report its findings (i) prior to the first day of the 2026 Regular Session of the General Assembly, (ii) prior to November 1, 2026, and (iii) by July 1, 2027, and for each of the five years thereafter.

⁷⁰ House Bill 2724, 2025 Regular Session of the General Assembly. (Del. Charniele L. Herring). <https://lis.virginia.gov/bill-details/20251/HB2724>.

⁷¹ 2025 Va. Acts ch. 720. House Bill 2724, 2025 Regular Session of the General Assembly, Chaptered. <https://lis.virginia.gov/bill-details/20251/HB2724>.

ACKNOWLEDGEMENTS

ACLU of Virginia

Americans for Prosperity – Virginia

Axon

Fairfax County Police Department

Flock Safety

Justice Forward Virginia

Legal Aid Justice Center

Motorola Solutions

Newport News Police Department

The Policing Project at NYU School of Law

Virginia Association of Chiefs of Police & Foundation

Virginia Association of Commonwealth's Attorneys

Virginia Coalition for Immigrant Rights

Virginia Commonwealth University Police Department

Virginia Department of Motor Vehicles

Virginia Freedom of Information Advisory Council

Virginia State Police

Virginia Department of Transportation

Virginia Indigent Defense Commission

Virginia Sheriffs' Association

APPENDIX A: VIRGINIA ALPR COURT OPINIONS (AS OF 11/14/24)

OPINIONS DENYING A DEFENDANT'S MOTION TO SUPPRESS A WARRANTLESS SEARCH OF ALPR DATA:

- *Commonwealth v. Eddie Robinson*, 113 Va. Cir. 494 (Jul. 26, 2024) (Norfolk).
 - Charges: burglary (x9), felony attempt to obtain money by false pretenses, felony larceny of lottery tickets, grand larceny (x2), petit larceny (x7), and possession of a firearm by a convicted felon.
- *Commonwealth v. Jonah Leon Adams*, 113 Va. Cir. 505 (Aug. 1, 2024) (Chesterfield).
 - Charges: aggravated murder of multiple persons, aggravated murder of a person under age 14 (x3), murder - first degree (x4), use of a sawed off shotgun in a crime (x4), use of a firearm in a felony (x4), armed burglary with intent to commit murder, and wear body armor while committing a crime (x4).
- *Commonwealth v. Isaiah Roberson*, 113 Va. Cir. 565 (Aug. 23, 2024) (Norfolk).
 - Charges: first degree murder, second degree murder, and use of a firearm in a felony.
- *U.S. v. Kumiko L. Martin, Jr.*, 753 F. Supp. 3d 454 (Oct. 11, 2024) (Eastern District).
 - Charges: robbery, use of a firearm by brandishing during and in relation to a crime of violence, and possession of a firearm by a convicted felon.
- *Commonwealth v. Javon Jerome Reap*, (Oct. 16, 2024) (Norfolk Circuit Court).
 - Charges: second degree murder, conspiracy to commit second degree murder, and use of a firearm in a felony.

OPINION GRANTING A DEFENDANT'S MOTION TO SUPPRESS A WARRANTLESS SEARCH OF ALPR DATA:

- *Commonwealth v. Jayvon Antonio Bell*, 113 Va. Cir. 316 (May 10, 2024) (Norfolk).
 - Charges: robbery by using or displaying a firearm, use of a firearm in felony, and conspiracy to commit robbery by using or displaying a firearm.

VIRGINIA SUPREME COURT OPINION ON USE OF ALPR:

- The Fairfax County Police Department's use of ALPR to passively collect data did not violate Virginia's Government Data Collection and Dissemination Practices Act (§§ 2.2-3800 to 2.2-3809). *Neal v. Fairfax County Police Department*, 299 Va. 253, 849 S.E.2d 123 (Oct. 22, 2020).

APPENDIX B: STATE ALPR STATUTES (AS OF 9/8/24)

STATE	STATUTE(S)
Alabama	Ala. Admin. Code R. § 265-X-6
Arkansas	Ark. Code Ann. § 12-12-1801 et seq.
California	Cal. Civil Code § 1798.90.5 et seq. Cal. Civil Code § 1798.29 Cal. Veh. Code § 2413
Colorado	Colo. Rev. Stat. § 24-72-113
Florida	Fla. Stat. Ann. §§ 316.0777 and 316.0778
Georgia	Ga. Code Ann. § 35-1-22
Illinois	625 Ill. Comp. Stat. Ann. 5/2-130
Maine	Me. Stat. tit. 29-A, § 2117-A
Maryland	Md. Code Ann., Public Safety § 3-509
Minnesota	Minn. Stat. §§ 13.82, 13.824, and 626.8472
Montana	Mont. Code Ann. § 46-5-117 et seq.
Nebraska	Neb. Rev. Stat. Ann. § 60-3201 et seq.
New Hampshire	N.H. Rev. Stat. Ann. § 261:75-b
New Jersey	A.G. Directive No. 2022-12
North Carolina	N.C. Gen. Stat. § 20-183.30 et seq.
Tennessee	Tenn. Code Ann. § 55-10-302
Utah	Utah Code Ann. § 41-6a-2001 et seq.
Vermont	Vt. Stat. Ann. tit. 23, § 1607 et seq.

Source: Table prepared by Virginia State Crime Commission. Staff legal analysis as of September 8, 2024.

Note: Iowa (traffic enforcement), Kansas (definition in the Kansas Open Records Act), Michigan (included in General Schedule #11 for data retention by local law enforcement), and Oklahoma (uninsured vehicle enforcement program) reference ALPR, but those references were narrower in scope than the other states examined in the Crime Commission study.

APPENDIX C: COMPARISON OF STATE ALPR STATUTES (AS OF 9/8/24)

STATEWIDE REGULATION OF ALPR USE BY LAW ENFORCEMENT:

- **18 states** regulate ALPR use by law enforcement at the statewide level:
 - 16 states by statute: Arkansas, California, Colorado, Florida, Georgia, Illinois, Maine, Maryland, Minnesota, Montana, Nebraska, New Hampshire, North Carolina, Tennessee, Utah, and Vermont.
 - 1 state by Administrative Code: Alabama.
 - 1 state by Attorney General Directive: New Jersey.

DATA RETENTION PERIODS:

- **16 states** limit how long law enforcement agencies can retain ALPR data:

STATE	RETENTION PERIOD
New Hampshire	3 minutes
Utah	14 days
Maine	21 days
Georgia	30 days
California	60 days
Minnesota	60 days
Montana	90 days
North Carolina	90 days
Tennessee	90 days
Arkansas	150 days
Nebraska	180 days
Vermont	1 year 6 months
Colorado	3 years
Florida	3 years
New Jersey	3 years
Alabama	5 years

Source: Table prepared by Virginia State Crime Commission. Staff legal analysis as of September 8, 2024.

USE LIMITED TO CRIMINAL JUSTICE AND PUBLIC SAFETY PURPOSES:

- **14 states** – Alabama, Arkansas, Florida, Georgia, Maine, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Utah, and Vermont.
 - All 14 states include “criminal investigations” in the definition of such purpose.
 - 4 states (Arkansas, Georgia, Maryland, Nebraska) include other states or federal agencies in the definition of law enforcement or government entity.

AGENCY POLICY ON ALPR USE REQUIRED:

- **11 states** – Alabama, Arkansas, California, Georgia, Maryland, Minnesota, Montana, Nebraska, New Jersey, North Carolina, and Utah.

AUDIT TRAIL REQUIRED:

- **8 states** – Alabama, California, Maryland, Minnesota, Montana, New Hampshire, New Jersey, and Vermont.

ROUTINE UPDATES TO DATABASES (HOT LIST) REQUIRED:

- **6 states** – Arkansas, Montana, Nebraska, New Hampshire, New Jersey, and North Carolina.

DATA SALE AND SHARING RESTRICTIONS:

- **12 states** – Alabama, Arkansas, California, Florida, Georgia, Illinois, Minnesota, Nebraska, New Jersey, North Carolina, Utah, and Vermont.
 - 5 states explicitly restrict sale – Alabama, Arkansas, California, North Carolina, and Utah.
 - 8 states limit sharing to other criminal justice agencies – Alabama, Arkansas, Florida, Georgia, Illinois, Minnesota, North Carolina, and Vermont.
 - Other important notes on ALPR data sharing:
 - Illinois prohibits sharing with other states if the data relates to reproductive health or immigration status.
 - The California Department of Criminal Justice has interpreted [California law](#) as prohibiting the sharing of ALPR data with out-of-state or federal agencies.
 - None of the other states appear to explicitly restrict sharing with out-of-state law enforcement agencies.
 - New Jersey and Utah allow out-of-state government agencies to enter into contracts or memorandums of understanding to receive ALPR data.
 - 3 states (Arkansas, Florida, Nebraska) allow sharing with the registered vehicle owner.

ALPR DATA IS CONFIDENTIAL OR NOT SUBJECT TO PUBLIC RECORD LAWS:

- **11 states** – Arkansas, Florida, Georgia, Illinois, North Carolina, Maine, Maryland, Montana, Nebraska, Tennessee, and Utah.

REPORT ON USE REQUIRED:

- **10 states** – Alabama, Arkansas, California, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, and Vermont.

CRIMINAL PENALTY FOR MISUSE:

- **6 states** – Georgia, Maine, Maryland, Montana, North Carolina, and Utah.

CIVIL CAUSE OF ACTION FOR MISUSE:

- **3 states** – Arkansas, California, and Nebraska.

VERIFICATION OF AN ALERT REQUIRED BEFORE A TRAFFIC STOP:

- **2 states** – Montana and New Hampshire.

SEARCH WARRANT REQUIRED FOR DATA:

- No state generally requires law enforcement to obtain a search warrant for ALPR data; however, three states require a search warrant in specific instances:
 - Minnesota Stat. § 13.824(2)(d): search warrant required to monitor or track an individual who is the subject of an active criminal investigation.
 - Montana Code § 46-5-117(2)(a)(i): a search warrant or judicial exception is required to use ALPR data for an investigation or as evidence if it was collected by the department of transportation or a city or town for planning purposes.
 - Utah Code § 41-6a-2005(5): search warrant or court order required for a governmental entity to obtain, receive, or use captured plate data from a nongovernmental entity.

OBTAIN PERMIT PRIOR TO INSTALLATION OF ALPR ON ROADWAY:

- **6 states** – Colorado, Florida, Georgia, Illinois, Tennessee, and Utah.
 - 3 states in statute (Florida, Tennessee, and Utah).
 - 3 states through a requirement in the Department of Transportation process (Colorado, Georgia, and Illinois).

APPENDIX D: INSTALLATION OF ALPR ON STATE HIGHWAYS (AS OF 2/11/25)

STATE	ALPR PLACEMENT REQUIREMENT
Colorado	A permit is required for the installation of an ALPR in CODOT maintained right-of-ways. See Colorado Department of Transportation- Terms and Conditions of Automated License Plate Reader Permits .
Florida	ALPR may be installed at the discretion of FDOT on a right-of-way of a road on the State Highway System when installed at the request of a law enforcement agency for the purpose of collecting active criminal intelligence information or active criminal investigative information. See Fla. Stat. Ann. § 316.0777(2)(b).
Georgia	A permit is required for the installation of an ALPR along Georgia state right-of-ways by state, local, and university police agencies through a GDOT permitting process. See Georgia Department of Transportation ALPR Permit .
Illinois	A permit is required for the installation of an ALPR along Illinois state right-of-ways by law enforcement agencies through an IDOT permitting process. See Illinois Department of Transportation Installation of License Plate Readers within State Right-of-Way Memorandum .
Tennessee	The Tennessee Department of Transportation is authorized, but not required, to permit the installation of ALPR on highways and right-of-ways to assist in criminal investigations or searches for missing or endangered persons. See Tenn. Code Ann. § 55-8-198(f)(2). See also Information Sheet from TDOT on ALPR Installation .
Utah	A law enforcement agency must obtain a special use permit from the Department of Transportation before installing any stationary ALPR device for the purpose of capturing license plate data of vehicles traveling on a state highway. See Utah Code Ann. § 41-6a-2003(3)(b).

Source: Table prepared by Virginia State Crime Commission. Staff legal analysis as of February 11, 2025.

APPENDIX E: ALPR ERRORS AND MISUSES (AS OF 11/14/24)

EXAMPLES OF ALPR ERRORS (INACCURATE READS OR ALERTS):

- [California \(2009\)](#): Denise Green was pulled over by multiple San Francisco Police Department officers after they received an alert from an ALPR that she was driving a stolen vehicle. Green was held at gunpoint, ordered to exit her vehicle, placed in handcuffs, and watched while officers searched her vehicle. This encounter lasted about 20 minutes before officers let her go. The ALPR misread a “7” as a “3.” Green was driving a burgundy Lexus and the stolen vehicle was a gray GMC truck. Officers failed to verify the alert by comparing the license plates or the color, make, and model of the stolen vehicle to Green’s vehicle. Green sued the San Francisco Police Department, the city of San Francisco, and the Sergeant who initiated the stop. The City settled for \$495,000.
- [Kansas \(2014\)](#): Attorney Mark Molner was driving to his office when two Prairie Village Police officers blocked his vehicle at an intersection. One of the officers had his gun out of its holster as he approached Molner’s vehicle. Officers initiated the stop because an ALPR mounted on one of their vehicles alerted that Molner was driving a stolen vehicle. The ALPR misread a “7” as a “2.” The ALPR alert was related to a stolen Oldsmobile, and Molner was driving a BMW. The officer indicated that because it was rush hour, he was unable to compare the two license plates before initiating the traffic stop. Molner did not take any action against the Prairie Village Police Department.
- [California \(2018\)](#): Brian Hofer, chairman of the Oakland Privacy Advisory Commission, and his brother were driving a rental car back from a trip when an ALPR alerted law enforcement officers that the rental car was reported stolen. Hofer and his brother were pulled over and surrounded by three officers with their guns drawn, placed in handcuffs, and put in the back of a squad car. The car was reported stolen earlier in the year, but it had not been removed from the stolen vehicle “hot list” after it was recovered. Hofer filed suit in federal court and received \$49,500.
- [Colorado \(2020\)](#): Law enforcement officers held a woman and four children at gunpoint because an ALPR alert matched her SUV’s license plate to an out-of-state stolen motorcycle. While the license plate numbers matched those of the stolen motorcycle, the officers failed to compare the type of stolen vehicle. The case was settled and the family received \$1.9 million.
- [New Mexico \(2022\)](#): Two separate incidents occurred involving the Española Police Department, which resulted in lawsuits against the City of Española, New Mexico. These cases are still pending.
 - Two minors riding in the same vehicle alleged that the ALPR misread their license plate for a vehicle that was reported stolen. The ALPR misread a “2” as a “7.” The minors were

held at gunpoint, handcuffed, and placed in a patrol car before the mistaken vehicle identification was confirmed.

- A [minor was driving](#) a white Toyota Tacoma when officers received a BOLO alert for the same color/make/model vehicle that had been implicated in a series of armed robberies. After reviewing ALPR camera footage of vehicles passing through an intersection near the crime scene, an officer wrongly concluded that the minor’s vehicle was the suspect vehicle and issued a BOLO. A felony traffic stop was conducted, and the minor was ordered at gunpoint to get out of the truck, handcuffed, and detained at the scene until officers determined he was not the suspect.
- [North Carolina \(2022\)](#): Jacqueline McNeill was arrested by Fayetteville police after detectives using license plate reader technology mistakenly identified her vehicle as being involved in a shooting two days prior. Officers initiated a traffic stop of McNeill, arrested her, and transported her downtown where she was subject to interrogation for several hours. Finally, detectives realized they captured license plate reader images of two similar cars (the suspect car and McNeill’s car) and arrested the wrong person. McNeill brought a suit against the Fayetteville Police Department and received a \$60,000 settlement.

EXAMPLES OF ALPR MISUSES (UNAUTHORIZED USES OR VIOLATIONS OF CIVIL RIGHTS):

- [New York \(2001 to 2011\)](#): The NYPD took photographs and collected license plate information of congregants at New York City mosques for fear of protests from Muslim communities. Law enforcement officers in unmarked vehicles with attached license plate readers recorded the license plates from the vehicles parked near the mosques.
- [Connecticut \(February 2019 to August 2023\)](#): A law enforcement officer (who was a serial burglar and later convicted) ran license plate information through a law enforcement database for vehicles belonging to him and his wife to determine if he had been identified as a suspect for his crimes.
- [California \(2020 to 2021\)](#): The Marin County Sheriff’s Office (the “Office”) collected several hundred thousand license plate reads and shared them with federal agencies such as ICE, CBP, FBI, and DEA along with more than 400 out-of-state law enforcement agencies. Three pro-immigration activists sued the Office claiming that it violated the California Values Act, which prohibits state and local law enforcement agencies from using their resources against non-violent immigrants, and a California law which prohibits non-California law enforcement agencies from accessing information collected by ALPRs. A [settlement](#) was reached to pay attorney fees and to stop sharing immigration information.
- [Pennsylvania \(2021\)](#): A law enforcement officer used ALPR to track the movements of his estranged wife and other family members.

- [Kansas \(2022\)](#): A lieutenant with the Kechi Police Department used the Wichita Police Department ALPR to stalk his estranged wife.
- [Kansas \(2024\)](#): A Sedgewick police chief used ALPR to track his ex-girlfriend and her new boyfriend's vehicles 228 times over four months and used his police vehicle to follow them out of town.



MARY JANE BURTON CASE REVIEW

MARY JANE BURTON CASE REVIEW

EXECUTIVE SUMMARY

In January 2023, a podcast was released alleging that Mary Jane Burton engaged in misconduct during her work as a forensic examiner with the Virginia Department of Forensic Science (DFS) between 1973 and 1988. In response to these allegations, the General Assembly enacted budget language in 2024 to require the Crime Commission to determine the scope of Ms. Burton's work at DFS. Specifically, the Crime Commission must review DFS cases where Ms. Burton performed the testing or analysis and report on the total number of:

- Case files that contain at least one named suspect;
- Cases where scientific testimony was provided by Ms. Burton; and,
- Named suspects who were convicted of an offense, categorized by persons:
 - Currently incarcerated, on probation, or on parole;
 - Executed; or,
 - Deceased.

As of April 2025, Crime Commission staff has identified approximately 7,600 cases where Ms. Burton was the forensic examiner. The chart on page 38 in this report entitled “*Status of the Mary Jane Burton (MJB) Project*” illustrates the progress of the work on the budget language as of April 2025. Staff will continue to provide updates on its work until this review is complete.

In addition to determining the scope of Ms. Burton's work in accordance with the 2024 budget language, staff also met with numerous stakeholders and advocates, examined post-conviction remedies under Virginia law, and identified incidents of forensic examiner misconduct in other states in an effort to determine how Virginia could respond to the allegations against Ms. Burton. Based on this work, staff recommended that the Crime Commission endorse legislation to create a panel to conduct a detailed review of certain cases where Ms. Burton was the forensic examiner. The Crime Commission unanimously endorsed staff's recommendation to create a review panel.

The endorsed legislation (House Bill 2730; Senate Bill 1465) was enacted into law during the 2025 Regular Session of the General Assembly. As enacted, the legislation directs the Crime Commission to designate a panel to review approximately 300 cases where Ms. Burton was the forensic examiner, including certain cases that resulted in a conviction and all cases where she testified. The panel will be comprised of a Commonwealth's attorney; a public defender; a practicing criminal defense attorney; a retired circuit court judge; the Office of the Attorney General; the Executive Director of the Mid-Atlantic Innocence Project; and an independent serologist. The panel must make all reasonable efforts to (i) determine whether Ms. Burton engaged in a pattern of misconduct and (ii)

evaluate the accuracy of her testing, analysis, and testimony. Crime Commission staff will provide staff support, and the panel must report annually until the completion of its review.

BACKGROUND

Mary Jane Burton was a forensic examiner at the Virginia Department of Forensic Science (DFS) from 1973 to 1988.⁸⁵ The majority of her work was in serology, which involves the detection and identification of biological material (such as blood, semen, saliva, or urine) on physical evidence.⁸⁶ Unlike DNA testing,⁸⁷ “serology testing cannot identify an individual to the exclusion of all others.”⁸⁸ Many of Ms. Burton’s cases involved violent crimes, such as murder and sexual assault, but she also examined evidence for a variety of other types of offenses.

In January 2023, the podcast *Admissible: Shreds of Evidence* was released.⁸⁹ This podcast raised concerns regarding Ms. Burton’s work at DFS, based in part on documents provided to its producer by a former DFS employee.⁹⁰ The allegations focused on two key areas:

- Discrepancies, errors, and alterations of test results; and,
- Misleading testimony in court.

⁸⁵ See Virginia Department of Forensic Science. *About DFS: History*, last visited May 8, 2025. Ms. Burton did not work for DFS as it exists today. The agency was housed in a number of locations before becoming its own department. (“In 1970, a survey by the International Association of Chiefs of Police demonstrated a need for a statewide forensic laboratory system in Virginia. Two years later, an act of the General Assembly created the Division of Consolidated Laboratory Services (DCLS), which included a Bureau of Forensic Science. The new Bureau absorbed the Commonwealth’s existing drug and toxicology laboratories in addition to providing other forensic services. In 1990, the rapidly expanding Bureau was elevated to Division status. In 1996, the Division transferred from the Department of General Services (DGS) to the Department of Criminal Justice Services (DCJS). In 2005, the Division was elevated to Department status under the Governor’s Secretary of Public Safety. DFS continues to provide comprehensive forensic laboratory services to over 400 law enforcement agencies in the Commonwealth, while remaining independent of any of them.”) <https://dfs.virginia.gov/about-dfs/>.

⁸⁶ See, e.g., National Institute of Justice, *Laboratory orientation and testing of body fluids and tissues for forensic analysts*, last visited May 8, 2025, <https://nij.ojp.gov/nij-hosted-online-training-courses/laboratory-orientation-and-testing-body-fluids-and-tissues/testing-body-fluids-tissues/overview> (“Serology is the detection, identification, and typing of body tissues, either in native form or as stains or residues left at a crime scene. Most often, the tissue of interest is a body fluid such as blood or semen; however, other tissues such as hair or bone are encountered.”)

⁸⁷ Virginia Department of Forensic Science. *Forensic biology*, last visited May 8, 2025, available at <https://dfs.virginia.gov/laboratory-forensic-services/biology/> (“...DNA analysis can be conducted on [biological material], and conclusions can be drawn as to whether an individual can be eliminated or included as a possible contributor to the genetic material identified.”).

⁸⁸ Jackson, L.C. (2024, October 22). *Current DFS quality system and the duty to correct: An update on the Mary Jane Burton project*. Presentation at the October 22, 2024 Crime Commission Meeting (Richmond, VA), <https://vscc.virginia.gov/2024/October22Mtg/DFS%20Quality%20System%20and%20Duty%20to%20Correct%20-%20MJB%20Update.pdf>. See also, e.g., Garrett, B.L., & Neufeld, P.J. (2009). Invalid forensic science testimony and wrongful convictions. *Virginia Law Review*, 95(1), 1-97, at p. 35: “This conventional serology analysis cannot identify particular individuals; it can, however, exclude individuals or place individuals within a percentage of the population that possesses a given type and cannot be excluded as a source of the fluid.”

⁸⁹ Podcast Directory. *Admissible: Shreds of evidence*. NPR, last visited May 8, 2025, available at <https://www.npr.org/podcasts/1164809981/admissible-shreds-of-evidence>. See also *Admissible: Shreds of evidence*. Podcast Website, last visited May 8, 2025, available at <https://admissible.vpm.org/>.

⁹⁰ *Admissible: Shreds of evidence* (2023, February 14). Chapter 3: *Pandora’s Box*, available at <https://admissible.vpm.org/pandoras-box/>.

DFS RESPONSE TO ALLEGATIONS AGAINST Ms. BURTON

In July 2023, the podcast provided documents to DFS that were relied upon as part of the allegations against Ms. Burton. These documents were then referred to the DFS Scientific Advisory Committee (SAC) on August 18, 2023.⁹¹ The SAC chair created a Review Subcommittee to investigate the allegations, which met on October 10, 2023; January 9, 2024; and April 8, 2024.⁹²

The Review Subcommittee directed DFS to notify individuals whose cases were potentially impacted by Ms. Burton's work. DFS offered to provide testing of any existing scientific evidence remaining from those cases as part of the laboratory's duty to correct.⁹³ In June 2024, DFS sent notification letters to 174 law enforcement agencies and 125 localities.⁹⁴ Each letter included a list of affected cases for that agency/locality with copies of the certificates of analysis prepared by Ms. Burton. The letters also highlighted cases where an individual might be currently incarcerated.⁹⁵

As of April 2025, 86 individuals were identified who are currently incarcerated on a case where Ms. Burton was the forensic examiner.⁹⁶ DFS notified those individuals of the ongoing review of Ms. Burton's work and referred them to the Innocence Project at the UVA School of Law for pro bono legal assistance.⁹⁷

2024 BUDGET LANGUAGE

As a result of the allegations against Ms. Burton, budget language was enacted during the 2024 Regular Session of the General Assembly which directs the Crime Commission to review cases at DFS where she performed testing or analysis and report on the total number of:

- Case files that contain at least one named suspect;
- Cases where scientific testimony was provided by Ms. Burton; and,

⁹¹ Jackson, L.C. (2024, October 22). *Current DFS quality system and the duty to correct: An update on the Mary Jane Burton project*. Presentation at the October 22, 2024 Crime Commission Meeting (Richmond, VA), <https://vscc.virginia.gov/2024/October22Mtg/DFS%20Quality%20System%20and%20Duty%20to%20Correct%20-%20MJB%20Update.pdf>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* A copy of the notification letter to the Chiefs of Police, Sheriffs, and Commonwealth's Attorneys is available at <https://vscc.virginia.gov/2024/October22Mtg/Notification%20Letters.pdf>.

⁹⁵ *Id.*

⁹⁶ Arrington, C.B. (2025, April 23). *Status of the Mary Jane Burton Project: Update to the Forensic Science Board*. Presentation by Crime Commission staff at the April 23 Forensic Science Board Meeting (Richmond, VA). Note: at the time of the October 2024 Crime Commission meeting, only 66 individuals had been identified as being currently incarcerated on a case where Ms. Burton was the forensic examiner.

⁹⁷ See Jackson, L.C. (2024, October 22). *Current DFS quality system and the duty to correct: An update on the Mary Jane Burton project*. Presentation at the October 22, 2024 Crime Commission Meeting (Richmond, VA), <https://vscc.virginia.gov/2024/October22Mtg/DFS%20Quality%20System%20and%20Duty%20to%20Correct%20-%20MJB%20Update.pdf>. A copy of the notification letter to defendants is available at <https://vscc.virginia.gov/2024/October22Mtg/Notification%20Letters.pdf>. The additional individuals identified since the October 2024 Crime Commission meeting have also been notified by DFS and referred to the Innocence Project at the UVA School of Law for pro bono assistance.

- Named suspects who were convicted of an offense, categorized by persons:
 - Currently incarcerated, on probation, or on parole;
 - Executed; or,
 - Deceased.⁹⁸

As part of its work on the 2024 budget language and the allegations of misconduct against Ms. Burton, Crime Commission staff:

- Analyzed a spreadsheet provided by DFS to identify the total number of cases and named suspects where Ms. Burton was the forensic examiner;⁹⁹
- Began reviewing case files at DFS in May 2024 to identify named suspects, offense details, and victims (staff has reviewed over 2,700 case files as of April 2025);¹⁰⁰
- Identified the number of Ms. Burton's cases that overlap with the prior *Post-Conviction DNA Testing Program and Notification Project* (approximately 47% of cases overlap as of April 2025);¹⁰¹

⁹⁸ 2024 General Assembly Budget, Item 23(A), available at <https://budget.lis.virginia.gov/amendment/2024/1/SB30/Introduced/FA/23/3s/>.

⁹⁹ DFS provided Crime Commission staff with a spreadsheet including all certificates of analysis in their agency's *Historic Case File Project* where Ms. Burton was indicated as the forensic examiner performing the analysis (1973-1988). Specifically, the spreadsheet included 11,394 certificates of analysis completed by Ms. Burton across 10,283 assigned DFS Lab Numbers. It was soon discovered, however, that there were far more assigned DFS Lab Numbers than *unique* cases where Ms. Burton was the forensic examiner. Per DFS, it was customary practice during this time frame (1973-1988) for two DFS Lab Numbers to be assigned to the same unique case in instances where the Request for Laboratory Examination (RFLE) was submitted to a Lab other than the Central Lab by a law enforcement agency, but where forensic testing was performed at the Central Lab. As such, staff had to collapse the certificates of analysis and DFS Lab Numbers into unique cases to meet the directives of the budget language. This involved a lengthy, reiterative process of linking and collapsing dually assigned DFS Lab Numbers into an individual row per named suspect in each unique case (numerous cases had more than one named suspect). As a result of these efforts, Crime Commission staff has identified 7,579 *unique* cases where Ms. Burton was the forensic examiner, of which 3,467 included at least one named suspect and 188 where there was an indication of scientific testimony being provided by Ms. Burton, as of April 2025. This process also assisted DFS in preparing mailed notification letters to 174 law enforcement agencies and to the Commonwealth's Attorneys representing 125 localities where such cases originated. Each mailing included two lists accompanied by copies of the original certificates of analysis related to each case as follows: (i) list of cases/named suspects on certificates of analysis for their respective localities; and, (ii) list of cases where there was no named suspect on the certificates of analysis but rather only the named victim. Recipients of these notification letters were asked to verify whether any of their listed cases resulted in a conviction. Cases where the named suspect(s) were potentially incarcerated were highlighted for priority review.

¹⁰⁰ The spreadsheet provided to the Crime Commission by DFS did not include any personally identifiable information (PII), such as the dates of birth or social security numbers of named suspects, or vital offense details, such as offense date and offense type. Accordingly, the case review process entails multiple Crime Commission staff members reviewing and cross-validating PII and offense details in case files. As of April 2025, staff has reviewed and cross-validated approximately 2,700 cases. Case review was prioritized for cases involving individuals potentially incarcerated or under DOC supervision, as well as cases where there was indication that Ms. Burton provided court testimony. This process is crucial in obtaining the information needed to assist clerks of court in verifying whether these named suspects were convicted in their respective cases.

¹⁰¹ Preliminary analysis by staff determined that approximately half of the archived MJB cases were part of the earlier *Post-Conviction DNA Testing Program and Notification Project*. As of April 2025, 47% (1,623 of 3,467) of cases have thus far been linked to the earlier *Post-Conviction DNA Testing Program and Notification Project*. In general, the conviction status, post-conviction DNA testing status, and notification status have already been documented for the named suspects in these cases.

- Coordinated with the Virginia Department of Corrections (DOC) and the Virginia Parole Board to identify individuals incarcerated or under DOC supervision;¹⁰²
- Presented updates to the Scientific Advisory Committee and the Forensic Science Board;¹⁰³
- Reviewed post-conviction remedies in Virginia;
- Identified incidents of forensic examiner misconduct in other states; and,
- Consulted with numerous stakeholders and advocates.¹⁰⁴

STATUS OF 2024 BUDGET LANGUAGE

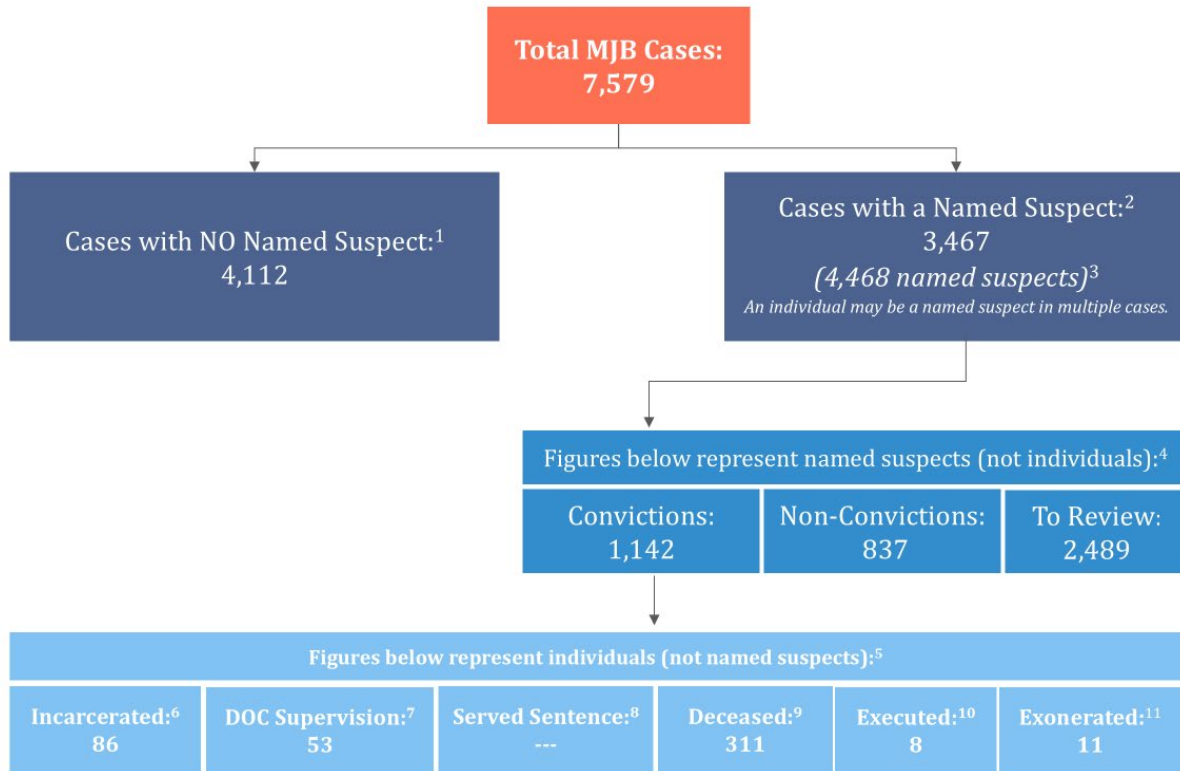
The following chart illustrates the status of the Crime Commission's work on the 2024 budget language as of April 2025.

¹⁰² Staff prioritized identifying individuals who were potentially incarcerated or under DOC supervision. Staff provided case information to both DOC and the Parole Board to help verify the incarceration status of each named suspect and to determine whether their current term of incarceration was specifically linked to the offense or offenses where Ms. Burton was the examiner. Any individuals determined to be incarcerated have been notified by DFS about their case, provided with a copy of their original certificate of analysis, and had their case referred to the UVA Innocence Project for pro bono legal assistance. As of April 2025, 86 individuals have thus far been identified as incarcerated, and 53 individuals have been identified as being under DOC supervision.

¹⁰³ Staff presented updates on the status of the case review to the Scientific Advisory Committee on April 8, 2024, October 8, 2024, and April 23, 2025, and to the Forensic Science Board on October 9, 2024, and April 23, 2025.

¹⁰⁴ Crime Commission staff consulted with the following stakeholders and advocates: Attorney General of Virginia; Benjamin and Desportes, P.C.; Cardozo Law, Perlmutter Center for Legal Justice; Innocence Project at the University of Virginia School of Law; Mid-Atlantic Innocence Project; Virginia Association of Chiefs of Police & Foundation; Virginia Association of Commonwealth's Attorneys; Virginia Commonwealth's Attorneys' Services Council; Virginia Department of Corrections; Virginia Department of Forensic Science; Virginia Department of Forensic Science – Scientific Advisory Committee; Virginia Indigent Defense Commission; Virginia Parole Board; Virginia Sheriffs' Association; and, Sheldon & Flood, P.L.C.

Status of Mary Jane Burton (MJB) Project



Source: Virginia Department of Forensic Science, Historic Case File Project, 1973-1988, MJB certificates of analysis only. Analysis by Virginia State Crime Commission staff. Separate and apart from the information in the chart, 181 cases have been identified where Ms. Burton provided scientific testimony. Status as of April 22, 2025.

¹ Nearly half (1,880 of 4,112) of the cases with no named suspect originated from the Office of the Chief Medical Examiner, which includes deaths that may not have been criminal in nature, such as a traffic fatalities and suicides. The remainder of these cases originated from law enforcement agencies where no named suspect was identified.

² To date, 47% (1,623 of 3,467) of these cases overlap with the earlier *Virginia Post-Conviction DNA Testing Program and Notification Project*.

³ This figure does not mean that there are 4,468 unique individuals, as a single person could be a named suspect in multiple cases. For example, "John Smith" might be a named suspect in five cases, so "John Smith" is counted as a named suspect five times.

⁴ These figures are based on 4,468 named suspects and not individuals, so a single person may be counted multiple times. For example, if "John Smith" was convicted on three cases and found not guilty on two cases, then "John Smith" is counted as three convictions and two non-convictions.

⁵ Unlike the "named suspects", these figures represent unique individuals who were convicted, along with their current status. For example, if "John Smith" was convicted on three cases and is incarcerated, then "John Smith" is counted as one unique individual in the incarcerated category. As named suspects who were convicted are identified, the individual who was convicted will be classified within these six categories based on their present status. The remainder of convicted named suspected are yet to be identified and classified across these six categories.

⁶ These 86 individuals (representing 96 named suspects in 92 cases) are either (i) serving a sentence in DOC on a case where Ms. Burton was the forensic examiner or (ii) have completed their term of incarceration for the Ms. Burton case, but are serving a sentence on an unrelated case.

⁷ These 53 individuals (representing 63 named suspects in 63 cases) are either (i) under DOC supervision (probation or parole) on a case where Ms. Burton was the forensic examiner or (ii) have completed DOC supervision for the Ms. Burton case, but are under DOC supervision for an unrelated offense.

⁸ This classification is still very preliminary. Thus far, two (2) individuals have been identified as being convicted on a case where Ms. Burton was the forensic examiner, but have served their sentence and are not incarcerated or on DOC supervision. This category is expected to grow significantly moving forward.

⁹ These 311 individuals (representing 320 named suspects in 302 cases) were convicted on a case where Ms. Burton was the forensic examiner, but have since passed away.

¹⁰ These 8 individuals (representing 10 named suspects in 10 cases) were convicted and executed on a case where Ms. Burton was the forensic examiner.

¹¹ These 11 individuals (representing 11 named suspects in 11 cases) were convicted and later exonerated on a case where Ms. Burton was the forensic examiner.

NEXT STEPS

While significant progress has been made on the directives set forth in the 2024 budget language, a great deal of work remains, including:

- Completing the review of the remaining DFS case files (~4,800) to collect information on named suspects, offense details, and victims;
- Coordinating with other stakeholders, such as clerks of court and Commonwealth's Attorneys, to determine the conviction status of all named suspects;
- Determining the status of any named suspect convicted on a case where Ms. Burton was the forensic examiner (incarcerated, DOC supervision, served sentence, deceased); and,
- Continuing to update the Crime Commission and other stakeholders on the progress of the work on the 2024 budget language.

POST-CONVICTION REMEDIES IN VIRGINIA

The Virginia Code sets forth two legal remedies for individuals seeking to petition Virginia courts for post-conviction relief. The first remedy is a writ of actual innocence, which can be based on previously unknown or unavailable biological¹⁰⁵ or non-biological¹⁰⁶ evidence. This remedy is available to an individual at any time following their conviction or adjudication of delinquency.¹⁰⁷ Both writs require that the petitioner provide an exact description of evidence which was not previously known or available,¹⁰⁸ and how the evidence will prove that no rational trier of fact would have found proof of guilt or delinquency beyond a reasonable doubt.¹⁰⁹ To support the writ, the individual can petition to obtain scientific analysis of newly discovered or previously untested scientific evidence.¹¹⁰ If the individual meets the burden of proof for the granting of a writ, the Court can either (i) vacate the conviction or finding of delinquency or (ii) find that sufficient evidence exists to enter a conviction or adjudication of delinquency to a lesser included offense and remand the case to circuit court for resentencing.¹¹¹

The second remedy is a writ of habeas corpus.¹¹² When filed to challenge a criminal conviction, a writ of habeas corpus typically alleges ineffective assistance of counsel, failure to disclose exculpatory evidence, new or recanting witness statements, failure of the court to provide sufficient

¹⁰⁵ VA. CODE ANN. § 19.2-327.2 et seq. (2024) (writs of actual innocence based on biological evidence are filed with the Virginia Supreme Court).

¹⁰⁶ VA. CODE ANN. § 19.2-327.10 et seq. (2024) (writs of actual innocence based on non-biological evidence are filed with the Virginia Court of Appeals).

¹⁰⁷ See VA. CODE ANN. §§ 19.2-327.3 & 19.2-327.11 (2024).

¹⁰⁸ If the evidence was previously known, the defendant would need to provide the reason why the evidence was not subject to scientific testing. VA. CODE ANN. §§ 19.2-327.3(A) & 19.2-327.11(A) (2024).

¹⁰⁹ VA. CODE ANN. §§ 19.2-327.3(A) & 19.2-327.11(A) (2024).

¹¹⁰ VA. CODE ANN. § 19.2-327.1 (2024).

¹¹¹ VA. CODE ANN. §§ 19.2-327.5 & 19.2-327.13 (2024).

¹¹² VA. CODE ANN. § 8.01-654 et seq. (2024).

time or expert resources, or juror impropriety or bias.¹¹³ If the defendant meets the probable cause standard of proof to demonstrate that they have been detained without legal authority, the court may grant the writ and order a new trial, sentencing, or appeal.¹¹⁴ However, this remedy has strict timelines, as the Virginia habeas corpus statute requires filing the writ either within two years of the final judgement in the trial court or within one year from the final disposition of the appeal, whichever date is later.¹¹⁵

FORENSIC EXAMINER MISCONDUCT IN OTHER STATES

While allegations have been raised about Ms. Burton's work at DFS, no determination has been made as to whether Ms. Burton engaged in a pattern of misconduct. However, as a result of these allegations, staff searched for instances of forensic misconduct in other states to determine how those states identified and responded to the misconduct. Staff discovered three relevant instances of forensic misconduct in other states, all of which required an individualized review of the forensic examiner's work to identify whether a pattern of misconduct existed.¹¹⁶

FRED ZAIN (WEST VIRGINIA)

Mr. Zain was the director of the serology department of the West Virginia Division of Public Safety from 1979 until 1989.¹¹⁷ Following the reversal of a conviction for sexual assault in *State v. Woodall*, 182 W. Va. 15 (July, 6, 1989), an internal investigation was conducted to review Mr. Zain's work.¹¹⁸ This internal investigation led the prosecuting attorney for Kanawha County, West Virginia, to petition

¹¹³ Virginia State Crime Commission (2016). *2016 annual report: Habeas corpus: Restrictions, deadlines and relief*, at p. 34, <https://vscc.virginia.gov/FINAL%20Habeas%20Corpus.pdf> (hereinafter "VSCC Habeas Corpus Report").

¹¹⁴ See VSCC Habeas Corpus Report at p.36. See also VA. CODE § 8.01-662 (2025).

¹¹⁵ VA. CODE § 8.01-654(A)(2) (2025).

¹¹⁶ The three cases of forensic scientist misconduct were the best comparisons to the ongoing study into the work of Ms. Burton. The three forensic scientists (Fred Zain, Joyce Gilchrist, and Yvonne "Missy" Woods) all worked for at least a decade as forensic scientists; they reviewed a wide range of cases during their careers, including sexual crimes and homicide; and, as a result of issues with their work being discovered, an individualized case review was conducted to determine the scope of the misconduct. Staff did find other examples of forensic scientist misconduct, but those examples did not provide guidance for how to handle Ms. Burton's cases because they were too dissimilar to Ms. Burton's cases and work. For example, a highly publicized case of forensic scientist misconduct was the case of Annie Dookhan and Sonja Farak in Massachusetts, which led to tens of thousands of cases being dismissed (and resulted in a 2020 Netflix documentary on the scandal). However, both Dookhan and Farak were chemists who worked exclusively on drug cases in drug labs, so their cases were significantly different in nature than the cases handled by Ms. Burton. See Mulvihill, M., & Schuppe, J. (2022, September 22). Epic Massachusetts crime lab scandal may involve even broader wrongdoing, judge says. *NBC News*, <https://www.nbcnews.com/news/us-news/massachusetts-crime-lab-drug-testing-scandal-rcna48940>; Trager, R. (2018, April 17). Fallout from rogue US forensic chemist continues. *Chemistry World*, <https://www.chemistryworld.com/news/fallout-from-rogue-us-forensic-chemist-continues/3008906.article>; Trager, R. (2017, April 25). 21,500 cases dismissed due to forensic chemist's misconduct. *Chemistry World*, <https://www.chemistryworld.com/news/21500-cases-dismissed-due-to-forensic-chemists-misconduct/3007173.article>.

¹¹⁷ *In re Investigation of the W. Va. State Police Crime Lab., Serology Div.*, 190 W. Va. 321, 330 n.4 (1993, November 10). See also Court invalidates a decade of blood test results in criminal cases. (1993, November 12). *New York Times*, <https://www.nytimes.com/1993/11/12/us/court-invalidates-a-decade-of-blood-test-results-in-criminal-cases.html>.

¹¹⁸ *In re Investigation* at 329.

the West Virginia Supreme Court for a review Mr. Zain's work.¹¹⁹ The review included 134 cases where Mr. Zain was the forensic examiner.¹²⁰

The review, which was completed in November 1993, concluded that the "overwhelming evidence of a pattern and practice of misconduct by Zain completely undermines the validity and reliability of any forensic work he performed or reported during his tenure in the serology department of the state police crime laboratory."¹²¹ Mr. Zain was found to have committed several acts of misconduct, including "reporting inconclusive results as conclusive;...failing to report conflicting results;...implying a match with a suspect when testing supported only a match with the victim; and...reporting scientifically impossible or improbable results."¹²² However, though the Court found that any testimony or evidence provided by Mr. Zain would be "deemed invalid, unreliable, and inadmissible," it did not mean that all of the cases he worked on should be dismissed.¹²³ Instead, affected defendants could proceed on a habeas corpus claim on the issue of whether the evidence provided at or prior to a guilty plea or trial, "independent of the forensic evidence presented by Zain, would have been sufficient to support the verdict or plea."¹²⁴ At least seven individuals whose cases Mr. Zain worked on had their convictions vacated following the Court's findings.¹²⁵

JOYCE GILCHRIST (OKLAHOMA)

Ms. Gilchrist worked as a forensic chemist for the Oklahoma City Police Department from 1980 until 2001.¹²⁶ In 1999, the District Court for the Western District of Oklahoma in Mitchell v. Ward, 150 F. Supp. 2d 1194 (W.D. Okla., Aug. 27, 1999), granted a defendant's petition for habeas relief regarding convictions for rape and sodomy based at least in part on misconduct by Ms. Gilchrist.¹²⁷ The District Court found that portions of Gilchrist's trial testimony were "without question, untrue" and "misleading,"¹²⁸ and that Gilchrist's testimony had been questioned in several other cases.¹²⁹

Following the Mitchell decision, an internal investigation was conducted to review Ms. Gilchrist's work.¹³⁰ The report from that investigation, filed in January 2001, found that "Gilchrist performed

¹¹⁹ *Id.* at 329-330.

¹²⁰ *Id.* at 331.

¹²¹ *Id.* at 337-338.

¹²² *Id.* at 336.

¹²³ *Id.* at 340.

¹²⁴ *Id.*

¹²⁵ See The National Registry of Exonerations, search results for "Fred Zain" and "Zain," last viewed May 8, 2025, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

¹²⁶ *Gilchrist v. Citty*, 173 Fed. Appx. 675, 677 (10th. Cir., Apr. 4, 2006). See also Brewer, G.L. (2015, August 13). Disgraced Oklahoma City police chemist Joyce Gilchrist dies, *The Oklahoman*, <https://www.oklahoman.com/story/news/2015/08/31/disgraced-oklahoma-city-police-chemist-joyce-gilchrist-dies/60726319007/>.

¹²⁷ Mitchell v. Ward at 1226, 1229.

¹²⁸ *Id.*

¹²⁹ *Id.* at 1229 n.52 (noting four separate cases where Gilchrist was found to have committed significant misconduct, including failing to disclose evidence to the defense and testifying to conclusions which were not scientifically supported).

¹³⁰ *Gilchrist* at 678.

inaccurate forensic analyses, interpreted evidence incorrectly, and offered misleading testimony in criminal cases.”¹³¹ This report led to additional findings of misconduct, which resulted in the termination of Ms. Gilchrist’s employment on September 25, 2001.¹³² At least 12 individuals whose cases Ms. Gilchrist worked on had their convictions vacated following the findings of misconduct.¹³³

YVONNE “MISSY” WOODS (COLORADO)

Ms. Woods worked as a forensic scientist for the Colorado Bureau of Investigation from 1994 until 2023.¹³⁴ An internal investigation into Ms. Woods’ work began in September 2023 after an intern uncovered an anomaly in her DNA case work.¹³⁵ Soon thereafter, Ms. Woods was placed on administrative leave, and she then retired on November 6, 2023, before the completion of the internal investigation.¹³⁶ The internal investigation report, published on June 5, 2024, found that Ms. Woods “omitted material facts in official criminal justice records,” “tampered with DNA testing by altering or omitting some test results from the case file,” and “engaged in the deletion and alteration of data.”¹³⁷ A comprehensive review of all of Ms. Woods’ cases was completed by December 2024, which found that Ms. Woods’ misconduct may have impacted 1,003 cases.¹³⁸ On January 22, 2025, Ms. Woods was charged with 102 criminal offenses in relation to her alleged misconduct, including 1 count of cybercrime, 1 count of perjury, 48 counts of attempt to influence a public servant, and 52 counts of forgery.¹³⁹

¹³¹ *Id.* at 679.

¹³² *Id.* at 679-681.

¹³³ See The National Registry of Exonerations, search results for “Joyce Gilchrist,” last viewed May 8, 2025, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

¹³⁴ Colorado Bureau of Investigation. (2024, March 3). *Colorado Bureau of Investigation releases findings from internal affairs probe into laboratory testing*, <https://cbi.colorado.gov/news-article/colorado-bureau-of-investigation-releases-findings-from-internal-affairs-probe-into>. See also Nguyen, T. (2024, March 10). Former Colorado forensic scientist accused of manipulating DNA test results, *USA Today*, <https://www.usatoday.com/story/news/nation/2024/03/10/colorado-forensic-scientist-manipulated-dna-results-investigation/72923480007/>.

¹³⁵ Hassenstab, K. (2024, February 26). Internal Affairs investigative report. *Colorado Bureau of Investigation Report of Investigation*, Case Number IIA-23-05, page 2 (hereinafter “CBI Woods Report”).

¹³⁶ Colorado Bureau of Investigation. (2024, June 5). *Colorado Bureau of Investigation releases internal affairs report into former forensic scientist Missy Woods*, <https://cbi.colorado.gov/news-article/colorado-bureau-of-investigation-releases-internal-affairs-report-into-former-forensic>.

¹³⁷ *Id.* See also CBI Woods Report at pages 91-94 (provides a table of “Known Error Types in Woods’ Case Work,” which includes issues of “deliberate data change,” “deleted data,” and “additional analysis should have been performed and was not”).

¹³⁸ Colorado Bureau of Investigation. *Yvonne “Missy” Woods investigation* (Timeline of Events, December 2024), last viewed May 8, 2025, <https://cbi.colorado.gov/sections/administration/media-relations/yvonne-missy-woods-investigation#:~:text=Timeline%20of%20Events&text=December%202024%20%2D%20Comprehensive%20review%20of%20Judicial%20District%20Attorney's%20Office>. See also Butzer, S. (2024, December 22). Review of all CBI cases involving Missy Woods complete; more than 1K cases impacted by mishandling of DNA. *ABC News, Denver Channel 7*, <https://www.denver7.com/news/local-news/review-of-all-cbi-cases-involving-missy-woods-complete-more-than-1k-cases-impacted-by-mishandling-of-dna>.

¹³⁹ Colorado District Attorney’s Office for Gilpin and Jefferson Counties. (2025, January 22). *Former CBI Lab analyst Missy Woods facing criminal charges*, <https://firstda.co/news-update/former-cbi-lab-analyst-missy-woods-facing-criminal-charges/>.

In February 2025, HB25-1275 was introduced in the Colorado legislature in response to Ms. Woods' alleged misconduct.¹⁴⁰ The legislation seeks to enact several new statutes which would require district attorneys, defendants, and defendant's counsel to be notified when a report of misconduct against a crime laboratory employee is filed with a crime laboratory director.¹⁴¹ Upon being notified of such misconduct, defendants would have the opportunity to file a petition to seek post-conviction relief.¹⁴² Under this petition, if a defendant can demonstrate by a preponderance of the evidence that the crime laboratory employee engaged in misconduct and the misconduct was material to the case, the court shall vacate the conviction and grant a new trial.¹⁴³ This bill passed the Colorado legislature and was signed into law by the Governor in June 2025.¹⁴⁴

CRIME COMMISSION LEGISLATION

At the October 2024 Crime Commission meeting, DFS presented on its response to the allegations against Ms. Burton,¹⁴⁵ while Crime Commission staff updated members on the status of the 2024 budget language¹⁴⁶ and potential next steps regarding the allegations against Ms. Burton.¹⁴⁷ Crime Commission staff recommended the creation of a panel to conduct a detailed review of certain cases where Ms. Burton was the forensic examiner in order to determine whether she engaged in a pattern of misconduct.¹⁴⁸

At the January 2025 Crime Commission meeting, members unanimously endorsed legislation to create a panel to review certain cases where Ms. Burton was the forensic examiner. As part of this endorsement, members voted to include the Office of the Attorney General on the review panel, provided that the Virginia State Bar verified that this would not pose a conflict of interest. The Virginia State Bar sent an email to the Crime Commission on January 17, 2025, advising that including the Office of the Attorney General as a member of the review panel would not constitute a legal ethics conflict under the Rules of Professional Conduct.

¹⁴⁰ Bill available at: <https://leg.colorado.gov/bills/hb25-1275>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Jackson, L.C. (2024, October 22). *Current DFS quality system and the duty to correct: An update on the Mary Jane Burton project*. Presentation at the October 22, 2024 Crime Commission Meeting (Richmond, VA), <https://vscc.virginia.gov/2024/October22Mtg/DFS%20Quality%20System%20and%20Duty%20to%20Correct%20-%20MJB%20Update.pdf>.

¹⁴⁶ Arrington, C.B. (2024, October 22). *Mary Jane Burton case review: Project status*. Presentation at the October 22, 2024 Crime Commission Meeting (Richmond, VA), https://vscc.virginia.gov/2024/October22Mtg/FINAL_MJB%20Case%20Review%20Presentation_10.21.24%20.pdf

¹⁴⁷ Lubetkin, J. (2024, October 22). *Mary Jane Burton case review: Next steps*. Presentation at the October 22, 2024 Crime Commission Meeting (Richmond, VA), <https://vscc.virginia.gov/2024/October22Mtg/2024%20MJB%20Legislation%20Presentation%20FINAL.pdf>.

¹⁴⁸ *Id.* at slide 6.

As a result of this study, House Bill 2730 and Senate Bill 1465 were introduced during the 2025 Regular Session of the General Assembly as part of the Crime Commission's legislative package.¹⁴⁹ These bills passed the General Assembly and were signed into law by the Governor.¹⁵⁰ As enacted into law, these identical bills:

- Direct the Crime Commission to designate a panel to review cases where Ms. Burton was the forensic examiner, including (i) cases resulting in convictions of persons who are currently incarcerated, or who were executed or exonerated, and (ii) cases where Ms. Burton testified, regardless of the final disposition of the case.
- Instruct the panel to make all reasonable efforts to (i) determine, if possible, whether Ms. Burton engaged in a pattern of misconduct in relation to her testing, analysis, or testimony in such cases and (ii) evaluate the accuracy of her testing, analysis, and testimony.
- Require the panel to prioritize the review of cases for persons who are currently incarcerated.
- Provide that the findings of the panel shall be admissible, but not binding, on a court's determination in any post-conviction proceeding.
- Set forth the panel membership as: a Commonwealth's attorney; a public defender; a practicing attorney who is qualified to serve as court-appointed counsel in felony cases pursuant to § 19.2-163.03 of the Code of Virginia; a judge of a circuit court who is retired under the Judicial Retirement System (§ 51.1-300 et seq. of the Code of Virginia); a representative from the Office of the Attorney General; the Executive Director of the Mid-Atlantic Innocence Project; and, an independent serologist.
- Exempt the work of the panel from the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).
- Require the Crime Commission to provide staff support to the panel.
- Allow the Crime Commission to receive and disseminate information to facilitate the work of the panel, and to share information that it receives with an attorney representing or considering representing an individual in a petition for a writ of habeas corpus or writ of actual innocence pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) of Title 19.2 of the Code of Virginia or any other federal or state post-conviction proceeding or pardon.
- Instruct the panel to report to the Crime Commission on its work by the first day of each Regular Session of the General Assembly until the completion of the review.

CONCLUSION

As a result of 2024 budget language and 2025 legislation, two reviews are being conducted into the allegations of misconduct against Ms. Burton. The review based on the 2024 budget language is

¹⁴⁹ House Bill 2730, 2025 Regular Session of the General Assembly (Del. Patrick A. Hope). <https://lis.virginia.gov/bill-details/20251/HB2730>. Senate Bill 1465, 2025 Regular Session of the General Assembly (Sen. Scott A. Surovell). <https://lis.virginia.gov/bill-details/20251/SB1465>.

¹⁵⁰ 2025 Va. Acts, Reg. Sess., ch. 421 and 430.

being conducted by Crime Commission staff in order to determine the scope of Ms. Burton's work at DFS. This review focuses on identifying the number of cases where Ms. Burton was the forensic examiner, including the number of cases where she testified, and identifying the number of cases that resulted in a conviction, as well as determining the current status of any individuals who were convicted.

The review based on the 2025 legislation will be conducted by a panel designated by the Crime Commission. That panel will conduct a more in-depth review of approximately 300 cases where Ms. Burton was the forensic examiner in an effort to evaluate the accuracy of her work and testimony and to determine, if possible, whether she engaged in a pattern of misconduct. The Crime Commission will provide staff support to this panel until the completion of the panel's work.

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Innocence Project at the University of Virginia School of Law

Mid-Atlantic Innocence Project

Office of the Attorney General of Virginia

Virginia Association of Chiefs of Police & Foundation

Virginia Association of Commonwealth's Attorneys

Virginia Commonwealth's Attorneys' Services Council

Virginia Court Clerks Association

Virginia Department of Corrections

Virginia Department of Forensic Science

Virginia Indigent Defense Commission

Virginia Parole Board

Virginia Sheriffs' Association

Sheldon & Flood, P.L.C.



SEALING OF CRIMINAL RECORDS UPDATE

SEALING OF CRIMINAL RECORDS UPDATE

SEALING OF CRIMINAL RECORDS BEGINS IN VIRGINIA ON JULY 1, 2026

On July 1, 2026, various statutes will take effect in Virginia that allow for the automatic and petition sealing of numerous offenses.¹ Processes will be in place to automatically seal the following types of offenses:

- Misdemeanor convictions (petit larceny, shoplifting, trespassing, instigating trespass, trespass on posted property, distribution of marijuana, and disorderly conduct);²
- Possession of marijuana offenses (criminal and civil);³
- Misdemeanor non-convictions at case conclusion (acquittal and dismissal with prejudice);⁴
- Felony non-convictions at case conclusion (upon verbal request by the defendant and concurrence of the Commonwealth's Attorney) (acquittal and dismissal with prejudice);⁵
- Previously concluded misdemeanor non-convictions (acquittal, nolle prosequi, and dismissal, excluding deferred dismissal);⁶ and,
- Traffic infractions.⁷

In addition, the following two petition processes will be available to seal certain offenses:

- Petition sealing of misdemeanor and felony convictions, deferred dismissals,⁸ and related ancillary matters, with the exception of numerous types of offenses, such as Class 1, 2, 3, and 4 felonies, sex crimes, violent felonies, sex trafficking, felonies involving the use of a firearm, protective order violations, hate crimes, animal cruelty, election laws, date rape drug offenses, not guilty by reason of insanity dispositions, dangerous or vicious dogs offenses, and crimes against family or household members;⁹ and,
- Automatic petition sealing of misdemeanor convictions and deferred dismissals eligible for automatic sealing that were unable to be sealed through the automatic process, certain

¹ 2025 Va. Acts ch. 634 and 671. Senate Bill 1466, 2025 Regular Session of the General Assembly, Governor's Recommendation Adopted. <https://lis.virginia.gov/bill-details/20251/SB1466>. House Bill 2723, 2025 Regular Session of the General Assembly, Governor's Recommendation Adopted. <https://lis.virginia.gov/bill-details/20251/HB2723>. See VA. CODE ANN. § 19.2-392.5 et seq. (2025). See also Appendix A.

² VA. CODE ANN. § 19.2-392.6 (2025).

³ VA. CODE ANN. § 19.2-392.6:1 (2025).

⁴ VA. CODE ANN. § 19.2-392.8(A) (2025).

⁵ VA. CODE ANN. § 19.2-392.8(B) (2025).

⁶ VA. CODE ANN. § 19.2-392.11 (2025).

⁷ VA. CODE ANN. § 19.2-392.17 (2025).

⁸ A deferred dismissal refers to a circumstance where a charge is dismissed after the defendant completes certain terms or conditions ordered by the court. See Virginia State Crime Commission. (2008). *Deferred disposition*, <https://vsc.virginia.gov/documents/deferred%20dispositon.pdf>.

⁹ VA. CODE ANN. § 19.2-392.12 (2025). See also Appendix B.

other misdemeanor convictions and deferred dismissals not eligible for automatic sealing, and related ancillary matters.¹⁰

The sealing statutes apply to records in the possession of (i) the Central Criminal Records Exchange (CCRE) operated by Virginia State Police, (ii) any Virginia court, (iii) any Virginia police department, sheriff's office, or campus police department, or (iv) the Virginia Department of Motor Vehicles that relate to an arrest, charge, conviction, or specifically identified ancillary matter.¹¹ Sealing also applies to certain records that are not criminal in nature, such as civil offenses for possession of marijuana and traffic infractions.¹² Furthermore, the sealing statutes prohibit background check companies from sharing sealed criminal records.¹³ For purposes of this report, the term “criminal record” refers to all of these records that are eligible for sealing.

The information contained in this report is current as of the sealing legislation enacted during the 2025 Regular Session of the General Assembly.¹⁴

CRIME COMMISSION SEALING LEGISLATION

At the January 2025 Crime Commission meeting, Commission members endorsed legislation to make numerous technical and policy amendments to the sealing statutes. During the 2025 General Assembly Session, the legislature passed both bills following amendments by the Governor.¹⁵ The sealing statutes are now set to take effect on July 1, 2026, unless changes are made during the 2026 Regular Session of the General Assembly.

Several budget amendments were also adopted during the 2025 Session to allocate funding for implementing the sealing processes,¹⁶ including:

- Circuit Court Clerks (\$5.5 million for 117 additional Deputy Clerk positions);¹⁷
- Commonwealth’s Attorneys (\$5.5 million for 70 additional Assistant Commonwealth’s Attorney positions);¹⁸

¹⁰ VA. CODE ANN. § 19.2-392.12:1 (2025).

¹¹ VA. CODE ANN. § 19.2-392.5(A) (2025).

¹² VA. CODE ANN. § 19.2-392.6:1(A) and § 19.2-392.17(A) (2025).

¹³ VA. CODE ANN. § 19.2-392.16 (2025).

¹⁴ 2025 Va. Acts ch. 634 and 671.

¹⁵ House Bill 2723, 2025 Regular Session of the General Assembly. (Del. Charniele L. Herring). <https://lis.virginia.gov/bill-details/20251/HB2723>. Senate Bill 1466, 2025 Regular Session of the General Assembly. (Sen. Scott A. Surovell). <https://lis.virginia.gov/bill-details/20251/SB1466>.

¹⁶ 2025 Va. Acts ch. 725. House Bill 1600. Final Budget. <https://budget.lis.virginia.gov/bill/2025/1/HB1600/Chapter/>.

¹⁷ House Bill 1600. Budget Amendments Conference Report. Item 65 #1c. <https://budget.lis.virginia.gov/amendment/2025/1/HB1600/Introduced/CR/65/1c/>.

¹⁸ House Bill 1600. Budget Amendments Conference Report. Item 64 #1c. <https://budget.lis.virginia.gov/amendment/2025/1/HB1600/Introduced/CR/64/1c/>.

- Office of the Executive Secretary (\$573,000 for system upgrades related to sealing,¹⁹ along with approximately \$3 million for IT contract resources and 3 additional staff positions);²⁰
- Virginia Indigent Defense Commission (\$138,000 for a Sealing and Expungement Resource Counsel position);²¹ and,
- Virginia State Police (\$886,000 in the first year and \$688,000 in the second year for system changes).²²

FREQUENTLY ASKED QUESTIONS ABOUT CRIMINAL RECORD SEALING

The following questions and answers are divided into three sections. The first section provides an overview of sealing regardless of the type of process. The second section focuses on the automatic sealing processes, while the third section addresses the petition sealing processes.

The answers to the following questions are provided for informational purposes only and should not be considered or interpreted as legal advice for any individual case. Each case is unique; therefore, individuals with specific questions should consult an attorney for legal advice.

The answers to the following questions are based on the sealing statutes set to take effect on July 1, 2026. If these statutes are amended in future legislative sessions, these answers may no longer be accurate.

OVERVIEW OF SEALING

WHAT IS SEALING?

Sealing means that a criminal record will generally no longer be publicly accessible.²³ A sealed criminal record held by the CCRE,²⁴ any Virginia court, any Virginia law enforcement agency, or the

¹⁹ House Bill 1600. Budget Amendments Conference Report. Item 31 #3c.

<https://budget.lis.virginia.gov/amendment/2025/1/HB1600/Introduced/CR/31/3c/>.

²⁰ House Bill 1600. Governor's Proposed Budget. Item 31.

<https://budget.lis.virginia.gov/item/2025/1/HB1600/Introduced/1/31/>. See also Padden, A.W. Office of the Executive Secretary. (2024). *Sealing of criminal court records, 2024 update*, slide 6,

<https://vsc.virginia.gov/2024/Nov14mtg/Presentation%20-%20OES%20Sealing%20of%20Criminal%20Records%202024%20Update.pdf>.

²¹ House Bill 1600. Budget Amendments Conference Report. Item 40 #1c.

<https://budget.lis.virginia.gov/amendment/2025/1/HB1600/Introduced/CR/40/1c/>.

²² House Bill 1600. Budget Amendments Conference Report. Item 415 #4c.

<https://budget.lis.virginia.gov/amendment/2025/1/HB1600/Introduced/CR/415/4c/>.

²³ VA. CODE ANN. § 19.2-392.5(A) and 19.2-392.13 (2025).

²⁴ The CCRE is a separate division with Virginia State Police and is the main Virginia criminal record keeping agency. See VA. CODE ANN. § 19.2-387 (2025). However, not all criminal offenses are reported to the CCRE; for example, misdemeanor offenses which are not punishable with jail time (Class 3 and 4 misdemeanors) are not required to be reported to the CCRE. See VA. CODE ANN. § 19.2-390 (2025).

DMV can only be shared publicly for certain purposes.²⁵ In addition, background check companies that collect criminal records are prohibited from sharing information related to a sealed offense.²⁶

Sealing a criminal record does not eliminate the record. Government agencies may retain the record and share it with other government agencies as needed to perform required duties or functions.²⁷ In addition, the Virginia sealing processes do not apply to records housed by the federal government, so the federal government may still access the record through the FBI Criminal Justice Information Services division and share that record without prohibition.²⁸

Even after a criminal record is sealed, various court records may still remain publicly available. For example, if a sealed record is included amongst other court records that have not been sealed, then that court record does not need to be sealed.²⁹ Similarly, certain appellate court records,³⁰ as well as paper records for possession of marijuana offenses and traffic infractions in circuit courts,³¹ will remain publicly available. However, even if a sealed record remains publicly available, the limitations on use still apply.³²

IS SEALING THE SAME AS EXPUNGEMENT?

No. Expungement only applies to a charge that did not result in a conviction.³³ Moreover, expunged records are only accessible for a few specific purposes,³⁴ whereas sealed records can be accessed for a broader range of purposes.³⁵

IS SEALING THE SAME AS A PARDON?

No. A pardon is issued by the Governor and is a separate process from sealing.³⁶

WHAT IS A CRIMINAL RECORD?

A criminal record includes arrests, charges, convictions, and related ancillary matters.³⁷ In addition, as previously noted, a criminal record for purposes of the sealing statutes may also include certain

²⁵ VA. CODE ANN. § 19.2-392.5(A) (2025).

²⁶ VA. CODE ANN. § 19.2-392.16 (2025).

²⁷ VA. CODE ANN. § 19.2-392.5(A) (2025).

²⁸ See FBI. (2025, March 17). *Criminal justice information services (CJIS)*, <https://www.fbi.gov/services/cjis>.

²⁹ VA. CODE ANN. § 19.2-392.13(F) (2025).

³⁰ *Id.*

³¹ VA. CODE ANN. § 19.2-392.13(G) (2025).

³² See VA. CODE ANN. § 19.2-392.15 (2025).

³³ VA. CODE ANN. § 19.2-392.2 (2025). See also VA. CODE ANN. § 19.2-298.02 (2025).

³⁴ VA. CODE ANN. §§ 19.2-392.3 and 19.2-392.3:1 (2025).

³⁵ VA. CODE ANN. § 19.2-392.13(C) (2025).

³⁶ See Secretary of the Commonwealth. (2025, May 20). *Frequently asked questions about pardons*, <https://www.commonwealth.virginia.gov/judicial-system/pardons/>.

³⁷ VA. CODE ANN. § 19.2-392.5(A) (2025).

records that are not criminal in nature, such as civil offenses for possession of marijuana and traffic infractions.³⁸

WHAT IS AN ANCILLARY MATTER?

An ancillary matter includes any of the following that relate to an arrest, charge, or conviction that was sealed or that a person is requesting to seal:

- Violation or alleged violation of a suspended sentence, probation, or parole;
- Violation or alleged violation of contempt of court;
- Charge or conviction for failure to appear; or,
- Appeal from a bail, bond, or recognizance order.³⁹

WHAT TYPES OF OFFENSES CAN BE SEALED?

The types of offenses that can be sealed vary based upon the sealing process. There are two types of sealing processes: automatic and petition. Both processes allow for the sealing of criminal records based on a specific offense, a class of offenses, or the final case disposition.

Processes will be in place to automatically seal the following types of offenses:

- Misdemeanor convictions (petit larceny, shoplifting, trespassing, instigating trespass, trespass on posted property, distribution of marijuana, and disorderly conduct);⁴⁰
- Possession of marijuana offenses (criminal and civil);⁴¹
- Misdemeanor non-convictions at case conclusion (acquittal and dismissal with prejudice);⁴²
- Felony non-convictions at case conclusion (upon verbal request by the defendant and concurrence of the Commonwealth's Attorney) (acquittal and dismissal with prejudice);⁴³
- Previously concluded misdemeanor non-convictions (acquittal, nolle prosequi, and dismissal, excluding deferred dismissal);⁴⁴ and,
- Traffic infractions.⁴⁵

³⁸ VA. CODE ANN. § 19.2-392.6:1(A) and § 19.2-392.17(A) (2025).

³⁹ VA. CODE ANN. § 19.2-392.5(A) (2025).

⁴⁰ VA. CODE ANN. § 19.2-392.6 (2025).

⁴¹ VA. CODE ANN. § 19.2-392.6:1 (2025).

⁴² VA. CODE ANN. § 19.2-392.8(A) (2025).

⁴³ VA. CODE ANN. § 19.2-392.8(B) (2025).

⁴⁴ VA. CODE ANN. § 19.2-392.11 (2025).

⁴⁵ VA. CODE ANN. § 19.2-392.17 (2025).

The following two petition processes will be available to seal certain offenses:

- Petition sealing of misdemeanor and felony convictions, deferred dismissals,⁴⁶ and related ancillary matters, with the exception of numerous types of offenses, such as Class 1, 2, 3, and 4 felonies, sex crimes, violent felonies, sex trafficking, felonies involving the use of a firearm, protective order violations, hate crimes, animal cruelty, election laws, date rape drug offenses, not guilty by reason of insanity dispositions, dangerous or vicious dogs offenses, and crimes against family or household members;⁴⁷ and,
- Automatic petition sealing of misdemeanor convictions and deferred dismissals eligible for automatic sealing that were unable to be sealed through the automatic process, certain other misdemeanor convictions and deferred dismissals not eligible for automatic sealing, and related ancillary matters.⁴⁸

WHAT ARE THE SEALING PROCESSES?

While the sealing statutes create two processes, automatic and petition sealing, there are different types of automatic and petition sealing with each of these processes, including:⁴⁹

- Automatic sealing of misdemeanor convictions (petit larceny, shoplifting, trespassing, instigating trespass, trespass on posted property, distribution of marijuana, and disorderly conduct);⁵⁰
- Automatic sealing of possession of marijuana offenses (criminal and civil);⁵¹
- Automatic sealing of misdemeanor non-convictions at case conclusion (acquittal and dismissal with prejudice);⁵²
- Automatic sealing of felony non-convictions at case conclusion (upon verbal request by the defendant and concurrence of the Commonwealth's Attorney) (acquittal and dismissal with prejudice);⁵³
- Automatic sealing of previously concluded misdemeanor non-convictions (acquittal, nolle prosequi, and dismissal, excluding deferred dismissal);⁵⁴
- Automatic sealing of traffic infractions;⁵⁵

⁴⁶ A deferred dismissal refers to a circumstance where a charge is dismissed after the defendant completes certain terms or conditions ordered by the court. See Virginia State Crime Commission. (2008). *Deferred disposition*, <https://vscc.virginia.gov/documents/deferred%20dispositon.pdf>.

⁴⁷ VA. CODE ANN. § 19.2-392.12 (2025). See also Appendix B.

⁴⁸ VA. CODE ANN. § 19.2-392.12:1 (2025).

⁴⁹ See Appendix A.

⁵⁰ VA. CODE ANN. § 19.2-392.6 (2025).

⁵¹ VA. CODE ANN. § 19.2-392.6:1 (2025).

⁵² VA. CODE ANN. § 19.2-392.8(A) (2025).

⁵³ VA. CODE ANN. § 19.2-392.8(B) (2025).

⁵⁴ VA. CODE ANN. § 19.2-392.11 (2025).

⁵⁵ VA. CODE ANN. § 19.2-392.17 (2025).

- Petition sealing of misdemeanor and felony convictions, deferred dismissals, and related ancillary matters (numerous ineligible and excluded offenses);⁵⁶ and,
- Automatic petition sealing of misdemeanor convictions and deferred dismissals eligible for automatic sealing that were unable to be sealed through the automatic process, certain other misdemeanor convictions and deferred dismissals not eligible for automatic sealing, and related ancillary matters.⁵⁷

WHAT IS THE DIFFERENCE BETWEEN AUTOMATIC SEALING AND PETITION SEALING?

Automatic sealing is initiated by the government and does not require a person to file a petition for a charge or conviction to be sealed.⁵⁸

Petition sealing requires a person to submit a request to the court for a charge, conviction, or specifically identified ancillary matter to be sealed.⁵⁹

DOES SEALING APPLY TO BOTH ADULT AND JUVENILE OFFENSES?

No.⁶⁰ Sealing only applies to adult offenses and offenses where a juvenile was tried as an adult. Sealing does not apply to offenses where a juvenile was tried or adjudicated delinquent.⁶¹

DOES A PERSON WHOSE RECORD WAS SEALED NEED TO DISCLOSE THE SEALED OFFENSE?

In general, a person is not required to disclose a sealed offense to a state or local government entity or a private employer in Virginia.⁶² However, a sealed offense must be disclosed for certain types of employment,⁶³ proceedings involving the care or custody of a child,⁶⁴ and when being considered for jury service.⁶⁵

These disclosure provisions apply only to government and private entities in Virginia. Therefore, a person may be required to disclose a sealed offense in response to another state or federal government entity or to a private employer outside of Virginia.

⁵⁶ VA. CODE ANN. § 19.2-392.12 (2025). See also Appendix B.

⁵⁷ VA. CODE ANN. § 19.2-392.12:1 (2025).

⁵⁸ VA. CODE ANN. §§ 19.2-392.6:1, 19.2-392.7, 19.2-392.8(A), 19.2-392.10, 19.2-392.11, and 19.2-392.17 (2025). There is one exception to government initiated automatic sealing, which is for certain felony non-convictions (acquittals and dismissals with prejudice), where a verbal request from the accused is required to seal an eligible non-conviction. VA. CODE ANN. § 19.2-392.8(B) (2025).

⁵⁹ VA. CODE ANN. §§ 19.2-392.12 and 19.2-392.12:1 (2025).

⁶⁰ VA. CODE ANN. § 19.2-392.5(B) (2025).

⁶¹ See VA. CODE ANN. § 16.1-306 (2025). Juvenile criminal records may eligible for expungement as set forth in this section.

⁶² VA. CODE ANN. § 19.2-392.5(D) (2025).

⁶³ VA. CODE ANN. § 19.2-392.5(E) (2025).

⁶⁴ VA. CODE ANN. § 19.2-392.5(G) (2025).

⁶⁵ VA. CODE ANN. § 19.2-392.5(J) (2025).

CAN A PERSON BE ASKED TO DISCLOSE A SEALED OFFENSE?

Various entities in Virginia are prohibited from asking about sealed offenses, including state and local government entities,⁶⁶ private employers,⁶⁷ educational institutions,⁶⁸ persons leasing or selling apartments or homes,⁶⁹ and insurance companies.⁷⁰ In addition, these entities must include a notice on any application that the applicant does not need to provide any information about a sealed offense.⁷¹ A willful violation of this prohibition is punishable as a Class 1 misdemeanor.⁷²

However, a person can be asked to disclose a sealed offense for certain types of employment with a state or local government entity in Virginia, the federal government, or private companies that are subject to certain federal laws or regulations as part of the hiring process.⁷³

These prohibitions on asking about a sealed offense apply only to government and private entities in Virginia. Therefore, a person may be asked to disclose a sealed offense when applying for employment, licensing, or services with the government of another state, the federal government, or a private entity outside of Virginia.

CAN A CRIMINAL RECORD BE USED OR SHARED AFTER IT HAS BEEN SEALED?

Yes. After a criminal record is sealed, it can still be accessed or shared for various purposes. Virginia law sets forth 28 specific reasons for which sealed records can be accessed, used, or shared.⁷⁴ Many of these reasons involve employment, criminal justice and other government functions, and certain court proceedings. In addition, a person whose record has been sealed can obtain a copy of the sealed record. Furthermore, sealed records can be shared between government entities to carry out duties or functions required by state or federal law.⁷⁵

IS THERE A PENALTY FOR DISCLOSING A SEALED OFFENSE?

Any Virginia state or local government employee can be charged with a Class 1 misdemeanor if they knowingly and intentionally disclose a sealed offense.⁷⁶ However, this criminal penalty does not apply to private citizens, such as crime victims or members of the news media.

⁶⁶ VA. CODE ANN. §§ 19.2-392.15(A) (employment purposes) and 19.2-392.15(C) (licensing, permitting, registration, or government service purposes) (2025).

⁶⁷ VA. CODE ANN. § 19.2-392.15(A) (2025).

⁶⁸ VA. CODE ANN. § 19.2-392.15(A) (2025).

⁶⁹ VA. CODE ANN. § 19.2-392.15(D) (2025).

⁷⁰ VA. CODE ANN. § 19.2-392.15(E) (2025).

⁷¹ VA. CODE ANN. § 19.2-392.15(F) (2025).

⁷² VA. CODE ANN. § 19.2-392.15(G) (2025).

⁷³ VA. CODE ANN. § 19.2-392.15(B) (2025).

⁷⁴ VA. CODE ANN. § 19.2-392.13(C) (2025).

⁷⁵ VA. CODE ANN. § 19.2-392.13(C1) (2025).

⁷⁶ VA. CODE ANN. § 19.2-392.14 (2025).

CAN SEALED OFFENSES BE USED IN A SUBSEQUENT CRIMINAL CASE?

Yes. Even if an offense was sealed, that offense must still be:

- Disclosed in any pretrial or sentencing report, including sentencing guidelines worksheets; and,
- Considered when deciding punishment or determining bail.⁷⁷

A sealed offense may also be used for impeachment purposes if its probative value outweighs its prejudicial effect.⁷⁸ Furthermore, the Commonwealth has a constitutional duty to disclose a sealed offense if it could be used as exculpatory, mitigating, or impeachment evidence.⁷⁹

WILL A SEALED OFFENSE STILL BE CONSIDERED A BARRIER CRIME?

It depends on the circumstance. A sealed offense will not be considered a barrier crime under Virginia law; however, it may still be a barrier crime under federal law.⁸⁰

DOES SEALING RESTORE A PERSON'S CIVIL RIGHTS OR RIGHT TO POSSESS A FIREARM?

No.⁸¹ Sealing does not restore a person's civil rights or right to possess a firearm for that offense. Even if an offense is sealed, a person will need to apply to the Governor for restoration of their civil rights.⁸² If a person has their civil rights restored, they will then need to go through an additional process to have their firearm rights restored.⁸³

DOES A PERSON STILL HAVE TO PAY RESTITUTION, FINES, AND COURT COSTS IF AN OFFENSE IS SEALED?

Yes. Even if an offense is sealed, a person still has an obligation to pay all fines, costs, forfeitures, penalties, and restitution related to the offense.⁸⁴

A petition under the general sealing process cannot be granted unless the petitioner has paid all restitution related to the offense.⁸⁵

⁷⁷ VA. CODE ANN. § 19.2-392.5(H) (2025).

⁷⁸ VA. CODE ANN. § 19.2-392.13(J) (2025).

⁷⁹ *Brady v. Maryland*, 373 U.S. 83 (1963). *Giglio v. United States*, 405 U.S. 150 (1972). See also VA. CODE ANN. § 19.2-392.13(C)(xviii) and 19.2-392.13(K) (2025).

⁸⁰ VA. CODE ANN. § 19.2-392.5(I) (2025). See Virginia Joint Subcommittee to Study Barrier Crimes and Criminal History Record Checks. (2021, June 14). *List of VA barrier crimes not included in federal barrier crimes*, https://dls.virginia.gov/groups/barriercrimes/list_of_va_barrier_crimes_not_included_in_federal_barrier_crimes.pdf.

⁸¹ VA. CODE ANN. § 19.2-392.5(K) (2025).

⁸² See Virginia Secretary of the Commonwealth. (2025, March 17). *Restoration of rights*, <https://www.restore.virginia.gov/>.

⁸³ See Virginia State Police. (2025, March 17). *Restoration of firearm rights*, <https://vsp.virginia.gov/services/firearms/restoration-of-firearm-rights/>.

⁸⁴ VA. CODE ANN. § 19.2-392.5(F) (2025).

⁸⁵ VA. CODE ANN. § 19.2-392.5(F) and 19.2-392.12(F)(4) (2025)

CAN SEALED CRIMINAL RECORDS BE OBTAINED VIA A FREEDOM OF INFORMATION ACT (FOIA) REQUEST TO LAW ENFORCEMENT?

No. Law enforcement cannot provide sealed criminal records in response to a FOIA request,⁸⁶ unless the disclosure of such records is otherwise permitted by law.⁸⁷

ARE SEALED CRIMINAL RECORDS PUBLICLY AVAILABLE IN A COURT’S ONLINE CASE INFORMATION SYSTEM?

No. Sealed criminal records are not publicly available in an online case information system.⁸⁸ However, various records will remain publicly available even after being sealed, such as:

- Published or unpublished opinions, orders, and case summaries;
- Cases that originated in the Supreme Court of Virginia or the Court of Appeals of Virginia; and,
- Appellate court records of traffic infractions.⁸⁹

ARE PRIVATE COMPANIES NOTIFIED WHEN AN OFFENSE IS SEALED?

Background check companies that collect or share criminal records in Virginia must register with Virginia State Police (VSP) to receive notice when an offense is sealed.⁹⁰ In addition, notice that possession of marijuana offenses and traffic infractions have been sealed is provided by statute.⁹¹ Background check companies cannot share sealed offenses and must delete the records, unless retention is authorized by federal law.⁹² No other private companies will be notified when an offense is sealed.

ARE ANY REMEDIES AVAILABLE IF A BACKGROUND CHECK COMPANY SHARES A SEALED RECORD?

Various options exist for instances when a background check company shares a sealed record. First, a person can dispute the accuracy of the record and request that the disputed record be corrected.⁹³ Second, the person can pursue a claim for damages against the background check company.⁹⁴ Third, the Virginia Attorney General may file a civil action to enforce the Code section and sanction the background check company for a violation of the law.⁹⁵

⁸⁶ VA. CODE ANN. §§ 2.2-3706(C)(3) and 2.2-3706.1(J)(2) (2025).

⁸⁷ VA. CODE ANN. § 19.2-392.13(C) and (C1) (2025).

⁸⁸ VA. CODE ANN. § 17.1-293.1(B) and (C) (2025).

⁸⁹ VA. CODE ANN. § 19.2-392.13(F) (2025).

⁹⁰ VA. CODE ANN. § 19.2-392.16(C) (2025).

⁹¹ See VA. CODE ANN. §§ 19.2-392.6:1 and 19.2-392.17 (2025).

⁹² VA. CODE ANN. § 19.2-392.16(B) (2025).

⁹³ VA. CODE ANN. § 19.2-392.16(E) (2025).

⁹⁴ VA. CODE ANN. § 19.2-392.16(G) (2025).

⁹⁵ VA. CODE ANN. § 19.2-392.16(H) (2025).

CAN A PERSON OBTAIN A COPY OF THEIR OWN CHARGE, CONVICTION, OR ANCILLARY MATTER AFTER IT HAS BEEN SEALED?

Yes. A sealed record can be shared with the person who was arrested, charged, or convicted of the offense that was sealed,⁹⁶ but only after the person has obtained a court order to access the sealed record.⁹⁷ To obtain that court order, the person will need to request either (i) the court that entered the order to seal the record or (ii) the court where the final disposition for the offense was entered if the case was sealed without a court order.⁹⁸ The Office of the Executive Secretary of the Supreme Court of Virginia (OES) will create a form for requesting the court for such access, and that form is expected to be available on the Virginia Judicial System website by July 1, 2026.⁹⁹

AUTOMATIC SEALING

WHAT ARE THE TYPES OF AUTOMATIC SEALING?

The types of automatic sealing are:

- Misdemeanor convictions (petit larceny, shoplifting, trespassing, instigating trespass, trespass on posted property, distribution of marijuana, and disorderly conduct);¹⁰⁰
- Possession of marijuana offenses (criminal and civil);¹⁰¹
- Misdemeanor non-convictions at case conclusion (acquittal and dismissal with prejudice);¹⁰²
- Felony non-convictions at case conclusion (upon verbal request by the defendant and concurrence of the Commonwealth's Attorney) (acquittal and dismissal with prejudice);¹⁰³
- Previously concluded misdemeanor non-convictions (acquittal, nolle prosequi, and dismissal, excluding deferred dismissal);¹⁰⁴ and,
- Traffic infractions.¹⁰⁵

WHAT MISDEMEANOR CONVICTIONS ARE ELIGIBLE FOR AUTOMATIC SEALING?

There are seven misdemeanor convictions that are eligible for automatic sealing:

- Petit larceny (§ 18.2-96);

⁹⁶ VA. CODE ANN. § 19.2-392.13(C)(xxviii) (2025).

⁹⁷ VA. CODE ANN. § 19.2-392.13(D) (2025).

⁹⁸ VA. CODE ANN. § 19.2-392.13(D) (2025).

⁹⁹ Virginia's Judicial System. (2025, March 19). *Forms*, <https://www.vacourts.gov/forms/home>.

¹⁰⁰ VA. CODE ANN. § 19.2-392.6 (2025).

¹⁰¹ VA. CODE ANN. § 19.2-392.6:1 (2025).

¹⁰² VA. CODE ANN. § 19.2-392.8(A) (2025).

¹⁰³ VA. CODE ANN. § 19.2-392.8(B) (2025).

¹⁰⁴ VA. CODE ANN. § 19.2-392.11 (2025).

¹⁰⁵ VA. CODE ANN. § 19.2-392.17 (2025).

- Shoplifting (§ 18.2-103);
- Trespassing (§ 18.2-119);
- Instigating trespass (§ 18.2-120);
- Trespass on posted property (§ 18.2-134);
- Distribution of marijuana (§ 18.2-248.1(a)(1)); and,
- Disorderly conduct (§ 18.2-415).¹⁰⁶

A single conviction, or multiple convictions, for these misdemeanors will be automatically sealed after seven years from the date of conviction if the person:

- Committed the offense on or after January 1, 1986;¹⁰⁷
- Was not convicted of a separate crime on the same date that is not eligible for automatic sealing;¹⁰⁸
- Has not been convicted of any other crime in Virginia during the 7-year waiting period that requires a report to the CCRE;¹⁰⁹ and,
- Has not been convicted of a crime in any other state, the District of Columbia, or a United States territory, excluding traffic infractions, during the 7-year waiting period.¹¹⁰

WHAT POSSESSION OF MARIJUANA OFFENSES ARE ELIGIBLE FOR AUTOMATIC SEALING?

Any criminal or civil offense that concluded with any final disposition as a charge or conviction for possession of marijuana be sealed without the entry of a court order.¹¹¹ The CCRE, courts, law enforcement agencies, and the DMV will identify and seal any such records in their possession.¹¹² However, the DMV will not automatically seal any records for possession of marijuana offenses if doing so would violate any federal regulation or program.¹¹³ In addition, circuit court clerks are not required to redact or seal paper records of possession of marijuana offenses.¹¹⁴

WILL OFFENSES THAT CONCLUDE AS A NON-CONVICTION BE AUTOMATICALLY SEALED?

Yes. The sealing statutes create processes to automatically seal certain misdemeanor and felony non-convictions at case conclusion,¹¹⁵ as well as certain previously concluded misdemeanor non-convictions.¹¹⁶

¹⁰⁶ VA. CODE ANN. § 19.2-392.6(A) (2025).

¹⁰⁷ VA. CODE ANN. § 19.2-392.6(A) (2025).

¹⁰⁸ VA. CODE ANN. § 19.2-392.6(C) (2025).

¹⁰⁹ VA. CODE ANN. § 19.2-392.6(B) (2025). *See also* VA. CODE ANN. § 19.2-390(A) (2025).

¹¹⁰ VA. CODE ANN. § 19.2-392.6(B) (2025).

¹¹¹ VA. CODE ANN. § 19.2-392.6:1(A) (2025).

¹¹² VA. CODE ANN. § 19.2-392.6:1(A) (2025).

¹¹³ VA. CODE ANN. § 19.2-392.6:1(B) (2025).

¹¹⁴ VA. CODE ANN. § 19.2-392.13(G) (2025).

¹¹⁵ VA. CODE ANN. § 19.2-392.8 (2025).

¹¹⁶ VA. CODE ANN. § 19.2-392.11 (2025).

WHAT MISDEMEANOR AND FELONY NON-CONVICTIONS AT CASE CONCLUSION ARE ELIGIBLE FOR AUTOMATIC SEALING?

Misdemeanor offenses that conclude with an acquittal or dismissal with prejudice on or after July 1, 2026, will be automatically sealed at the time the case concludes, unless the defendant objects.¹¹⁷ Similarly, felony offenses that conclude with an acquittal or dismissal with prejudice on or after July 1, 2026, will be automatically sealed at the time the case concludes if the defendant verbally requests the sealing of such records and the Commonwealth's Attorney agrees.¹¹⁸ Misdemeanor and felony offenses that conclude with some other non-conviction disposition, such as a *nolle prosequi* or a dismissal without prejudice, are not eligible for automatic sealing at case conclusion. A person may still petition to expunge non-convictions, regardless of whether or not a sealing order was entered.¹¹⁹

WHAT PREVIOUSLY CONCLUDED MISDEMEANOR NON-CONVICTIONS ARE ELIGIBLE FOR AUTOMATIC SEALING?

Misdemeanor offenses that previously concluded as an acquittal, *nolle prosequi*, or dismissal, excluding deferred dismissal, will be automatically sealed if:

- The offense date of the non-conviction was on or after January 1, 1986;
- The person's criminal record contains no convictions for a crime that requires a report to the CCRE; and,
- The person has not been arrested or charged with a crime that requires a report to the CCRE in the past 3 years.¹²⁰

WILL A SEALED CONVICTION PREVENT AN ELIGIBLE NON-CONVICTION FROM BEING SEALED?

No. An offense that has been sealed will not be counted as a charge or conviction on a person's record when determining eligibility for sealing previously concluded misdemeanor non-convictions.¹²¹ For example, a person who has a petit larceny conviction from 8 years ago and an assault and battery charge that was *nolle prosequi* 10 years ago may have the petit larceny conviction automatically sealed through the conviction process,¹²² and then the assault and battery can be sealed through the non-conviction process.¹²³

¹¹⁷ VA. CODE ANN. § 19.2-392.8(A) (2025).

¹¹⁸ VA. CODE ANN. § 19.2-392.8(B) (2025).

¹¹⁹ VA. CODE ANN. § 19.2-392.8(D) (2025). See also VA. CODE ANN. § 19.2-392.2(A) (2025).

¹²⁰ VA. CODE ANN. § 19.2-392.11(A) (2025).

¹²¹ VA. CODE ANN. § 19.2-392.11(A) (2025).

¹²² VA. CODE ANN. § 19.2-392.7 (2025).

¹²³ VA. CODE ANN. § 19.2-392.11 (2025).

WHAT TRAFFIC INFRACTIONS ARE AVAILABLE FOR AUTOMATIC SEALING?

All traffic infractions that occurred on or after January 1, 1986, excluding offenses punishable as a criminal offense, will be sealed 11 years after the date of final disposition, unless sealing the record would be:

- Prohibited under federal or state law; or,
- In violation of a federal regulation or program requirement.¹²⁴

However, appellate court records of traffic infractions are not required to be sealed,¹²⁵ and circuit court clerks are not required to redact or seal paper records of traffic infractions.¹²⁶

HOW WILL MISDEMEANOR CONVICTIONS AND PREVIOUSLY CONCLUDED MISDEMEANOR NON-CONVICTIONS BE IDENTIFIED AND AUTOMATICALLY SEALED?

Every month, VSP will review the CCRE and compile a list of misdemeanor convictions eligible for automatic sealing.¹²⁷ VSP will electronically send this list to OES,¹²⁸ which will forward it to the clerk of each circuit court in the jurisdiction where the case was finalized.¹²⁹ The chief or presiding judge of the circuit court will order that the offenses on the list be sealed, and the circuit court clerk will electronically notify VSP that the order has been entered.¹³⁰

In addition, VSP will review the CCRE annually and make a list of all previously concluded misdemeanor non-convictions which are eligible for automatic sealing.¹³¹ Similar to misdemeanor convictions, VSP will send this list to OES, which will forward it to the circuit court in the jurisdiction where the case was finalized to enter a sealing order, and the circuit court will then electronically notify VSP of the sealing order.¹³²

¹²⁴ VA. CODE ANN. § 19.2-392.17 (2025).

¹²⁵ VA. CODE ANN. § 19.2-392.13(F) (2025).

¹²⁶ VA. CODE ANN. § 19.2-392.13(G) (2025).

¹²⁷ VA. CODE ANN. § 19.2-392.7(A) (2025).

¹²⁸ VA. CODE ANN. § 19.2-392.7(B) (2025). Virginia State Police will also send the list directly to any circuit court clerk which maintains a case management system not administered by OES (currently only Fairfax County Circuit Court maintains its own case management system).

¹²⁹ VA. CODE ANN. § 19.2-392.7(C) (2025).

¹³⁰ VA. CODE ANN. § 19.2-392.7(D) and (E) (2025).

¹³¹ VA. CODE ANN. § 19.2-392.11(A) (2025).

¹³² VA. CODE ANN. § 19.2-392.11 (2025).

ARE THERE ANY REASONS WHY A MISDEMEANOR CONVICTION OR A PREVIOUSLY CONCLUDED MISDEMEANOR NON-CONVICTION THAT IS ELIGIBLE FOR AUTOMATIC SEALING MIGHT NOT BE AUTOMATICALLY SEALED?

Yes. For an eligible misdemeanor conviction or a previously concluded misdemeanor non-conviction to be automatically sealed, it must have been reported to the CCRE.¹³³ If the person was not fingerprinted, or if there was a clerical or transmission error, the offense may not appear on the person's criminal history record and, as a result, will not be automatically sealed.

However, while a misdemeanor conviction may not have been automatically sealed, a person can request to seal this conviction under the automatic petition sealing statute.¹³⁴ In addition, a person can petition for expungement of a misdemeanor non-conviction regardless of whether or not it has been automatically sealed.¹³⁵

WILL A PERSON BE NOTIFIED IF AN OFFENSE IS AUTOMATICALLY SEALED?

No. A person will not generally be notified that an offense has been automatically sealed, except for instances where a person is present when an order to automatically seal certain misdemeanor and felony non-convictions at case conclusion is entered.¹³⁶

HOW CAN A PERSON FIND OUT IF AN OFFENSE WAS AUTOMATICALLY SEALED?

There are various ways to determine whether an offense has been automatically sealed. First, a person can verify whether the offense still appears on the Virginia Judiciary Online Case Information System.¹³⁷ If the offense is no longer visible, it may have been automatically sealed. However, certain records may be destroyed by the courts after a specified retention period as provided in the Code. Thus, it may not always be clear whether a case is no longer viewable because it was sealed or because it was destroyed at the end of the retention period.¹³⁸ Unlike sealed records, the records destroyed by the court at the conclusion of the retention period will still appear in a background check.

¹³³ VA. CODE ANN. §§ 19.2-392.7 and 19.2-392.11 (2025). See also VA. CODE ANN. § 19.2-390(A) (2025).

¹³⁴ See VA. CODE ANN. § 19.2-392.12:1 (2025).

¹³⁵ VA. CODE ANN. § 19.2-392.11(G) (2025).

¹³⁶ VA. CODE ANN. § 19.2-392.8(C) (2025).

¹³⁷ VA. CODE ANN. § 17.1-293.1 (2025). *Virginia judiciary online case information system 2.0*, <https://eapps.courts.state.va.us/ocis/landing>.

¹³⁸ VA. CODE ANN. §§ 16.1-69.55(A) and 17.1-213 (2025).

Second, a person can request a copy of their criminal history record from VSP.¹³⁹ VSP will include an indicator on the record to identify any offenses that have been sealed. VSP is currently working to streamline the process for an individual to obtain an electronic copy of their criminal history record.

Third, a person can ask the clerk in the court which disposed of the case to determine whether the case has been sealed.¹⁴⁰ The clerk will be able to advise the person whether the case has been sealed.¹⁴¹

PETITION SEALING

WHAT ARE THE TYPES OF PETITION SEALING?

The types of petition sealing are:

- Petition sealing of misdemeanor and felony convictions, deferred dismissals, and related ancillary matters (numerous ineligible and excluded offenses);¹⁴² and,
- Automatic petition sealing of misdemeanor convictions and deferred dismissals eligible for automatic sealing that were unable to be sealed through the automatic process, certain other misdemeanor convictions and deferred dismissals not eligible for automatic sealing, and related ancillary matters.¹⁴³

WHAT IS THE MAIN DIFFERENCE BETWEEN PETITION SEALING AND AUTOMATIC PETITION SEALING?

Petition sealing is designed to cover a broader class of offenses and includes additional criteria that must be met for an offense to be sealed.¹⁴⁴ Automatic petition sealing is intended for offenses that were meant to be automatically sealed but were not, either because the offense was not in the CCRE or there was a clerical or transmission error.¹⁴⁵ Automatic petition sealing also addresses offenses that cannot be electronically identified within the CCRE for sealing, including underage possession of alcohol, possession of marijuana-related drug paraphernalia, deferred and dismissed offenses, and ancillary matters.¹⁴⁶

¹³⁹ VA. CODE ANN. § 19.2-389(A)(11) (2025). See also Virginia State Police. (2025, March 17). *Virginia criminal history record check*, <https://vsp.virginia.gov/services/criminal-background/>.

¹⁴⁰ See VA. CODE ANN. § 19.2-392.5(C) (2025). See also VA. CODE ANN. § 19.2-392.13(C)(xxviii) and (D) (2025).

¹⁴¹ *Id.*

¹⁴² VA. CODE ANN. § 19.2-392.12 (2025). See also Appendix B.

¹⁴³ VA. CODE ANN. § 19.2-392.12:1 (2025).

¹⁴⁴ VA. CODE ANN. § 19.2-392.12(A) and (F) (2025).

¹⁴⁵ VA. CODE ANN. § 19.2-392.12:1(A) (2025).

¹⁴⁶ VA. CODE ANN. § 19.2-392.12:1(A) and (B) (2025).

WHAT OFFENSES ARE ELIGIBLE FOR PETITION SEALING?

A wide variety of convictions and deferred dismissals for the following types of offenses are eligible for petition sealing:

- Misdemeanors;
- Class 5 and 6 felonies; and,
- Grand larceny, along with other felony offenses punishable as larceny.¹⁴⁷

In addition, ancillary matters that are specifically identified in the petition may also be sealed.¹⁴⁸

Some of common offenses that are eligible for petition sealing include assault and battery,¹⁴⁹ larceny 3rd or subsequent,¹⁵⁰ drug possession,¹⁵¹ distribution of marijuana,¹⁵² destruction of property,¹⁵³ possession or distribution of drug paraphernalia,¹⁵⁴ and reckless driving.¹⁵⁵

ARE ANY OFFENSES INELIGIBLE FOR PETITION SEALING?

Yes. A number of offenses are ineligible for petition sealing. A person cannot petition to seal any Class 1, 2, 3, and 4 felonies, or a variety of unclassified felonies.¹⁵⁶ In addition, several misdemeanors and felonies are specifically excluded from eligibility.¹⁵⁷

There are 19 provisions which exclude the following types of offenses from sealing eligibility: sex crimes, violent felonies, sex trafficking, felonies involving the use of a firearm, protective order violations, hate crimes, animal cruelty, election laws, date rape drug offenses, not guilty by reason of insanity dispositions, dangerous or vicious dogs offenses, and crimes against family or household members.¹⁵⁸

In addition, any conspiracy, attempt, or solicitation to commit an ineligible offense, or anyone acting as a principal in the second degree¹⁵⁹ or an accessory before or after the fact will be barred from

¹⁴⁷ VA. CODE ANN. § 19.2-392.12(A) (2025).

¹⁴⁸ *Id.*

¹⁴⁹ VA. CODE ANN. § 18.2-57 (2025), with the exception of the hate crime provisions and felony assault and battery of certain public servants listed under subsection C.

¹⁵⁰ Former VA. CODE ANN. § 18.2-104 (2025).

¹⁵¹ VA. CODE ANN. § 18.2-250 (2025), with the exception of possession of flunitrazepam or Gamma hydroxybutyric acid.

¹⁵² VA. CODE ANN. § 18.2-248.1(a)(2) (2025), Class 5 felony distribution only.

¹⁵³ VA. CODE ANN. § 18.2-137 (2025).

¹⁵⁴ VA. CODE ANN. § 54.1-3466 (2025).

¹⁵⁵ VA. CODE ANN. § 46.2-852 (2025).

¹⁵⁶ Unclassified felonies include a wide range of crimes, such as use of a firearm in the commission of a felony (VA. CODE ANN. § 18.2-53.1); carjacking (VA. CODE ANN. § 18.2-58.1); and burglary with the intent to commit larceny, assault and battery, or a felony other than rape, robbery, or arson (VA. CODE ANN. § 18.2-91).

¹⁵⁷ VA. CODE ANN. § 19.2-392.12(L) (2025). See also Appendix B.

¹⁵⁸ VA. CODE ANN. § 19.2-392.12(L) (2025). See also Appendix B.

¹⁵⁹ A principal in the second degree is “[o]ne who helped the perpetrator at the time of the crime.” Black’s Law Dictionary (9th Ed., 2009), p. 1312.

sealing the offense.¹⁶⁰ While there are a significant number of ineligible and excluded offenses, the majority of Class 5 and 6 felonies, as well as the vast majority of misdemeanors, will remain eligible for sealing.¹⁶¹

WHAT CRITERIA MUST BE MET UNDER THE PETITION SEALING STATUTE FOR A PETITION TO BE GRANTED?

In order for a circuit court to grant a petition under the petition sealing statute, the person who is petitioning to seal an offense must prove that:¹⁶²

1. Based on the date that the sealing petition was filed, the petitioner has:
 - Never been convicted of a Class 1 or 2 felony, or any other felony offense punishable by a life sentence;
 - Not been convicted of a Class 3 or 4 felony within the past 20 years; and,
 - Not been convicted of any other felony within the past 10 years.¹⁶³
2. At least 7 years must have passed for a misdemeanor, or at least 10 years for a felony, and during that time the petitioner cannot have been convicted of an offense that requires a report to the Virginia CCRE, or of any crime in any other state, the District of Columbia, or the United States or one of its territories, excluding traffic infractions. These 7- and 10-year time periods are calculated from the date of the following events, based on whichever date occurred latest in time:
 - Dismissal of the deferred offense to be sealed;
 - Conviction for the offense to be sealed;
 - Release from incarceration on the offense to be sealed;
 - A finding that the person was in violation of a suspended sentence, probation, or parole related to the offense to be sealed; or,
 - Release from incarceration following a finding that the person was in violation of a suspended sentence, probation, or parole related to the offense to be sealed.¹⁶⁴

¹⁶⁰ VA. CODE ANN. § 19.2-392.12(L) (2025). See also Appendix B.

¹⁶¹ Crime Commission staff reviewed the FY2024 Virginia Crime Code (VCC) Book developed by the Virginia Criminal Sentencing Commission to identify active VCCs in Virginia and found that 62% of Class 5 felony offenses (102 of 165), 61% of Class 6 felony offenses (320 of 523), and 94% of misdemeanor offenses (2,068 of 2,211) will be eligible for sealing. In addition, staff identified 44 larceny offenses (classified by the Virginia Crime Code as “F9,” meaning a felony with a special penalty structure) that will be eligible for sealing. These figures are based on active VCCs as of 2024 and do not include any retired VCCs that are no longer in use. See Virginia Criminal Sentencing Commission (2024). *2024 Virginia Crime Codes*, <http://www.vcsc.virginia.gov/VCCs/2024/2024VCCCodeBook.pdf>.

¹⁶² VA. CODE ANN. § 19.2-392.12(F) (2025).

¹⁶³ VA. CODE ANN. § 19.2-392.12(F)(1) (2025).

¹⁶⁴ VA. CODE ANN. § 19.2-392.12(F)(2) (2025).

3. If the offense to be sealed involved the use of or dependence upon alcohol or some other drug, the petitioner must demonstrate their rehabilitation.¹⁶⁵
4. If the petitioner was ordered to pay restitution on the offense to be sealed, that restitution has been paid in full.¹⁶⁶
5. The petitioner has not previously had two sealing petitions granted under this section (lifetime limit of two granted petitions).¹⁶⁷
6. The continued existence and possible dissemination of the records of the offense to be sealed causes or may cause a manifest injustice to the petitioner.¹⁶⁸

WHAT OFFENSES ARE ELIGIBLE FOR AUTOMATIC PETITION SEALING?

The automatic petition sealing statute includes two categories of offenses that are eligible for sealing. First, convictions, deferred dismissals, and specifically identified ancillary matters for the following nine misdemeanors with an offense date on or after January 1, 1986, are eligible:

- Underage alcohol offenses (§ 4.1-305);
- Petit larceny (§ 18.2-96);
- Shoplifting (§ 18.2-103);
- Trespassing (§ 18.2-119);
- Instigating trespass (§ 18.2-120);
- Trespass on posted property (§ 18.2-134);
- Distribution of marijuana (§ 18.2-248.1(a)(1));
- Sale or possession of drug paraphernalia (§ 18.2-265.3(A)); and,
- Disorderly conduct (§ 18.2-415).¹⁶⁹

Second, the statute allows for the sealing of specifically identified ancillary matters related to a conviction or non-conviction that was automatically sealed, as well as specifically identified ancillary matters related to a possession of marijuana offense that was automatically sealed by statute.¹⁷⁰ For ancillary matters related to a conviction or non-conviction, the offense date for the conviction or non-conviction must have been on or after January 1, 1986.¹⁷¹ There is no offense date restriction for sealing an ancillary matter related to a possession of marijuana offense.¹⁷²

¹⁶⁵ VA. CODE ANN. § 19.2-392.12(F)(3) (2025). The statute does not provide specific guidance on how a petitioner is to demonstrate their rehabilitation; thus, this determination will need to be made on a case-by-case basis by the court.

¹⁶⁶ VA. CODE ANN. § 19.2-392.12(F)(4) (2025).

¹⁶⁷ VA. CODE ANN. § 19.2-392.12(F)(5) (2025).

¹⁶⁸ VA. CODE ANN. § 19.2-392.12(F)(6) (2025).

¹⁶⁹ VA. CODE ANN. § 19.2-392.12:1(A) (2025).

¹⁷⁰ VA. CODE ANN. § 19.2-392.12:1(B) (2025). See also VA. CODE ANN. §§ 19.2-392.6:1, 19.2-392.7, and 19.2-392.11 (2025).

¹⁷¹ VA. CODE ANN. § 19.2-392.12:1(B) (2025).

¹⁷² VA. CODE ANN. § 19.2-392.12:1(B) (2025).

WHAT CRITERIA MUST BE MET UNDER THE AUTOMATIC PETITION SEALING STATUTE FOR A PETITION TO BE GRANTED?

The criteria that must be proven by a petitioner in order for the court to grant an automatic sealing petition will differ depending on what the petition is requesting to seal.¹⁷³

To grant a petition to seal one of the nine specified misdemeanor offenses listed above (conviction or deferred dismissal, along with any related ancillary matter), the court must find that, during the 7-year period following the date of conviction or deferred dismissal, the person (i) has not been convicted of any other crime in Virginia that requires a report to the CCRE and (ii) has not been convicted of a crime in any other state, the District of Columbia, or the United States or one of its territories, excluding traffic infractions.¹⁷⁴ In addition, the person cannot have been convicted of a separate offense ineligible for petition sealing under this statute on the same date as the conviction or deferred dismissal to be sealed.¹⁷⁵

In order to grant a petition to seal an ancillary matter related to a conviction or non-conviction that has been automatically sealed or a possession of marijuana offense automatically sealed by statute, the court must find that the underlying conviction, non-conviction, or possession of marijuana offense has been sealed.¹⁷⁶ In addition, the person cannot have been convicted of a separate crime that is not eligible for petition sealing under this statute on the same date as the conviction or deferred dismissal to be sealed.¹⁷⁷

IS THERE A LIMIT ON THE NUMBER OF SEALING PETITIONS THAT A PERSON CAN FILE (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

No. There is no limit on the number of sealing petitions that can be filed under either statute.

IS THERE A LIMIT ON THE NUMBER OF SEALING PETITIONS THAT CAN BE GRANTED (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

Yes. A person can only have two petitions granted in their lifetime under the petition sealing statute.¹⁷⁸ However, there is no limit on the number of petitions that can be granted in a person's lifetime under the automatic petition sealing statute.¹⁷⁹

¹⁷³ VA. CODE ANN. § 19.2-392.12:1(I) and (J) (2025).

¹⁷⁴ VA. CODE ANN. § 19.2-392.12:1(I) (2025).

¹⁷⁵ VA. CODE ANN. § 19.2-392.12:1(D) (2025).

¹⁷⁶ VA. CODE ANN. § 19.2-392.12:1(J) (2025).

¹⁷⁷ VA. CODE ANN. § 19.2-392.12:1(D) (2025).

¹⁷⁸ VA. CODE ANN. § 19.2-392.12(C) (2025).

¹⁷⁹ VA. CODE ANN. § 19.2-392.12:1(E) (2025).

IS THERE A LIMIT ON THE NUMBER OF OFFENSES THAT CAN BE INCLUDED IN A SEALING PETITION (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

No. Petitions under both the petition sealing statute and the automatic petition sealing statute can include multiple offenses and ancillary matters.¹⁸⁰

A petition filed under the petition sealing statute may include multiple charges and convictions, along with related ancillary matters, so long as the charges and convictions arose from the same criminal event and are all eligible for sealing.¹⁸¹ The criminal event is determined by the offense date of the charges or convictions, and not the offense date of any related ancillary matter.¹⁸² For example, if a person was convicted of grand larceny and later found in violation of probation for that conviction, the probation violation is not treated as a separate criminal event. Therefore, the probation violation could be included in a petition to seal the grand larceny conviction.

A petition under the automatic petition sealing statute can include multiple charges, convictions, and ancillary matters, so long as all the offenses included in the petition are eligible for sealing under the statute.¹⁸³

ARE THERE ANY COURT FEES OR COSTS TO FILE A SEALING PETITION (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

No. There are no court fees or costs to file a sealing petition under either the petition sealing statute or the automatic petition sealing statute.¹⁸⁴

ARE THERE ANY OTHER FEES TO FILE A SEALING PETITION (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

A person may need to pay other fees as part of the petition process, such as fees for obtaining their criminal history record from VSP,¹⁸⁵ using a notary service when electronically sending their criminal history record to the court,¹⁸⁶ or serving the petition on the Commonwealth's Attorney.¹⁸⁷ To avoid

¹⁸⁰ VA. CODE ANN. §§ 19.2-392.12(C) and 19.2-392.12:1(D) (2025).

¹⁸¹ VA. CODE ANN. § 19.2-392.12(C) (2025).

¹⁸² VA. CODE ANN. § 19.2-392.12(C) (2025).

¹⁸³ VA. CODE ANN. § 19.2-392.12:1(D) (2025).

¹⁸⁴ VA. CODE ANN. §§ 19.2-392.12(B) and 19.2-392.12:1(C) (2025).

¹⁸⁵ VA. CODE ANN. § 19.2-389(A)(11) (2025). See also Virginia State Police. (2025, March 17). *Virginia criminal history record check*, <https://vsp.virginia.gov/services/criminal-background/>.

¹⁸⁶ See VA. CODE ANN. §§ 19.2-392.12(E) and 19.2-392.12:1(G) (2025).

¹⁸⁷ See VA. CODE ANN. § 17.1-272(A) (2025). A process and service fee of \$12 may be charged to serve the Commonwealth's Attorney with the sealing petition.

any potential service fees, a person can hand-deliver or mail a copy of the sealing petition to the Commonwealth's Attorney.¹⁸⁸

WHERE DOES THE SEALING PETITION HAVE TO BE FILED (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

The petition must be filed in the circuit court in the county or city where the charge, conviction, or related ancillary matter to be sealed was concluded.¹⁸⁹ For example, if a person was convicted of misdemeanor destruction of property in the Richmond City General District Court and later seeks to seal that conviction, the petition should be filed in the Richmond City Circuit Court.

OES is developing a form to assist with drafting a sealing petition, which can then be filed with the circuit court. This form is expected to be available on the Virginia Judicial System website when the sealing laws go into effect.¹⁹⁰

DOES A PERSON NEED TO FILE ANYTHING ELSE WITH THE COURT BESIDES THE SEALING PETITION (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

Yes. A person also needs to provide a copy of the warrant, summons, or indictment for the charge, conviction, or ancillary matter to be sealed, unless those documents are not reasonably available.¹⁹¹ If those documents are not available, the petition must state the reason why.¹⁹²

In addition, after the petition is filed, the person must request that the CCRE (VSP) send a copy of their Virginia and national criminal history record to the court.¹⁹³ VSP will create an online portal that allows individuals to request their criminal history record be sent electronically to the circuit court. If a person is unable to use the online portal, they will need to submit a written request for VSP to send their criminal history record to the circuit court.¹⁹⁴

¹⁸⁸ See VA. CODE ANN. §§ 19.2-392.12(D) and 19.2-392.12:1(F) (2025). If a petition is mailed to the Commonwealth's Attorney, it must be sent by first-class mail, postage pre-paid.

¹⁸⁹ VA. CODE ANN. §§ 19.2-392.12(C) and 19.2-392.12:1(D) (2025).

¹⁹⁰ Virginia's Judicial System. (2025, March 19). *Circuit court civil forms*, <https://www.vacourts.gov/forms/circuit/civil>.

¹⁹¹ VA. CODE ANN. §§ 19.2-392.12(C) and 19.2-392.12:1(D) (2025).

¹⁹² VA. CODE ANN. §§ 19.2-392.12(C) and 19.2-392.12:1(D) (2025).

¹⁹³ VA. CODE ANN. §§ 19.2-392.12(E) and 19.2-392.12:1(G) (2025).

¹⁹⁴ Virginia State Police. (2025, March 17). *Virginia criminal history record check*, <https://vsp.virginia.gov/services/criminal-background/>.

DOES A PERSON NEED TO BE FINGERPRINTED IN ORDER TO HAVE THEIR CRIMINAL HISTORY RECORD SENT TO THE CIRCUIT COURT (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

No. A person will only need to provide certain personally identifying information to VSP, such as their name, date of birth, and social security number, in order to request that their criminal history record be sent to the circuit court.¹⁹⁵

CAN THE CIRCUIT COURT APPOINT AN ATTORNEY TO ASSIST WITH A PERSON’S SEALING PETITION (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

No. The statutes do not authorize the court to appoint counsel to assist a person with filing or litigating a sealing petition. A person can search for private attorneys, legal bar organizations, or other private entities who offer free legal assistance with sealing petitions. Otherwise, a person needing help with the sealing process will need to hire an attorney at their own expense.

DOES THE CIRCUIT COURT HAVE TO CONDUCT A HEARING ON A SEALING PETITION (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

No. The circuit court may grant or deny a sealing petition without a hearing.¹⁹⁶ The circuit court may grant a sealing order without a hearing under either the petition sealing statute or the automatic petition sealing statute if the Commonwealth’s Attorney gives written notice that they do not object to the sealing petition and:

- For petition sealing, states in writing that the offense is eligible for sealing and that the continued existence and possible dissemination of the records of the offense to be sealed causes or may cause a manifest injustice to the petitioner;¹⁹⁷ or,
- For automatic petition sealing, states in writing that the offense is eligible for sealing.¹⁹⁸

CAN A CIRCUIT COURT’S DECISION TO DENY OR GRANT A SEALING PETITION BE APPEALED (PETITION SEALING OR AUTOMATIC PETITION SEALING)?

Yes. Either party can appeal a circuit court’s ruling on a sealing petition.¹⁹⁹ Therefore, if the petitioner disagrees with a circuit court’s decision to deny a sealing petition, or the Commonwealth’s Attorney disagrees with a circuit court’s decision to grant a sealing petition, either can appeal as provided by law in civil cases.²⁰⁰

¹⁹⁵ See VA. CODE ANN. §§ 19.2-392.12(E) and 19.2-392.12:1(G) (2025).

¹⁹⁶ VA. CODE ANN. §§ 19.2-392.12(F) and 19.2-392.12:1(H) (2025).

¹⁹⁷ VA. CODE ANN. § 19.2-392.12(G) (2025).

¹⁹⁸ VA. CODE ANN. § 19.2-392.12:1(K) (2025).

¹⁹⁹ VA. CODE ANN. §§ 19.2-392.12(H) and 19.2-392.12:1(L) (2025).

²⁰⁰ VA. CODE ANN. §§ 19.2-392.12(H) and 19.2-392.12:1(L) (2025).

CONCLUSION

The sealing statutes that will take effect on July 1, 2026, mark a major shift in how criminal records will be used and shared in Virginia. These laws will impact not only individuals whose criminal records are sealed, but also a wide range of government and private entities throughout the Commonwealth. The Crime Commission will continue its study of criminal record sealing in an effort to promote public awareness, educate and train stakeholders, improve public access to the processes, assess workload and resource requirements, and identify any challenges that arise with the implementation of these statutes.²⁰¹

²⁰¹ 2025 Va. Acts ch. 634 and 671. House Bill 2723, 2025 Sess. (Del. Charniele L. Herring), <https://lis.virginia.gov/bill-details/20251/HB2723>. Senate Bill 1466, 2025 Sess. (Sen. Scott A. Surovell), <https://lis.virginia.gov/bill-details/20251/SB1466>. See enactment clauses 14 through 17.

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Nolef Turns

Office of the Executive Secretary of the Supreme Court of Virginia

RELX Inc. (Vectre Corp.)

Virginia Association of Commonwealth's Attorneys

Virginia Compensation Board

Virginia Court Clerks Association

Virginia Department of Criminal Justice Services

Virginia Department of Motor Vehicles

Virginia Department of State Police

Virginia Freedom of Information Advisory Council

Virginia Indigent Defense Commission

Virginia Sexual and Domestic Violence Action Alliance

Virginia State Bar

Virginia Victim Assistance Network

Voyatek

APPENDIX A: CRIMINAL RECORD SEALING PROCESSES IN VIRGINIA (AS OF 7/1/25)¹

PROCESS ²	ELIGIBLE OFFENSES	WAITING PERIOD	CRITERIA FOR RELIEF
Automatic sealing of misdemeanor convictions ³	Misdemeanor convictions with an offense date on or after January 1, 1986, for: <ul style="list-style-type: none"> Petit larceny (§ 18.2-96); Shoplifting (§ 18.2-103); Trespassing (§ 18.2-119); Instigating trespass (§ 18.2-120); Trespass on posted property (§ 18.2-134); Distribution of marijuana (§ 18.2-248.1(a)(1)); and, Disorderly conduct (§ 18.2-415).⁴ 	7 years from the date of conviction. ⁵	Person cannot have been convicted of a separate offense on the same date that is not eligible for automatic sealing, ⁶ and during the 7 year waiting period cannot have been: <ul style="list-style-type: none"> Convicted of any other crime in Virginia that requires a report to the CCRE;⁷ or, Convicted of a crime in any other state, the District of Columbia, or the United States or one of its territories, excluding traffic infractions.⁸
Automatic sealing of possession of marijuana offenses ⁹	Any criminal or civil offense that concluded with a final disposition as a charge or conviction for possession of marijuana (former Va. Code § 18.2-250.1), regardless of the offense date. ¹⁰	None. ¹¹	None, except the DMV cannot seal any offense in violation of federal regulations or program requirements. ¹²
Automatic sealing of misdemeanor non-convictions at case conclusion ¹³	All misdemeanors that conclude on or after July 1, 2026, as an: <ul style="list-style-type: none"> Acquittal; or, Dismissal with prejudice.¹⁴ 	None. Sealed immediately upon conclusion of the case. ¹⁵	Misdemeanor non-convictions must be sealed unless the defendant objects to sealing. ¹⁶
Automatic sealing of felony non-convictions at case conclusion ¹⁷	All felonies that conclude on or after July 1, 2026, as an: <ul style="list-style-type: none"> Acquittal; or, Dismissal with prejudice.¹⁸ 	None. Sealed immediately upon conclusion of the case. ¹⁹	Felony non-convictions must be sealed if: <ul style="list-style-type: none"> The defendant makes a verbal request for sealing; and, The Commonwealth's Attorney concurs with the sealing request.²⁰
Automatic sealing of previously concluded misdemeanor non-convictions ²¹	All misdemeanors with an offense date on or after January 1, 1986, that concluded as an: <ul style="list-style-type: none"> Acquittal; Nolle prosequi; or, Dismissal, excluding deferred dismissals.²² 	3 years from the date of final disposition. ²³	The person's criminal history record cannot include: <ul style="list-style-type: none"> Any convictions that are reportable to the CCRE;²⁴ or, Any arrests or charges for a crime the requires a report to the CCRE, excluding traffic infractions, within the past 3 years.²⁵
Automatic sealing of traffic infractions ²⁶	All traffic infractions under Title 46.2 with an offense date on or after January 1, 1986, excluding criminal offenses. ²⁷	11 years from date of final disposition. ²⁸	Traffic infractions must be sealed unless such sealing is: <ul style="list-style-type: none"> Prohibited under federal or state law;²⁹ or, In violation of a federal regulation or program requirement.³⁰

PROCESS ²	ELIGIBLE OFFENSES	WAITING PERIOD	CRITERIA FOR RELIEF
Petition sealing of misdemeanor and felony convictions, deferred dismissals, and related ancillary matters ³¹	<p>Convictions and deferred dismissals for certain classes of offenses with an offense date on or after January 1, 1986, with a variety of exclusions:³²</p> <ul style="list-style-type: none"> • Misdemeanors; • Class 5 and 6 felonies; • Grand larceny and offenses punishable as larceny; and, • Related ancillary matters.³³ 	<p>7 years for misdemeanors and 10 years for felonies, beginning from the latest date of the following events:</p> <ul style="list-style-type: none"> • Dismissal of the deferred charge; • Conviction; • Release from incarceration on the charge or conviction; • Finding of a violation of a suspended sentence, probation, or parole; or, • Release from incarceration after a finding of a violation of a suspended sentence, probation, or parole.³⁴ 	<p>In addition to the waiting period:</p> <ul style="list-style-type: none"> • No prior convictions for a Class 1 or 2 felony or any other crime punishable by life; • No Class 3 or 4 felony convictions in the past 20 years; • No other felony conviction within the past 10 years; • Demonstrate rehabilitation if the charge or conviction involved the use or dependence on alcohol or any other narcotic drug; • Restitution paid in full; • Cannot have had two sealing petitions previously granted under the general sealing statute; and, • Petitioner must prove that the continued existence and possible dissemination of the conviction would constitute a manifest injustice.³⁵
Automatic petition sealing of misdemeanor convictions, deferred dismissals, and related ancillary matters, as well as ancillary matters related to previously sealed offenses ³⁶	<p>Misdemeanor convictions and deferred dismissals with an offense date on or after January 1, 1986, for:</p> <ul style="list-style-type: none"> • Underage alcohol (§ 4.1-305); • Petit larceny (§ 18.2-96); • Shoplifting (§ 18.2-103); • Trespassing (§ 18.2-119); • Instigating trespass (§ 18.2-120); • Trespass on posted property (§ 18.2-134); • Distribution of marijuana (§ 18.2-248.1(a)(1)); • Drug paraphernalia (§ 18.2-265.3(A)); and, • Disorderly conduct (§ 18.2-415).³⁷ 	7 years from the date of conviction or deferred dismissal ³⁸	<p>Person cannot have been convicted of a separate offense on the same date that is not eligible for automatic sealing,³⁹ and during the 7 year waiting period cannot have been:</p> <ul style="list-style-type: none"> • Convicted of any other crime in Virginia that requires a report to the CCRE;⁴⁰ or, • Convicted of a crime in any other state, the District of Columbia, or the United States or one of its territories, excluding traffic infractions.⁴¹
	<p>Ancillary matters related to the following offenses that were previously automatically sealed:</p> <ul style="list-style-type: none"> • Convictions (§ 19.2-392.7); • Non-convictions (§ 19.2-392.11); and, • Possession of marijuana offenses (§ 19.2-392.6:1).⁴² 	None ⁴³	Ancillary matters must be sealed if the related underlying offense was automatically sealed. ⁴⁴

Source: Table prepared by Virginia State Crime Commission staff.

¹ The sealing statutes will take effect on July 1, 2026, unless that date is changed with future legislation. See VA. CODE ANN. §§ 19.2-392.5(A) and 19.2-392.16 (2025). Sealing applies to the records of the Central Criminal Records Exchange (Virginia State Police), any state courts, any law enforcement agency in Virginia, and the Virginia Department of Motor Vehicles, as well as records collected and shared by third-parties. See also VA. CODE ANN. § 19.2-392.5(B) (2025). Sealing applies to the records of adults and juveniles tried as adults, but not juveniles. See also VA. CODE ANN. § 19.2-392.13(C) and (C1) (2025). Even if a record is sealed, that record still exists and can be disclosed for a variety of purposes.

² These sealing processes are different than the expungement process which currently exists under Virginia law. See VA. CODE ANN. §§ 19.2-392.1 through 19.2-392.4 (2025). Certain conviction and non-conviction criminal records are eligible for sealing (see table above), whereas only non-conviction criminal records are eligible for expungement. See VA. CODE ANN. § 19.2-392.2 (2025). Sealing is intended to prohibit public access to criminal records (VA. CODE ANN. § 19.2-392.5(A) (2025)), whereas expungement is intended to prohibit nearly all access to a record (6VAC20-120-20 and 6VAC20-120-80 (2025)). Sealed records can be accessed for numerous reasons (VA. CODE ANN. § 19.2-392.13(C) (2025)), whereas expunged records can only be accessed for very limited purposes (VA. CODE ANN. §§ 19.2-392.3 & 19.2-392.3:1 (2025)).

³ VA. CODE ANN. § 19.2-392.6 and 19.2-392.7 (2025).

⁴ VA. CODE ANN. § 19.2-392.6(A) (2025).

⁵ VA. CODE ANN. § 19.2-392.6(B) (2025).

⁶ VA. CODE ANN. § 19.2-392.6(C) (2025).

⁷ VA. CODE ANN. § 19.2-392.6(B) (2025). See also VA. CODE ANN. § 19.2-390(A).

⁸ VA. CODE ANN. § 19.2-392.6(B) (2025).

⁹ VA. CODE ANN. § 19.2-392.6:1 (2025).

¹⁰ VA. CODE ANN. § 19.2-392.6:1(A) (2025).

¹¹ VA. CODE ANN. § 19.2-392.6:1(A) (2025).

¹² VA. CODE ANN. § 19.2-392.6:1(B) (2025).

¹³ VA. CODE ANN. § 19.2-392.8(A) (2025). See also § 19.2-392.10 (2025).

¹⁴ VA. CODE ANN. § 19.2-392.8(A) (2025).

¹⁵ VA. CODE ANN. § 19.2-392.8(A) (2025).

¹⁶ VA. CODE ANN. § 19.2-392.8(A) (2025). Regardless of whether the non-conviction is sealed or not, the person may still seek to have the offense expunged. VA. CODE ANN. § 19.2-392.8(D) (2025).

¹⁷ VA. CODE ANN. § 19.2-392.8(B) (2025).

¹⁸ VA. CODE ANN. § 19.2-392.8(B) (2025).

¹⁹ VA. CODE ANN. § 19.2-392.8(B) (2025).

²⁰ VA. CODE ANN. § 19.2-392.8(B) (2025). Regardless of whether the non-conviction is sealed or not, the person may still seek to have the offense expunged. VA. CODE ANN. § 19.2-392.8(D) (2025).

²¹ VA. CODE ANN. § 19.2-392.11 (2025).

²² VA. CODE ANN. § 19.2-392.11(A) (2025).

²³ VA. CODE ANN. § 19.2-392.11(A) (2025).

²⁴ VA. CODE ANN. § 19.2-392.11(A) (2025). An offense that has been sealed is not treated as a conviction for eligibility purposes under this process.

²⁵ VA. CODE ANN. § 19.2-392.11(A) (2025).

²⁶ VA. CODE ANN. § 19.2-392.17 (2025).

²⁷ VA. CODE ANN. § 19.2-392.17(A) (2025).

²⁸ VA. CODE ANN. § 19.2-392.17(A) (2025).

²⁹ VA. CODE ANN. § 19.2-392.17(A) (2025).

³⁰ VA. CODE ANN. § 19.2-392.17(B) (2025).

³¹ VA. CODE ANN. § 19.2-392.12 (2025). See also VA. CODE ANN. § 19.2-392.12(B) (2025). A person does not need to pay any court fees or costs to file a petition; however, a person may need to pay other fees to obtain their criminal history record or serve the petition.

³² VA. CODE ANN. § 19.2-392.12(L) (2025). See also Appendix B for a list of exclusions.

³³ VA. CODE ANN. § 19.2-392.12(A) (2025). See also VA. CODE ANN. § 19.2-392.5(A) (2025). Ancillary matter is defined as “any (i) violation or alleged violation of the terms and conditions of a suspended sentence, probation, or parole; (ii) violation or alleged violation of contempt of court; (iii) charge or conviction for failure to appear; or (iv) appeal from a bail, bond, or recognizance order.”

³⁴ VA. CODE ANN. § 19.2-392.12(F)(2) (2025).

³⁵ VA. CODE ANN. § 19.2-392.12(F) (2025).

³⁶ VA. CODE ANN. § 19.2-392.12:1 (2025). See also VA. CODE ANN. § 19.2-392.12:1(C) (2025). A person does not need to pay any court fees or costs to file a petition; however, a person may need to pay other fees to obtain their criminal history record or serve the petition.

³⁷ VA. CODE ANN. § 19.2-392.12:1(A) (2025).

³⁸ VA. CODE ANN. § 19.2-392.12:1(I) (2025).

³⁹ VA. CODE ANN. § 19.2-392.12:1(D) (2025).

⁴⁰ VA. CODE ANN. § 19.2-392.12:1(I) (2025). *See also* VA. CODE ANN. § 19.2-390(A) (2025).

⁴¹ VA. CODE ANN. § 19.2-392.12:1(I) (2025).

⁴² VA. CODE ANN. § 19.2-392.12:1(B) (2025). *See also* § 19.2-392.5(A) (2025). Ancillary matter is defined as “any (i) violation or alleged violation of the terms and conditions of a suspended sentence, probation, or parole; (ii) violation or alleged violation of contempt of court; (iii) charge or conviction for failure to appear; or (iv) appeal from a bail, bond, or recognizance order.”

⁴³ There is no waiting period for ancillary matters because the waiting period for the related automatically sealed conviction or non-conviction will have passed, and there is no waiting period for automatically sealed marijuana offenses.

⁴⁴ VA. CODE ANN. § 19.2-392.12:1(J) (2025).

APPENDIX B: PETITION SEALING – INELIGIBLE AND EXCLUDED OFFENSES (AS OF 7/1/25)

CLASSES OF OFFENSES INELIGIBLE FOR PETITION SEALING (§ 19.2-392.12(A))

- Class 1, 2, 3, and 4 felonies; and,
- Unclassified felonies, with the exception of grand larceny (§ 19.2-95) and offenses deemed punishable as larceny.

CLASSES OF OFFENSES EXCLUDED FROM PETITION SEALING (§ 19.2-392.12(L))

1. Any violation of any offense under [§ 9.1-902](#) for which registration with the Sex Offender and Crimes Against Minors Registry is required;
2. Any violation of any offense listed under subsection C of [§ 17.1-805](#) (violent crimes);
3. Any violation of any felony offense not listed under subsection C of [§ 17.1-805](#) where the person utilized a firearm, as defined in [§ 18.2-308.2:2](#), as part of the transaction or occurrence in the underlying offense to be sealed, unless such person's right to possess, transport, or carry a firearm, ammunition for a firearm, or a stun weapon has been restored pursuant to [§ 18.2-308.2](#);
4. Any violation of an emergency, preliminary, or permanent protective order issued pursuant to Article 4 ([§ 16.1-246 et seq.](#)) of Chapter 11 of Title 16.1 or Chapter 9.1 ([§ 19.2-152.7:1 et seq.](#)) of Title 19.2, or any family abuse protective order under [§ 16.1-279.1](#);
5. Any violation of any hate crime as defined in [§ 52-8.5](#);
6. Any violation of Article 9 of Chapter 65 of Title 3.2 ([§ 3.2-6570 et. seq.](#)) (cruelty to animals);
7. Any violation of [Title 24.2](#) (election laws);
8. Any violation involving the possession and distribution of flunitrazepam pursuant to [§ 18.2-251.2](#) or the possession of Gamma hydroxybutyric acid (some other names include GHB; gamma hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate) pursuant to [§ 18.2-250](#);
9. Any violation where a person was found not guilty by reason of insanity;
10. Any conspiracy, attempt, or solicitation, and any principal in the second degree, accessory before the fact, or accessory after the fact for an ineligible offense;
11. Any conspiracy, attempt, or solicitation, and any principal in the second degree, accessory before the fact, or accessory after the fact where the completed substantive offense would be punishable as a Class 1, 2, 3, or 4 felony or by a term of imprisonment of more than 10 years, with the exception of a violation [§ 18.2-95](#) or any other felony offense where the defendant is deemed guilty of larceny and punished as in [§ 18.2-95](#);

12. Any violation of any offense where the person was prohibited by the court from possessing or owning a companion animal as a result of the transaction or occurrence in the underlying offense to be sealed, while such prohibition remains in effect;
13. Any violation of Article 6 of ([§ 3.2-6537 et seq.](#)) of Chapter 65 of Title 3.2 that involved a dangerous or vicious dog as a part of the transaction or occurrence in the underlying offense to be sealed, while the person continues to own or possess such dog;
14. Any violation of Article 7 ([§ 18.2-61 et seq.](#)) of Chapter 4 of Title 18.2;
15. Any violation of Article 3 ([§ 18.2-346 et seq.](#)) of Chapter 8 of Title 18.2, with the exception of [§ 18.2-346](#), former subsection A of § 18.2-346, and [§ 18.2-347](#);
16. Any violation of Article 4 ([§ 18.2-362 et seq.](#)) of Chapter 8 of Title 18.2, with the exception of [§§ 18.2-365](#), [18.2-371.2](#), [18.2-371.3](#), and [18.2-371.4](#);
17. Any violation of Article 5 ([§ 18.2-372 et seq.](#)) of Chapter 8 of Title 18.2, with the exception of [§ 18.2-388](#); and
18. Any offense where the victim of the crime to be sealed was a family or household member, as defined in [§ 16.1-228](#), of the person.

INDIVIDUAL OFFENSES EXCLUDED FROM PETITION SEALING (§ 19.2-392.12(L))

CODE SECTION	SECTION TITLE
§ 4.1-309.1	Possessing or consuming alcoholic beverage while operating a school bus; penalty.
§ 5.1-13	Operation of aircraft while under influence of intoxicating liquors or drugs; reckless operation.
§ 18.2-36	How involuntary manslaughter punished.
§ 18.2-36.1	Certain conduct punishable as involuntary manslaughter.
§ 18.2-36.2	Involuntary manslaughter; operating a watercraft while under the influence; penalties.
§ 18.2-47	Abduction and kidnapping defined; forced labor; punishment.
§ 18.2-49.1(A)	Violation of court order regarding custody and visitation; penalty
§ 18.2-51.5	Maiming, etc., of another resulting from operating a watercraft while intoxicated; penalty.
§ 18.2-57(C)	Felony assault or assault and battery against certain public servants.
§ 18.2-57.2	Assault and battery against a family or household member; penalty.
§ 18.2-57.3	Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation; conditions; education and treatment programs; costs and fees; violations; discharge.
§ 18.2-59.1	Sexual extortion; penalty.
§ 18.2-60	Threats of death or bodily injury to a person or member of his family; threats of death or bodily injury to persons on school property; threats of death or bodily injury to health care providers; penalty.
§ 18.2-60.3	Stalking; penalty.
§ 18.2-60.5	Unauthorized use of electronic tracking device; penalty.
§ 18.2-130	Peeping or spying into dwelling or enclosure.
§ 18.2-130.1	Peeping or spying into dwelling or occupied building by electronic device or unmanned aircraft system; penalty.
§ 18.2-144	Maiming, killing or poisoning animals, fowl, etc.
§ 18.2-144.1	Prohibition against killing or injuring police animals; penalty.
§ 18.2-154	Shooting at or throwing missiles, etc., at train, car, vessel, etc.; penalty.
§ 18.2-178.1	Financial exploitation of vulnerable adults; penalty.
§ 18.2-266	Driving motor vehicle, engine, etc., while intoxicated, etc.
§ 18.2-266.1	Persons under age 21 driving after illegally consuming alcohol; penalty

CODE SECTION	SECTION TITLE
§ 18.2-268.3	Refusal of tests; penalties; procedures.
§ 18.2-282.1	Brandishing a machete or other bladed weapon with intent to intimidate; penalty.
§ 18.2-324.2	Use of unmanned aircraft system for certain purposes; penalty.
§ 18.2-346 (former subsection B only)	Prostitution; commercial sexual conduct; penalties.
§ 18.2-405	What constitutes a riot; punishment.
§ 18.2-406	What constitutes an unlawful assembly; punishment.
§ 18.2-472.1	Providing false information or failing to provide registration information; penalty; prima facie evidence.
§ 19.2-62	Interception, disclosure, etc., of wire, electronic or oral communications unlawful; penalties; exceptions.
§ 29.1-738	Operating boat or manipulating water skis, etc., in reckless manner or while intoxicated, etc.
§ 29.1-738.02	Persons under age twenty-one operating watercraft after illegally consuming alcohol; penalty.
§ 29.1-738.2	Consent to blood or breath test.
§ 37.2-912	Conditional release; criteria; conditions; reports; penalty.
§ 40.1-100.2	Employment involving sexually explicit visual material prohibited.
§ 40.1-103	Cruelty and injuries to children; penalty; abandoned infant.
§ 46.2-341.24	Driving a commercial motor vehicle while intoxicated, etc.
§ 46.2-341.26:3	Refusal of tests; issuance of out-of-service orders; disqualification.

Source: Table prepared by Virginia State Crime Commission staff.



SURVEILLANCE TECHNOLOGY REPORTING BY VIRGINIA LAW ENFORCEMENT

SURVEILLANCE TECHNOLOGY REPORTING BY VIRGINIA LAW ENFORCEMENT

OVERVIEW OF SURVEILLANCE TECHNOLOGY REPORTING REQUIREMENTS

Legislation enacted during the 2024 Regular Session of the General Assembly requires each state and local law enforcement agency and sheriff's department in Virginia to annually report all surveillance technology it procured to the Virginia Department of Criminal Justice Services (DCJS).³³⁹ This reporting requirement does not apply to private or campus police departments.³⁴⁰

The 2024 legislation defines "surveillance technology" as "any electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, behavioral, or similar information or communications specifically associated with, or capable of being associated with, any specific individual, group, or place or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software."³⁴¹ In addition, the legislation provides the following examples of surveillance technology:

- International mobile subscriber identity (IMSI) catchers and other cell site simulators;
- Automatic license plate readers;
- Electronic toll readers;
- Closed-circuit television cameras;
- Biometric surveillance technology, including facial, voice, iris, and gait-recognition software and databases;
- Mobile DNA capture technology;
- Gunshot detection and location hardware and services;
- X-ray vans;
- Video and audio monitoring or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras;
- Surveillance enabled or capable lightbulbs or light fixtures;
- Tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network;
- Social media monitoring software;

³³⁹ 2024 Va. Acts ch. 614. House Bill 1496, 2024 Regular Session of the General Assembly. (Del. Sam Rasoul). <https://legacylis.virginia.gov/cgi-bin/legp604.exe?ses=241&typ=bil&val=hb1496>.

³⁴⁰ See VA. CODE ANN. § 9.1-101 (2024) for the definition of "private police department." See also VA. CODE ANN. § 23.1-809 et. seq. (2024) for laws pertaining to campus police departments.

³⁴¹ VA. CODE ANN. § 9.1-116.10(A) (2024).

- Through-the-wall radar or similar imaging technology;
- Passive scanners of radio networks;
- Long-range Bluetooth and other wireless-scanning devices;
- Radio-frequency I.D. (RFID) scanners; and,
- Software designed to integrate or analyze data from surveillance technology, including surveillance target tracking and predictive policing software.³⁴²

However, the legislation specifically excludes the following devices or hardware from the surveillance technology reporting requirement:

- Routine office hardware, such as televisions, computers, and printers, that is in widespread use and will not be used for any surveillance-related functions;
- Parking ticket devices;
- Manually operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
- Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
- Databases not intended to store or compile surveillance data; and,
- Manually operated technological devices used primarily for internal communications and not designed to surreptitiously collect surveillance data, such as radios and email systems.³⁴³

DCJS SURVEY ON LAW ENFORCEMENT ACQUISITION OF SURVEILLANCE TECHNOLOGY

To facilitate the annual surveillance technology reporting requirement, DCJS conducted a survey of law enforcement agencies and sheriff's departments in October 2024. Although the 2024 legislation only mandates the reporting of surveillance technology that agencies procured (i.e., purchased),³⁴⁴ DCJS broadened the reporting parameters to include surveillance technology "acquired" by any means. The survey collected: (i) an agency contact, (ii) all surveillance technology equipment listed in the reporting statute that was procured or acquired by the agency, and (iii) any surveillance technology equipment not included in the reporting statute that was procured or acquired by the agency.

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ VA. CODE ANN. § 9.1-116.10(B) (2024).

DCJS reported an 82% (275 of 335) survey response rate from law enforcement agencies and sheriff's departments.³⁴⁵ The survey findings revealed that:

- 87% (240 of 275) of responding law enforcement agencies reported having procured/acquired video and audio monitoring or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras;
- 51% (141 of 275) of responding law enforcement agencies reported having procured/acquired closed-circuit television cameras (CCTV);
- 51% (140 of 275) of responding law enforcement agencies reported having procured/acquired automatic license plate readers (ALPR);
- A much smaller percentage of responding law enforcement agencies reported having procured/acquired other types of technologies, such as gunshot detection and location hardware and services (5%), social media monitoring software (4%), facial recognition technology (3%), or mobile DNA capture technology (1%); and,
- A small number of responding law enforcement agencies reported having procured/acquired other surveillance technology that was not included in the reporting statute, such as drones, cameras, and GPS trackers.

DCJS PRESENTATION OF SURVEY FINDINGS TO THE CRIME COMMISSION

At the December 2024 Crime Commission meeting, DCJS presented its survey findings and outlined potential changes to clarify the surveillance technology reporting requirements and improve data collection.³⁴⁶ These potential changes included legislative amendments to the reporting statute, as well as administrative changes to DCJS's own data collection and reporting practices.

DCJS advised that legislative amendments to the reporting statute could clarify:

- Whether law enforcement must report on all surveillance technology it procures each year, or if a report is only required for newly procured surveillance technology each year;
- Whether reporting access to surveillance technology through other law enforcement agencies or third-part services or subscriptions should be required; and,
- How to interpret the phrase "*unauthorized access*" when law enforcement has a search warrant to access a computer, computer service, or computer network.

³⁴⁵ Virginia Department of Criminal Justice Services. (2024). *Summary report on surveillance technology equipment procured by Virginia law enforcement agencies, 2024*.

<https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/research/summary-report-surveillance-technology-equipment-procured-virginia-law-enforcement-agencies-2024.pdf>

³⁴⁶ Johnson, S. (2024, December 16). Findings from the 2024 surveillance technology equipment reporting. Virginia Department of Criminal Justice Services' presentation at the December 16, 2024, Crime Commission Meeting (Richmond, VA). <https://vscc.virginia.gov/2024/Dec16Mtg/DCJS%20-%20Findings%20from%202024%20Surveillance%20Technology%20Equipment%20Reporting.pdf>.

In addition, DCJS noted that it could make the following administrative changes without legislation to improve future data collection related to surveillance technology reporting:

- Create a guidance document for law enforcement that will define the surveillance technology equipment that is listed in the statute;
- Add other types of surveillance technology equipment in the survey that are not explicitly listed as examples in the statute, but were commonly reported by law enforcement, such as drones and GPS trackers; and,
- Include additional questions in the survey to gather information on the possession, access, and use of surveillance technology equipment by law enforcement.

CRIME COMMISSION LEGISLATION

The Crime Commission endorsed legislation at its January 2025 meeting to amend the surveillance technology reporting statute to clarify what constitutes surveillance technology and what is to be reported to DCJS.³⁴⁷ This legislation was introduced as House Bill 2725 during the 2025 Regular Session of the General Assembly as part of the Crime Commission’s legislative package.³⁴⁸ The bill passed the General Assembly and was signed into law by the Governor.³⁴⁹ As enacted into law, the bill makes the following changes to the surveillance technology reporting statute:

- Requires each law enforcement agency to report all surveillance technology that it has used, accessed, or procured during the previous fiscal year, regardless of whether that technology belonged to the reporting agency or to another law enforcement agency.
- Directs each law enforcement agency to report any third-party services or third-party subscriptions that it used to access or obtain any surveillance technology or data.
- Deletes the term “*unauthorized*” from “(xi) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network” to clarify any ambiguity over whether access is authorized or not when law enforcement has obtained a search warrant for the computer, computer service, or computer network.
- Adds the phrase “*software, service, or subscription*” to the listed items that do not constitute surveillance technology because some of the existing exclusions are not “*devices or hardware*”, such as databases and email systems.

Finally, in addition to these clarifying amendments, House Bill 2725 requires that the surveillance technology information reported to DCJS be shared with the Crime Commission and the Joint Commission on Technology and Science (JCOTS) by December 1st each year. This amendment

³⁴⁷ VA. CODE ANN. § 9.1-116.10 (2024).

³⁴⁸ House Bill 2725, 2025 Regular Session of the General Assembly. (Del. Sam Rasoul). <https://lis.virginia.gov/bill-details/20251/HB2725>.

³⁴⁹ 2025 Va. Acts ch. 420.

ensures that the Crime Commission and JCOTS will have access to the information to help inform policy decisions prior to or during the General Assembly Session.

