



2018 Recommendations and Policy Options

December 3, 2018



Study Update: Fingerprinting of Defendants

VIRGINIA STATE CRIME COMMISSION



Fingerprinting of Defendants

Since the October presentation, the Virginia State Police (VSP) provided Crime Commission staff with the entire “Hold File” from their CCRE *Legacy* system.

- While the data goes back to 1970, the large majority of offenses are from 1999 through October 7, 2016.
- The CCRE *Legacy* system was replaced with the CCRE *Replacement* system on October 8, 2016.
- The CCRE “Hold File” contains offenses that have not been applied to criminal history records (CCRE).



Fingerprinting of Defendants

Based on the CCRE *Legacy* “Hold File” there are over 700,000 offenses not applied to criminal history records due to missing fingerprints or other errors:

- 33% were felonies
 - 233,671 of 706,944
- 67% were misdemeanors
 - 473,273 of 706,944



Fingerprinting of Defendants

57% of felony offenses in the CCRE *Legacy* “Hold File” are CONVICTIONS (134,258 of 233,671).

- 61% of misdemeanor offenses are convictions (289,802 of 473,272).

The majority of the felony convictions not applied to criminal history records are for probation/supervision violations, followed by fraud, larceny, and drug offenses.



Fingerprinting of Defendants

Felony convictions not applied to criminal history records according to VSP’s CCRE *Legacy* “Hold File”:

Rank	Felony VCC Category	Total	Percent
1	Probation/Supervision Violations	62,419	46.5%
2	Fraud	14,827	11.0%
3	Larceny	13,247	9.9%
4	Narcotics	11,233	8.4%
5	Assault	5,841	4.4%
6	Burglary	5,277	3.9%
7	Robbery	3,316	2.5%
8	Rape	1,866	1.4%
9	Weapon Violations	1,844	1.4%
10	License-Related Offenses	1,797	1.3%
---	All Other Felony Convictions	12,591	9.4%
	TOTAL FELONY CONVICTIONS	134,258	100.0%

Source: Virginia State Police, CCRE Legacy Hold File. Analysis by Crime Commission staff.



Fingerprinting of Defendants

97% of the felony convictions in the *CCRE Legacy* “Hold File” are from the years 2000-2016 (129,747 of 134,258).

- 60% of the felony convictions are from arrests made between 2010 through 2016 (80,789 of 134,258).
- Electronic reporting of offenses to the CCRE began around 2000; however, it is difficult to determine how widespread the problem was prior to this time.



Fingerprinting of Defendants

VSCC staff conducted a cursory analysis and estimate that there are approximately **55,000 unique individual convicted felons** in the *CCRE Legacy* “Hold File”.

- Further analysis is necessary to determine the precise number of individual convicted felons:
 - In the *CCRE Legacy* “Hold File”
 - In the *CCRE Replacement* “Hold File”
 - With an existing criminal history record



Fingerprinting of Defendants

Staff identified proposed solutions to:

- Retroactively apply some missing offenses to existing criminal history records.
- Prospectively ensure future offenses are applied to criminal history records with the necessary fingerprint submission.



Recommendations

Recommendation 1: Adopt provisions to identify and reconcile “unapplied criminal history record information” by amending the Virginia Code as follows:

- Virginia Code § 9.1-101 to define “unapplied criminal history record information.”
- Virginia Code § 19.2-388 to require VSP to submit reports and reconcile information with OES, Clerks of Court, Commonwealth’s Attorneys, law enforcement agencies, and other agencies, regarding unapplied criminal history record information.
- Virginia Code § 19.2-388 to require VSP to submit an annual report on the status of unapplied criminal history record information.



Recommendations

Recommendation 2: Virginia Code § 19.2-390 should be amended to require that fingerprints be submitted for violations of a suspended sentence, probation, and parole if the underlying offense is reportable to the CCRE.



Recommendations

Recommendation 3: Virginia Code § 19.2-390 should be amended to require that charges brought by summons that are deferred and dismissed pursuant to the property (§ 19.2-303.2) and domestic assault (§ 18.2-57.3) first offender statutes be reported to the CCRE.



Recommendations

Recommendation 4: Virginia Code Sections 18.2-57.3 (first offense domestic assault), 18.2-251 (drug first offender), 19.2-74, 19.2-303.2 (property offense deferral statute), and 19.2-390 should be amended to require the court to:

- Determine whether the defendant's fingerprints have been submitted at the time of deferral;
- Order fingerprints to be taken if fingerprints have not been submitted;
- Verify that fingerprints have been submitted prior to dismissing the case; and,
- Report such offenses to the CCRE.



Recommendations

Recommendation 5: Virginia Code § § 19.2-232 and 19.2-390 should be amended to require fingerprinting of incarcerated defendants following service of a direct indictment.



Recommendations

Recommendation 6: Enact Virginia Code § 19.2-390.03 to require VSP to develop and disseminate a model policy to law enforcement agencies on the collection of fingerprints and reporting of criminal history record information to the Central Criminal Records Exchange as required by § 19.2-390.



Recommendations

Recommendation 7: Virginia Code § 19.2-303 should be amended to require the court to order a defendant to submit fingerprints as a condition of a suspended sentence or probation for any CCRE reportable offense.



Recommendations

Recommendation 8:

- Virginia Code § 19.2-390 should be amended to allow VSP to classify and file information received from correctional institutions as part of the CCRE, unless otherwise prohibited by law.
- Virginia Code § 53.1-23 should be amended to require DOC to provide fingerprints to the CCRE of all inmates received into a state correctional facility and to allow such fingerprints to be included in criminal history record information, unless otherwise prohibited by law.



Recommendations

Recommendation 9: Virginia Code § 53.1-145 should be amended to require state probation officers to verify that the conviction for which the defendant is being supervised appears on the criminal history record prior to the release of the defendant from probation.

- If the conviction does not appear on the criminal history record, the probation officer shall obtain fingerprints prior to release from probation.



Recommendations

Recommendation 10: Virginia Code § 9.1-176.1 should be amended to require local probation officers to verify that the conviction for which the defendant is being supervised appears on his criminal history record prior to the release of that defendant from probation.

- If the conviction does not appear on the criminal history record, the probation officer shall notify the court, the Commonwealth's Attorney, and the arresting law enforcement agency in writing.



Recommendations

Recommendation 11: Virginia Code § 19.2-305.1 should be amended to require the court at each restitution review hearing to verify that the charge for which restitution was ordered appears on the criminal history record.

- If the charge does not appear, the court shall order the defendant to submit to fingerprinting.



Recommendations

Recommendation 12: Enact Virginia Code § 19.2-303.02 to allow the court to modify the terms of a suspended sentence at any time during the period of suspension to order a defendant to submit fingerprints.



Recommendations

Recommendation 13: Virginia Code § 19.2-390 should be amended to clarify reporting procedures for offenses charged by summons for clerks of court to report to the CCRE.



Recommendations

Recommendation 14: Require VSP to work with state and local agencies and make reasonable efforts to ensure that unapplied criminal history record information is applied to criminal history records.

- Allows for sharing of information between agencies.
- Requires VSP to report to the Chair of the Crime Commission by November 1, 2019.
- Could be accomplished by Section 1 bill.



Policy Decision Options

Policy Decision Option 1: Amend Virginia Code § 19.2-390 to expand the list of offenses that require CCRE reports.

- **Option A**: Require CCRE reports for all jailable offenses.
- **Option B**: Require CCRE reports for certain offenses not currently included.



Policy Decision Options

Pros of Policy Decision Option 1:

- Clarity will ease administration of fingerprinting procedures for law enforcement and court personnel (Option A only).
- More accurate tracking of first offender statutes for underage possession of alcohol and vandalism ordinances (Both Options).

Cons of Policy Decision Option 1 (Both Options):

- Increased personnel for processing of fingerprinting.
- Will require updated software for Live Scan machines to match new list of reportable offenses.
- Expungement statute only covers Title 18.2 charges.



Policy Decision Options

Policy Decision Option 2: Amend the Virginia Code to require the collection of fingerprints for CCRE reportable offenses when a summons is issued.



Policy Decision Options

Pros of Policy Decision Option 2:

- Eliminates the necessity of collecting fingerprints post-disposition.
- If a defendant fails to appear, or is found guilty *in absentia*, fingerprints have already been collected.
- Can be done quickly, because two thumbprints are sufficient for VSP requirements.
- Facilitates identification of defendants charged via summons.
- Emerging technology allows for mobile fingerprinting.



Policy Decision Options

Cons of Policy Decision Option 2:

- May delay the duration of a seizure, for both defendants and law enforcement officers.
- Technology may not be available to all law enforcement agencies due to limited resources.
- Ink-card submissions may not be as accurate as electronic submissions, and require increased personnel and processing.



Recommendations

Recommendation 15: Request VSP to develop a brief reference guide of CCRE reportable offenses for use by law enforcement agencies.



Recommendations

Recommendation 16: Request VSP to develop policies and procedures for referencing the CCRE "Hold File" when conducting criminal history records checks in certain circumstances, such as:

- Sex Offender and Crimes Against Minors registration;
- Firearms background checks;
- Barrier crimes exclusions;
- DNA databank inclusion;
- Licensing eligibility;
- Law enforcement employment background checks; and,
- Any other identified category.



Recommendations

Recommendation 17: Request that corresponding associations and state and local agencies provide and/or coordinate training for law enforcement officers, prosecutors, judges, clerks of court, and state and local probation officers on the following topics:

- Collection and submission of fingerprints; and,
- The relationship between fingerprint collection and criminal history records.



Recommendations

Recommendation 18: Request that OES, in coordination with other users of the Uniform Statute Table (UST), update and implement a revised table by July 2019.



Recommendations

Recommendation 19: Request Crime Commission staff continue this study to address the reconciliation of unapplied offenses to criminal history records and other remaining issues.



Pre-Trial Process



Recommendations

Recommendation 1: Virginia Code § 19.2-121 should be amended to require magistrates to complete the existing “Checklist For Bail Determinations” (DC327) form and transmit it to the court.

- This codifies current practice in the field.



Recommendations

Recommendation 2: Virginia Code § 19.2-149 should be amended to require that the basis of arrest must be provided when requesting a surety’s capias.



Recommendations

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



Recommendations

Recommendation 4: Request Crime Commission staff to continue to examine this topic and convene focus groups to address issues of uniformity within the pre-trial process, including:

- First appearances;
- Bond hearings;
- Timely sharing of information, such as bail condition violations;
- Conditions of supervision and fees; and,
- Monitoring of pre-trial jail populations.



Recommendations

Unresolved Matter: Court-ordered use of GPS and similar tracking devices, including fees, on a pre-trial basis.



Virginia Pre-Trial Data Project



Recommendations

Recommendation 1: Enact Virginia Code Sections 16.1-69.24:1 and 18.2-456.1 to allow the court to issue a *capias* or show cause specifically for failure to appear (FTA).

- Amend Virginia Code Sections 16.1-69.24 and 18.2-456 to prohibit charging FTA under the general contempt statutes.



Recommendations

Recommendation 2: Request Crime Commission staff to convene state agencies and stakeholders to develop a plan for statewide case tracking across the criminal justice system and any other related systems, and provide recommendations by December 2019.



Recommendations

Recommendation 3: Request the Office of the Executive Secretary of the Supreme Court of Virginia (OES) to determine a method for tracking the number of criminal defendants statewide found to be indigent pursuant to Va. Code § 19.2-159.

- This can be incorporated as part of the statewide case tracking project.



Sex Trafficking



Recommendations

Recommendation 1: Virginia Code § § 16.1-251, 16.2-252, 63.2-1506, 63.2-1508, and 63.2-1517 should be amended to:

- Allow Department of Social Services (DSS) to take emergency custody of Virginia children who are victims of sex trafficking;
- Require DSS to conduct family assessments of juvenile sex trafficking victims' residence;
- Clarify that traffickers are considered caretakers; and,
- Clarify local agency jurisdiction issues.



Recommendations

Recommendation 2: Virginia Code § 18.2-357.1 should be amended to allow commercial sex traffickers to be charged for each individual act of trafficking.



Recommendations

Recommendation 3: The following Virginia Code sections should be amended to enhance penalties and create consistency of consequences for commercial sex trafficking if the victim is a minor:

- **9.1-902:** Sex Offender Registry offenses requiring registration;
- **17.1-805:** Inclusion as a violent felony offense;
- **18.2-46.1:** Inclusion as a predicate criminal act for a gang offense;
- **18.2-348:** Aiding prostitution or illicit sexual intercourse, etc.;
- **18.2-349:** Using vehicles to promote prostitution or unlawful sexual intercourse;
- **18.2-513:** Inclusion as racketing activity; and,
- **19.2-215.1:** Inclusion in multi-jurisdiction grand jury.



Recommendations

Recommendation 4: Virginia Code § § 18.2-346, 18.2-348, and 18.2-356 should be amended to include manual stimulation of another's genitals.



Recommendations

Recommendation 5: Enact Virginia Code § 9.1-117 to create a statewide Sex Trafficking Response Coordinator position at DCJS with the following responsibilities:

- Create a statewide response plan of action for when a sex trafficking victim is identified;
- Coordinate the development of standards and guidelines for treatment programs for sex trafficking victims;
- Oversee the development of a curriculum for persons convicted of solicitation of prostitution (“John school”);
- Promote education, training, and awareness of sex trafficking; and,
- Report annually on the status of Virginia’s response to sex trafficking.



Recommendations

Recommendation 6: Virginia Code § 19.2-368.3 should be amended to require the Criminal Injuries Compensation Fund (Virginia Victim Fund) to develop policies for the investigation and consideration of claims by victims of sex trafficking for reimbursement for medical care and other expenses from the Fund.



Recommendations

Recommendation 7: Enact Virginia Code § 9.1-118 to create a Virginia Prevention of Sex Trafficking Fund to be administered by DCJS to promote training, education, and awareness of sex trafficking.

- Enact Virginia Code § § 16.1-69.48:6 and 17.1-275.13 for the collection of fees for the Fund.



Recommendations

Recommendation 8: Virginia Code § 18.2-67.9 should be amended to allow juvenile victims and witnesses of sex trafficking to testify via two-way closed-circuit television under existing rules:

- Victim: Age 14 or under at the time of offense and age 16 or under at the time of trial; or,
- Witness: Age 14 or under at the time of trial.



Recommendations

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



Recommendations

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



Recommendations

Recommendation 11: Continue this study an additional year and request Crime Commission staff to work with stakeholders to:

- Identify strategies to enhance data collection and case tracking across multiple agencies;
- Examine the roles of existing multi-disciplinary teams and their response to sex trafficking;
- Work with stakeholders to include sex trafficking training at various conferences over the next year;



Recommendations

Recommendation 11 (cont.):

- Work with the Department of Education and school divisions to examine prevention strategies for at-risk youth;
- Assess options for assisting sex trafficking victims with obtaining personal identification documents;
- Identify available screening tools to identify at-risk youth and develop a plan for how a statewide uniform tool can be adopted; and,
- Identify any other strategies to address sex trafficking in Virginia.



Policy Decision Options

Policy Option 1: Amend Virginia Code § 18.2-346 to allow a petition for a child in need of services to be substituted for a delinquency petition for a minor arrested for prostitution if the minor is willing to participate in specialized services for those engaged in commercial sexual conduct (Endorse HB 984 as written).



Policy Decision Options

Policy Option 2: Amend Virginia Code § 19.2-392.2 to allow a person to petition for expungement of convictions for prostitution when the person was induced to engage in prostitution through the use of force, intimidation, or deception by another (Endorse HB 962 as written).



Policy Decision Options

Policy Option 3: Amend Virginia Code § 19.2-305.1 and § 19.2-368.15 to require mandatory restitution for juvenile victims of sex trafficking.



Technical Amendment to DNA Databank: Local Ordinances



DNA Databank: Local Ordinances

- Last year, SB 565 and HB 1249 were passed that expanded the list of misdemeanor crimes for the DNA Databank (trespass and assault and battery).
- It has come to our attention that some localities are charging only the local ordinance and not including the corresponding state code section on the summons.
- Staff is proposing a technical amendment to add language so it is clear that DNA shall be collected and included in the DNA Databank for convictions under similar local ordinances.



Recommendations

Recommendation 1: Virginia Code § 19.2-310.2 should be amended to include the “similar local ordinances” language found in the fingerprinting statute (§ 19.2-390).





Discussion

VIRGINIA STATE CRIME COMMISSION

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