

VIRGINIA STATE CRIME COMMISSION

2018 Annual Report: *Fingerprinting of Defendants*



Fingerprinting of Defendants

Executive Summary

During the course of two Crime Commission studies in 2017,¹ staff identified discrepancies between court data and criminal history record data in relation to the total number of charges and dispositions for particular offenses. Fingerprinting policies and procedures were suspected as the primary reason for this discrepancy. As a result, the Executive Committee of the Crime Commission authorized a study of the fingerprinting of defendants, which focused primarily on the link between fingerprinting and criminal history records.

The Central Criminal Records Exchange (CCRE) is administered by the Virginia State Police (VSP).² Information in the CCRE is used to generate an individual's criminal history record.³ Before a charge will appear on a criminal history record, an arrest report, including the fingerprints of the offender, must be submitted to the CCRE by a law enforcement agency.⁴ In order for the disposition of that charge to appear on the criminal history record, a case disposition report must also be submitted to the CCRE by the clerk of court.⁵

Criminal history records are used for a wide variety of criminal justice and civil purposes. The criminal justice purposes include, but are not limited to, determinations of first offender eligibility, terms and conditions of bond, sentencing guidelines, predicate offenses, DNA database inclusion, expungement, and latent fingerprint comparison. The civil purposes include, but are not limited to, employment and licensing eligibility, barrier crime exclusion, firearms background checks, and Sex Offender and Crimes Against Minors Registry inclusion.

Crime Commission staff discovered that a Hold File exists within the CCRE. This Hold File contains offenses and dispositions that the CCRE cannot apply to criminal history records.⁶ Approximately 90% of the unapplied offenses in the CCRE Hold File were due to missing fingerprints.⁷ Staff requested the CCRE Hold File from VSP to determine the number and type of offenses that were unable to be applied to criminal history records. Staff received the CCRE *Legacy System* Hold File in its entirety on November 28, 2018.⁸ Based on an analysis of the CCRE *Legacy System* Hold File, there were 706,944 offenses not applied to criminal history records due to missing fingerprints or other errors. Of the total number of offenses in the CCRE *Legacy System* Hold File, 33% (233,671 of 706,944) were felonies and 67% (473,273 of 706,944) were misdemeanors. A particular concern identified by staff was that the CCRE *Legacy System* Hold File contained over 134,000 felony convictions, including such serious offenses as murder, rape, and robbery.

Staff undertook measures to address the significantly large number of offenses contained in the CCRE Hold File and to prevent this issue from occurring in the future.⁹ Staff conducted research on whether offenses currently in the CCRE Hold File could be retroactively applied to an individual's criminal history record if fingerprints

had been or could be obtained. Staff determined that such offenses could be retroactively applied in certain circumstances.¹⁰

Staff also proposed numerous prospective actions that could be taken to ensure that fingerprints are consistently collected and submitted to the CCRE. As a result, legislation was enacted during the Regular Session of the 2019 General Assembly establishing numerous measures throughout the criminal justice process to ensure that fingerprints are taken and to require that criminal history records are reviewed to verify that offenses have been applied. These measures more clearly define the roles of VSP, law enforcement agencies, courts, clerks of court, Commonwealth's Attorneys, the Department of Corrections (DOC), and local community-based probation officers in the fingerprinting process. Various other aspects of the criminal justice process, such as suspended sentence and probation revocations and modifications, deferred and dismissed offenses, direct indictments, and restitution review hearings were also addressed.

Staff identified 727 statutes in the Virginia Code that contained jailable offenses for which a report to the CCRE was not required.¹¹ Staff proposed amending the Virginia Code to require additional offenses be reported to the CCRE.¹² Crime Commission members endorsed an expansion of the list to require CCRE reports for certain additional offenses.¹³ These particular offenses were selected because they were serious in nature, charged frequently, or served as predicate offenses to enhance punishments for future criminal violations. Ultimately, fourteen new offenses were added to the list of crimes that require a report to the CCRE, including the following Code sections: 3.2-6570 (cruelty to animals), 4.1-309.1 (school bus, possess or consume alcohol while transporting children), 5.1-13 (aircraft DWI), 15.2-1612 (impersonate sheriff, unauthorized person), 46.2-339 (drive school bus while required to register w/ sex offender registry), 46.2-341.21 (drive commercial vehicle after being disqualified), 46.2-341.24 (commercial DWI), 46.2-341.26:3 (refusal of breath test, 2nd DWI/refusal within 10 years), 46.2-817 (elude police), 58.1-3141 (embezzlement, <\$500 by treasurer), 58.1-4018.1 (larceny of lottery tickets, <\$500), 60.2-632 (false statement to obtain increased benefits), 63.2-1509 (fail to report rape of child), and 63.2-1727 (allow sex offender to reside/work/volunteer in day home).

Crime Commission members reviewed study findings at the October meeting and unanimously endorsed all 19 Recommendations from staff, along with Policy Decision Option 1-B, at the December meeting. No motions were made by the Crime Commission in regard to Policy Decision Options 1-A or 2.

Recommendation 1: Identify and reconcile “unapplied criminal history record information” by amending the Virginia Code as follows:

- § 9.1-101 to define “unapplied criminal history record information”;
- § 19.2-388 to require VSP to submit reports and reconcile information regarding unapplied criminal history record information with the Office of the Executive Secretary of the Supreme Court of Virginia (OES), Clerks of Court, Commonwealth's Attorney's, law enforcement agencies, and other agencies; and,

- § 19.2-388 to require VSP to submit an annual report to the Governor and General Assembly on the status of unapplied criminal history record information.

Recommendation 2: Amend Virginia Code § 19.2-390 to require that fingerprints be submitted for violations of a suspended sentence and probation, if the underlying offense is reportable to the Central Criminal Records Exchange.

Recommendation 3: Amend Virginia Code § 19.2-390 to require that charges brought by summons which are deferred and dismissed pursuant to the property (Va. Code § 19.2-303.2) and domestic assault and battery (Va. Code § 18.2-57.3) deferral statutes be reported to the CCRE.

Recommendation 4: Amend Virginia Code §§ 18.2-57.3 (first offense domestic assault and battery deferral), 18.2-251 (first offense drug possession deferral), 19.2-303.2 (certain property offenses deferral), 19.2-74, and 19.2-390 to require courts to do the following:

- determine whether fingerprints have been submitted at the time of deferral;
- order fingerprints to be taken at the time of deferral, if fingerprints were not previously submitted;
- verify that fingerprints were submitted prior to dismissing the case; and,
- report such offenses to the CCRE.

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

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 CCRE.

Recommendation 7: Amend Virginia Code § 19.2-303 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.

Recommendation 8: Amend Virginia Code § 19.2-390 to allow VSP to classify and file information received from correctional institutions as criminal history record information within the CCRE. In addition, amend Virginia Code § 53.1-23 to require the Department of Corrections (DOC) to provide fingerprints to the CCRE of all inmates received into a state correctional facility and to allow such fingerprints to be used as criminal history record information, unless otherwise prohibited by law.

Recommendation 9: Amend Virginia Code § 53.1-145 to require state probation officers to verify that the conviction for which a defendant is being supervised appears on his criminal history record prior to his release from supervised probation. If the conviction does not appear on the criminal history record, the state probation officer shall obtain fingerprints prior to release.

Recommendation 10: Amend Virginia Code § 9.1-176 to require local probation officers to verify that the conviction for which a defendant is being supervised appears on his criminal history record prior to his release from supervised probation. If the conviction does not appear on the criminal history record, the local probation officer shall order the defendant to submit to fingerprinting.

Recommendation 11: Amend Virginia Code § 19.2-305.1 to require the court at each restitution review hearing to verify that the charge for which the defendant was convicted appears on his criminal history record. If the charge does not appear, the court shall order the defendant to submit to fingerprinting.

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

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

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.

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

Recommendation 16: Request VSP to develop policies and procedures for referencing the CCRE Hold File when conducting criminal history records checks for certain criminal and civil purposes.

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 collection and submission of fingerprints and the relationship between fingerprints and criminal history records.

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.

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

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

- Option 1-A: Require CCRE reports for all jailable offenses.
- Option 1-B: Require CCRE reports for certain offenses not currently included.

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

Legislation was enacted for Recommendations 1 through 14 and Policy Decision Option 1-B during the Regular Session of the 2019 General Assembly.¹⁴ Bills introduced by Delegate Robert B. Bell (House Bill 2343) and Senator Mark D. Obenshain (Senate Bill 1602) encompassed all of the legislative recommendations and added fourteen new offenses that require a report to the CCRE. Legislation introduced by Senator A. Benton Chafin (Senate Bill 1529) also requires that a report be submitted to the CCRE for certain new offenses. Additionally, the Crime Commission sent letters to numerous agencies and entities requesting that administrative action be taken to address Recommendations 15 through 18. Finally, in accordance with Recommendation 19, Crime Commission staff will continue to monitor VSP's efforts to address unapplied criminal history record information currently in the CCRE Hold File.

Background

CRIMINAL HISTORY RECORD PURPOSES

Criminal history records are used for a wide variety of criminal justice and civil purposes. These records frequently inform critical decisions and therefore the completeness and accuracy of such records is paramount. The dissemination of criminal history record information by the CCRE is prohibited, except to specific parties or in specific circumstances as authorized by law.¹⁵

Criminal history records are used within the criminal justice system for such purposes as first offender eligibility, bail determinations, sentencing guidelines, predicate offenses, DNA database inclusion, expungement, and latent fingerprint comparison. The information contained in these records may be used at multiple stages of the criminal justice process and can impact the outcome of cases in a myriad of ways. Additionally, criminal history records are used for various civil purposes, such as employment and licensing eligibility, barrier crime exclusion, firearms background checks, and Sex Offender and Crimes Against Minors Registry inclusion.

RELATIONSHIP BETWEEN CRIMINAL HISTORY RECORDS AND FINGERPRINTS

In order for an offense to appear on a criminal history record, a report that includes the fingerprints of the defendant must be submitted to the CCRE.¹⁶ Fingerprints have been used as a means of identification for over 100 years due to their uniqueness and consistency over time.¹⁷ By collecting fingerprints at the time of arrest or disposition, a *definitive* identification can later be made of the individual who was arrested or appeared before the court on the charge. While other data included with the arrest or disposition record (e.g., name, address, date of birth, social security number, race, and sex) may allow for a means of identification, the degree of certainty does not always allow for a *definitive* identification. Without fingerprints, it is extremely difficult to conclusively link an offense on a criminal history record to the person who was arrested or convicted of that offense.

The Virginia Code requires that reports of criminal offenses be submitted to the CCRE by law enforcement agencies and clerks of court in certain circumstances.¹⁸ The Code requires law enforcement agencies to submit an arrest report, including fingerprints, to the CCRE.¹⁹ Clerks of court are not required to collect fingerprints, but are required to submit a case disposition report to the CCRE.²⁰ The CCRE links the case disposition report to the arrest report.²¹ The CCRE uses the fingerprints as “positive identification” information in order to apply the offense to an individual’s criminal history record.²² If no arrest report was submitted, or if no fingerprints were taken or provided to the CCRE, then the offense will not be applied to the individual’s criminal history record.²³ If an arrest report, including fingerprints, was submitted to the CCRE, but no case disposition report was submitted, the offense will be applied to the individual’s criminal history record, but no disposition will be noted on that record.

Virginia is a Criminal Justice Information Services (CJIS) Systems Agency signatory state and has agreed to adhere to the Federal Bureau of Investigation’s (FBI) CJIS policies, which include providing fingerprints that meet submission criteria for qualifying arrests.²⁴ Virginia benefits from this arrangement by receiving access to criminal history record information from other states that also utilize the FBI’s CJIS data programs and services.²⁵ One segment of the CJIS program is the Interstate Identification Index System (III), which is an automated system that allows for the storage and exchange of criminal history record information between the federal government and states.²⁶ Criminal history record information in the III is created and supported through the submission of fingerprint images.²⁷ Every three years the FBI audits participants in its CJIS programs for compliance with policies and standards and may impose sanctions against any participant for non-compliance.²⁸ Virginia State Police were last audited in October 2018.²⁹

Fingerprints are also necessary in order for reliable comparisons to be made as part of the expungement and criminal history record challenge process.³⁰ The Virginia Code specifically requires that the fingerprints of an individual seeking expungement be taken by law enforcement and submitted to the CCRE along with a copy of the petition for expungement.³¹ Fingerprints are used to associate the individual seeking to expunge or challenge an offense with the particular criminal history record that is being expunged or challenged.

CCRE HOLD FILE DATA

The CCRE Hold File contains offenses and dispositions submitted to the CCRE that cannot be applied to criminal history records.³² If an offense is contained in the CCRE Hold File, that offense will not appear on an individual’s criminal history record. Staff requested the CCRE Hold File from VSP to determine the number and type of offenses that were unable to be applied to criminal history records. Staff received the CCRE *Legacy System* Hold File in its entirety on November 28, 2018.³³

Based on staff’s analysis of the CCRE *Legacy System* Hold File, there were 706,944 offenses not applied to criminal history records due to missing fingerprints or other errors.³⁴ Of the total number of offenses in the Hold File:

- 33% (233,671 of 706,944) were felonies; and,
- 67% (473,273 of 706,944) were misdemeanors.

Staff determined that 60% (424,060 of 706,944) of the offenses within the CCRE *Legacy System* Hold File were convictions:

- 57% (134,258 of 233,671) of felony offenses resulted in convictions; and,
- 61% (289,802 of 473,273) of misdemeanor offenses resulted in convictions.

Felony Convictions

The remainder of the analysis primarily focused on the 134,258 felony convictions within the CCRE *Legacy System* Hold File.³⁵ Nearly all of the felony convictions were for arrests made between 2000-2016.³⁶ Table 1 illustrates the most frequent felony convictions in the CCRE *Legacy System* Hold File. The majority of the felony convictions not applied to criminal history records were probation/supervision violations,³⁷ followed by fraud, larceny, and drug offenses.

Table 1: Felony Convictions Not Applied to Criminal History Records by VCC Category³⁸

Rank	Felony VCC Category	Total	Percent
1	Probation/Supervision Violations	62,419	47%
2	Fraud	14,827	11%
3	Larceny	13,247	10%
4	Narcotics	11,233	8%
5	Assault	5,841	4%
6	Burglary	5,277	4%
7	Robbery	3,316	3%
8	Rape	1,866	1%
9	Weapon Violations	1,844	1%
10	License-Related Offenses	1,797	1%
---	<i>All Other Felony Convictions</i>	<i>12,591</i>	<i>9%</i>
	TOTAL FELONY CONVICTIONS	134,258	100%

Source: Virginia State Police, CCRE *Legacy System* Hold File. Analysis by Crime Commission staff.
Figures do not equal 100% due to rounding.

Of the 134,258 felony convictions in the CCRE *Legacy System* Hold File, there were *at least* the following number of serious convictions that had not been applied to criminal history records:

- 61 convictions for capital murder under § 18.2-31;
- 271 convictions for first or second degree murder under § 18.2-32;
- 276 convictions for rape under § 18.2-61;
- 279 convictions for carnal knowledge of a child (age 13-15) under § 18.2-63;
- 385 convictions for forcible sodomy under § 18.2-67.1;
- 143 convictions for object sexual penetration under § 18.2-67.2; and,
- 619 convictions for aggravated sexual battery under § 18.2-67.3.

It must be underscored that the figures presented above represent the number of convictions for felony offenses rather than unique individual defendants.

Number of Unique Individual Defendants Convicted of Felonies

Crime Commission staff conducted a cursory analysis and estimated that there were approximately 55,000 unique individual convicted felons in the CCRE *Legacy System* Hold File.³⁹ To validate this initial estimate, staff requested individual criminal history records for each of the 134,258 felony convictions in the CCRE *Legacy System* Hold File, as well as 281 felony offenses with deferred and dismissed dispositions, and 166 felony offenses with a not guilty by reason of insanity (NGRI) disposition. The goal of this effort was to determine:

- how many unique individuals were in the Hold File for these 134,705 dispositions;
- how many of these individuals had an existing state identification (SID) number;⁴⁰ and,
- how many of these individuals did not have a SID number.

Overall, 93% (125,381 of 134,705) of the felony offenses contained in the CCRE *Legacy System* Hold File linked up with an existing SID number (i.e., a criminal history record). Specifically, there were 125,381 felony offenses that linked to 58,852 unique SID numbers.⁴¹ This total number of unique SID numbers validated staff's initial estimate of unique individuals.

The remaining felony offenses contained in the CCRE *Legacy System* Hold File had the following outcomes:

- 5% (6,802 of 134,705) did not link to a unique SID number; and,
- 2% (2,522 of 134,705) were indeterminate as the syntax requirements to request an individual criminal history record were not met.

Further Analysis of the CCRE Hold File

Further analysis is required by VSP in order to accurately determine the full scope and content of both the CCRE *Legacy System* and *Replacement System* Hold Files.

Most importantly, efforts must first be made to address the 6,802 felony offenses with no SID match. These individuals are of utmost concern because they have no existing criminal history record to preclude them from activities prohibited to felons.

Second, it is important to determine how many of the individuals with a SID number match had a prior felony or misdemeanor conviction. Individuals *without* such existing convictions are also of a high priority because they have no existing criminal history record to preclude them from activities prohibited to felons.

Third, prompt efforts must be made to address the 2,522 felony offenses that did not meet the syntax for requesting individual criminal history records. These individuals could fall into either the group with no SID match or the group with a SID match but no prior felony or misdemeanor convictions.

Fourth, instances where an individual had more than one SID number need to be reviewed and clarified. There were 1,224 cases where an individual was linked to more than one SID number.

Finally, there were thousands of felonies in the CCRE *Replacement System* Hold File (with a disposition of guilty, deferred and dismissed, or NGRI) that need to be addressed. VSP needs to promptly determine the scope of the defect in the CCRE *Replacement System* so a similar analysis can be conducted on its Hold File.

RETROACTIVE APPLICATION OF FINGERPRINTS TO OFFENSES

Staff conducted research on whether fingerprints could be taken from defendants for offenses currently in the CCRE Hold File so that such offenses could be retroactively applied to those defendants' criminal history records. Staff determined that defendants could be ordered to submit to fingerprinting in certain circumstances, including defendants who are incarcerated, as a condition of a suspended sentence or probation, or when the court had entered an order that fingerprints be taken.

The court may issue an order for fingerprints to be taken as a condition of a suspended sentence or probation.⁴² Defendants convicted of a felony offense are required to provide fingerprints as a condition of probation if ordered by the court.⁴³ Courts commonly use a form produced by the Office of the Executive Secretary of the Supreme Court of Virginia (OES), entitled *Order for DNA or HIV and Hepatitis B, C Viruses Testing and/or for Preparation of Reports to Central Criminal Records Exchange* (CC-1390), when entering such an order.⁴⁴ This order may result in the defendant being remanded into custody or directed to report to a specific law enforcement agency at a specific date and time for fingerprints to be taken.

If a defendant failed to comply with a court order to submit to fingerprinting and the period of the suspended sentence or probation ended less than a year prior to the failure to comply, the court can issue process to revoke the suspended sentence or probation for failure to comply with that order.⁴⁵ If the court ordered fingerprinting as a condition of the suspended sentence or probation, but the period of the suspended sentence or probation ended more than one year prior to the failure to comply, the court can issue process for contempt for failure to comply with its order.⁴⁶

If the court did not order the defendant to provide fingerprints as a condition of the suspended sentence or probation at the time of sentencing, the court has the authority to modify the terms of a sentence at any time while the defendant remains in the custody of a local jail.⁴⁷ Therefore, persons convicted of felony or misdemeanor offenses who are in the custody in local jails can be brought before the court and ordered to submit to fingerprinting as a condition of the sentence.⁴⁸ The court also has the authority to modify the conditions of probation at any time during the period of probation.⁴⁹ In order to add fingerprinting as a condition of the suspended sentence or probation, the court must conduct a hearing and provide reasonable notice to the defendant.⁵⁰

Additionally, staff noted that numerous defendants who were convicted of an offense, but not fingerprinted, are currently or were previously held in custody at a state

correctional facility. The Department of Corrections (DOC) is required to take fingerprints, a photograph, and a description of each person it receives into a state correctional facility for identification purposes.⁵¹ Additionally, DOC must cooperate with other agencies as it deems appropriate to take fingerprints of persons charged with the commission of a felony.⁵² If an individual was convicted of a felony offense and committed to a state correctional facility, the fingerprints taken by DOC could be used to link an offense to that person's criminal history record.⁵³

Staff also determined that the court has limited authority to require a defendant to submit to fingerprinting if such a condition was not ordered at the time of sentencing. Subject to specific exceptions noted above, the terms and conditions of a sentence cannot be modified by the court after 21 days from entry of the final order.⁵⁴ If the defendant is no longer incarcerated in a local jail or on probation, the court lacks authority under the Virginia Code to modify the terms of the suspended sentence or probation to require that the defendant submit to fingerprinting. Furthermore, if an offense in the CCRE Hold File was *dismissed* or resulted in a finding of *not guilty*, the court has no authority to require fingerprinting in relation to that offense because the defendant no longer remains subject to the jurisdiction of the court.

Recommendations and Legislation

Staff undertook measures to address the significantly large number of offenses in the CCRE Hold File and to prevent this issue from occurring in the future.⁵⁵ Consequently, staff proposed numerous prospective and retrospective recommendations to Crime Commission members to ensure that fingerprints are consistently collected and submitted to the CCRE as required.

These recommendations were based on four key principles. First, VSP must work with stakeholders to ensure that offenses currently in the CCRE Hold File are applied to criminal history records. Second, the Virginia Code must clearly define the roles and responsibilities of each stakeholder in the fingerprinting process. Third, measures must be implemented in the process to verify that fingerprints were submitted to the CCRE and to quickly identify instances where an offense does not appear on an individual's criminal history record. Fourth, stakeholders must be properly trained to perform their duties and responsibilities as part of the fingerprinting process. These four principles formed the foundation of two identical omnibus bills that were enacted during the Regular Session of the 2019 General Assembly,⁵⁶ along with letters sent by the Crime Commission requesting that various agencies and entities take administrative actions in relation to the fingerprinting process. This legislation establishes numerous measures throughout the criminal justice process to ensure that fingerprints are taken and to require that criminal history records are reviewed to verify that offenses have been applied.⁵⁷ A brief summary of these legislative changes classified by entity and new responsibilities can be found in *Appendix 1* of this report.

DEFINING UNAPPLIED CRIMINAL HISTORY RECORD INFORMATION⁵⁸

Staff discovered that the Virginia Code did not address information that had been submitted to the CCRE but not applied to a criminal history record (i.e., the CCRE Hold

File). Therefore, the following definition of “unapplied criminal history record information” was added to Virginia Code § 9.1-101:

“[I]nformation pertaining to criminal offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.”

VIRGINIA STATE POLICE⁵⁹

The CCRE serves as a repository for criminal records and operates as a distinct division within VSP.⁶⁰ The CCRE is tasked with receiving, classifying, and filing criminal history record information, furnishing such information to authorized recipients, and maintaining a separate storage system for juvenile records.⁶¹ Numerous measures were endorsed by the Crime Commission and enacted into law in relation to the role of VSP in the fingerprinting process and the administration of the CCRE.

First, Virginia Code § 19.2-388 was amended to impose several additional responsibilities on the CCRE, including requirements to:

- submit periodic reports that identify unapplied criminal history record information to stakeholders;
- reconcile any offenses that cannot be applied to criminal history records; and,
- submit an annual report to the Governor and General Assembly on the status of unapplied criminal history record information and any updates to fingerprinting policies and procedures.

Second, Virginia Code § 19.2-390 was amended to allow the CCRE to classify and file information received from DOC or any correctional institution, including fingerprints, as criminal history record information unless otherwise prohibited by law. This change was significant because the CCRE began receiving fingerprints from DOC in June 2006.⁶² As of November 30, 2018, the CCRE had received 321,962 fingerprints of incarcerated individuals and 202,787 fingerprints of individuals on probation/parole from DOC. While these fingerprints have been submitted to the CCRE, they have only been used for “correctional status information”, and not “criminal history record information” purposes, because DOC was not considered an arresting agency by VSP.⁶³

Third, Virginia Code § 19.2-390.03 was enacted to require VSP to develop a model policy on the collection of fingerprints and reporting of criminal history record information to the CCRE. This policy must be disseminated to all law enforcement agencies in the Commonwealth. Ultimately, fingerprints submitted by law enforcement must be compatible with CCRE requirements in order to link offense information to individual defendants. VSP is in the best position to communicate these requirements to law enforcement agencies because it administers the CCRE.

Fourth, an enactment clause was included in the legislation to require VSP to make reasonable efforts to ensure that the offenses identified by staff in the CCRE Hold File are applied to criminal history records. This includes identifying and prioritizing felony convictions currently in the CCRE Hold File and providing a list of those convictions to the arresting law enforcement agency and the Commonwealth's Attorney. Such efforts should also consist of a further analysis of the Hold File by VSP as described in the CCRE Hold File Data section above. The legislation authorizes the sharing of information between VSP and other state and local government agencies in order to complete these efforts. Virginia State Police are required to report to the Governor and the Chair of the Crime Commission on the progress of these efforts by November 1, 2019.

Fifth, a third enactment clause was included in the legislation which requires VSP to work with the Virginia Department of Criminal Justice Services (DCJS) to develop a form for local community-based probation officers to use when directing defendants on supervision to submit to fingerprinting.

Sixth, the Crime Commission sent a letter requesting that VSP take administrative actions to:

- develop a brief reference guide of CCRE reportable offenses for law enforcement agencies;
- develop policies and procedures for referencing the CCRE Hold File when conducting background checks for both criminal and civil purposes; and,
- provide training to VSP personnel and other law enforcement agencies on the collection and submission of fingerprints and the relationship between fingerprints and criminal history records.

The General Assembly recognized that VSP would require additional resources in order to accomplish some of these responsibilities. Therefore, the 2019 budget bill included funding for technology enhancements to the CCRE and additional positions (\$197,920 in the first year for a modification to the CCRE and \$211,947 for three positions in the second year) to address the recommendations of the Crime Commission.⁶⁴

LAW ENFORCEMENT AGENCIES⁶⁵

Under existing Virginia law, if an individual is arrested for an offense that requires a CCRE report, the law enforcement agency that effectuates the arrest is required to collect fingerprints and submit that report.⁶⁶ If the individual is arrested and brought before a magistrate, but released on bail prior to being committed to jail, fingerprints may be collected at the facility where the magistrate is located.⁶⁷ If a person is charged via a summons, the report is not required and fingerprints cannot be taken until a specified case disposition occurs.⁶⁸

While law enforcement agencies are required to report every arrest of a CCRE reportable offense, staff discovered that in some instances a defendant may be arrested on multiple charges, but the arresting law enforcement agency may submit fingerprints for only one or some of those charges. Therefore, Virginia Code § 19.2-

390 was amended to clarify that a CCRE report and fingerprints are required for “each charge when any person is arrested.”⁶⁹

Because Live Scan technology is in place across the Commonwealth, law enforcement agencies do not have to obtain numerous distinct sets of fingerprints for the same arrested defendant.⁷⁰ The Live Scan device can process fingerprints for up to fifteen offenses at one time for an arrested individual.⁷¹ Therefore, if an individual was charged with fifteen offenses, he could be fingerprinted one time on the Live Scan device and that set of fingerprints would be applied to all fifteen offenses. If that individual was charged with more than fifteen offenses, fingerprints would be required from that person for any additional offenses in the same fifteen offense increments.

Staff found that the Virginia Code was clear that a report and fingerprints must be submitted to the CCRE when a law enforcement agency arrests an individual on a *capias* for failure to appear;⁷² however, the Code did not specify whether a report was required following an arrest on a *capias* that was issued for any other reason. To address this ambiguity, Virginia Code § 19.2-390 was amended to clarify that law enforcement agencies must submit a report to the CCRE if they arrest an individual on a *capias* for an alleged violation of the terms or conditions of a suspended sentence or probation for an underlying felony offense.

In addition to these changes, Virginia Code §§ 19.2-74 and 19.2-392 were also amended to allow law enforcement agencies to take fingerprints for offenses that were charged via summons and deferred pursuant to the first offense domestic assault and battery,⁷³ first offense drug possession,⁷⁴ and certain property offense statutes.⁷⁵

COURTS

Numerous recommendations from the Crime Commission addressed instances where a defendant’s criminal history record could be reviewed when he appeared before the court. This presented an opportune time for the court to determine whether an offense appeared on a defendant’s criminal history record and whether fingerprints had been taken and, if not, to order that the defendant’s fingerprints be taken.

Verification of Fingerprinting at Sentencing⁷⁶

Under existing law prior to July 1, 2019, the court was required to determine at every felony sentencing hearing whether fingerprints had been taken from the defendant, and if not, to order that such fingerprints be taken as a condition of probation.⁷⁷ This provision did not encompass all instances where fingerprints and a report to the CCRE were required, such as misdemeanor offenses or felony sentences that did not include a term of probation. In order to ensure that fingerprints are taken for every offense when a CCRE report is required, Virginia Code § 19.2-303 was amended to require the court to determine at any sentencing (felony or misdemeanor) whether fingerprints have been taken for any CCRE reportable offense. If such fingerprints have not been taken, the court must order fingerprinting as a condition of the suspended sentence or probation.

Felony Violations of Suspended Sentence or Probation Conditions⁷⁸

Existing law prior to July 1, 2019, was unclear whether suspended sentence revocations and/or probation violations required a CCRE report. Two arguments could be made that such a report was required. First, a suspended sentence revocation or probation violation is in effect a re-sentencing of the underlying offense.⁷⁹ Second, a felony suspended sentence revocation or probation violation could be encompassed by the “any felony” provision requiring CCRE reports upon arrest of any felony charge.⁸⁰

Conversely, arguments could also be made that such a report was not required. Suspended sentence revocations and probation violations are not technically “criminal offenses” as defined by Virginia case law.⁸¹ Moreover, neither suspended sentence revocations nor probation violations are specifically listed as offenses that require a CCRE report.⁸² Furthermore, while the Virginia Code is silent on whether a summons to show cause issued by the court requires a CCRE report and fingerprinting, an Attorney General’s Opinion advises that such judicial issued process be treated in a similar manner to a criminal summons.⁸³

In order to address this significant ambiguity, Virginia Code § 19.2-390 was amended to require the court to order that fingerprints be taken and a report be submitted to the CCRE when any defendant is found to be in violation of the terms or conditions of a suspended sentence or probation for an underlying felony offense. The legislation did not address suspended sentence revocations or probation violations for misdemeanor offenses due to the significant number of misdemeanors that do not require a CCRE report and the confusion that such a requirement could cause in the field.

Deferred and Dismissed Offenses⁸⁴

Staff identified multiple concerns within existing law prior to July 1, 2019, relating to deferred and dismissed offenses. First, for offenses charged via summons, the Virginia Code only allowed for fingerprints to be taken for offenses that were deferred and dismissed under the first offender drug possession statute (Virginia Code § 18.2-251).⁸⁵ The Virginia Code did not authorize fingerprints to be taken for any other CCRE reportable offense, if charged via summons, that was deferred and dismissed pursuant to some other statute. Furthermore, staff found that if fingerprints were not collected and submitted to the CCRE for an offense that was deferred and dismissed, such offense would not appear on the defendant’s criminal history record. This could allow a defendant multiple opportunities to have a charge deferred and dismissed when certain Virginia Code provisions, such as the first offender drug possession and first offense domestic assault and battery statutes, allow for only one such deferral and dismissal.⁸⁶

Two measures were enacted to address these concerns. First, Virginia Code § 19.2-390 was amended to require that law enforcement agencies and clerks of court submit fingerprints and reports to the CCRE for various deferred and dismissed offenses charged via summons, including first offense domestic assault and battery,⁸⁷ first offense drug possession,⁸⁸ and certain property offenses.⁸⁹ These fingerprinting

and reporting requirements are meant to ensure that all of these types of deferred and dismissed offenses appear on criminal history records.

Second, Virginia Code §§ 18.2-57.3 (first offense domestic assault and battery deferral), 18.2-251 (first offense drug possession deferral), and 19.2-303.2 (certain property offenses deferral) were amended to require the court to determine at the time of deferral whether fingerprints had been taken for the offense being deferred, and if not, to order that fingerprints be taken. Furthermore, the court must determine that fingerprints were taken for the offense that was deferred before dismissing the charge. This measure will ensure that fingerprints are taken for all of these types of offenses that are deferred and dismissed.

Direct Indictments⁹⁰

Fingerprinting is required when an individual is arrested for a CCRE reportable offense based upon a direct indictment.⁹¹ The legal instrument that authorizes this arrest is a *capias* that is issued when the direct indictment is returned.⁹² If the indictment is for a felony, a *capias* must be issued; while either a *capias* or summons may be issued for a misdemeanor offense.⁹³ Under existing law prior to July 1, 2019, if the defendant was not in custody when the direct indictment was returned, the judge was required to issue process to bring the defendant before the court.⁹⁴ However, if the defendant was in custody at the time the direct indictment was returned, such process was not required. As a result, fingerprints may not have been taken from defendants who were in custody when a direct indictment was returned.

Virginia Code §§ 19.2-232 and 19.2-390 were amended to address this gap in the process by requiring that fingerprints be taken of defendants who are in custody when a direct indictment is returned. The Commonwealth's Attorney must notify the court at the first appearance that (i) the defendant was in custody at the time the direct indictment was returned and (ii) a report to the CCRE, including fingerprints, is required for the newly indicted offense. Upon such notification, the court shall order that fingerprints be taken and a report submitted to the CCRE. The court may order that either a law enforcement agency or the agency having custody of the defendant take such fingerprints and submit the report to the CCRE.

Restitution Review Hearings⁹⁵

Last year, legislation was enacted requiring courts to conduct review hearings to ensure that defendants were complying with the terms of restitution orders.⁹⁶ These hearings often require the defendant to appear before the court, and thus afford the court an opportunity to verify that the offense for which the defendant was convicted appears on his criminal history record.

Virginia Code § 19.2-305.1 was amended to require the court to review the defendant's criminal history record at the restitution review hearing to verify that the offense for which the defendant was convicted (CCRE reportable offenses only) appears on such record. The court is not required to review the criminal history record if it previously verified that the offense appears on the record. The criminal history record must be provided to the court by the probation officer for defendants

on supervised probation or by the Commonwealth's Attorney for defendants not on supervised probation, if the Commonwealth's Attorney participated in the prosecution of the case.

If the offense does not appear on the criminal history record, the court must order that fingerprints be taken by a law enforcement agency and a report be submitted to the CCRE. If fingerprints were taken and the offense still does not appear on the record, then either the probation officer or the Commonwealth's Attorney must notify the CCRE.

Modification of the Terms of a Suspended Sentence Or Probation⁹⁷

Under existing Virginia rules, the court is limited in its ability to modify a sentence after 21 days of the final order.⁹⁸ It is likely that there are offenses in the CCRE Hold File where the defendant remains subject to the jurisdiction of the court, but where the court lacks the authority to require the defendant to submit to fingerprinting. As such, Virginia Code § 19.2-303.02 was enacted to allow the court to modify the terms or conditions of a suspended sentence or probation at any time during the period of suspension or probation in order to require the defendant to submit to fingerprinting. To satisfy due process requirements, the court must provide reasonable notice to the defendant and conduct a hearing prior to modifying these terms or conditions.

CLERKS OF COURT⁹⁹

Existing Virginia law prior to July 1, 2019, required reports from clerks to the CCRE for certain offenses, which in practice entailed clerks submitting case disposition reports to the CCRE for offenses charged via summons where fingerprints had not yet been taken or transmitted to the CCRE.¹⁰⁰ Since the CCRE had not yet received fingerprints from a law enforcement agency in relation to the summonsed offense, the case disposition report submitted by the clerk could not be applied to the defendant's criminal history record. This could cause an increase in the number of offenses in the CCRE Hold File for offenses where the law did not allow fingerprints to be taken until after the final disposition of the case. As such, Virginia Code § 19.2-390 was amended to allow clerks to submit case disposition reports to the CCRE for offenses charged via *summons* after (i) a conviction, unless an appeal is noted; (ii) a deferral or dismissal of certain drug, domestic assault and battery, and property offenses; or, (iii) an acquittal by reason of insanity.

COMMONWEALTH'S ATTORNEYS¹⁰¹

The Virginia Code did not define a role in the fingerprinting process for Commonwealth's Attorneys. The legislation imposed two new duties on Commonwealth's Attorneys to ensure that fingerprints are taken and offenses appear on criminal history records. First, as noted in the above section on direct indictments, Virginia Code §§ 19.2-232 and 19.2-390 were amended to require the Commonwealth's Attorney to notify the court at the first appearance that (i) the defendant was in custody at the time a direct indictment was returned and (ii) a report to the CCRE, including fingerprints, is required for the newly indicted offense.

Second, as addressed in the above restitution review hearings section, Virginia Code § 19.2-305.1 was amended to require the Commonwealth's Attorney to provide criminal history records of defendants who are not on supervised probation to the court at such hearings, if the Commonwealth's Attorney participated in the prosecution of the case. If it is determined during the hearing that fingerprints were taken and the offense for which the defendant was convicted still does not appear on his criminal history record, the Commonwealth's Attorney must notify the CCRE.

DEPARTMENT OF CORRECTIONS

Staff determined that DOC can serve an important role in verifying that convictions appear on defendants' criminal history records and providing information and fingerprints to the CCRE when such convictions are not present. Such verifications can be conducted by DOC staff both for defendants incarcerated in state correctional facilities and those on state supervised probation.

DOC State Correctional Facilities¹⁰²

Certain defendants may be committed to state correctional facilities to serve all or a portion of their sentence. Several existing Virginia Code provisions required or granted authorization for correctional officers to collect fingerprints for correctional record keeping purposes and to report that information to the CCRE. First, state correctional facilities are required to collect fingerprints from persons in their custody upon intake.¹⁰³ Second, DOC is directed to cooperate with "federal, state, county and city law-enforcement agencies, insofar as it may deem proper, in disclosing information concerning such persons and in the taking of fingerprints and photographs of persons charged with the commission of a felony."¹⁰⁴ Lastly, corrections officials, sheriffs, and superintendents of regional jails are required to report changes in an inmate's correctional status to the CCRE.¹⁰⁵

Because none of these authorizations specifically related to fingerprinting for criminal history record purposes, Virginia Code § 53.1-23 was amended in two ways to help ensure that the conviction for which the defendant is serving his sentence appears on his criminal history record. First, DOC will be required to submit fingerprints to the CCRE of any defendant it receives in a state correctional facility who is serving a sentence for an offense that requires a report to the CCRE. Second, at least 60 days prior to releasing the defendant from incarceration, DOC must verify that the offense for which the defendant is serving a sentence appears on his criminal history record. If the offense does not appear, DOC must take and submit the defendant's fingerprints to the CCRE and provide notice to the CCRE that the offense does not appear on the criminal history record.

It is important to note that these requirements only apply to inmates committed to DOC state correctional facilities. These verifications are not required for inmates who receive prison sentences, but are not transferred from local or regional jails to the custody of DOC.

DOC State Probation And Parole Officers¹⁰⁶

Under existing law prior to July 1, 2019, if an individual was convicted of a felony and fingerprints had not previously been obtained, the court was required to order fingerprinting as a condition of probation;¹⁰⁷ however, the Virginia Code did not grant express authority to state probation and parole officers to collect fingerprints.¹⁰⁸ While state probation and parole officers were granted authority to administer drug and alcohol tests¹⁰⁹ and to require or collect DNA samples,¹¹⁰ no such power was granted to collect fingerprints.

Because numerous defendants are ordered to report to probation as a condition of their sentence, and because some offenders in Virginia remain eligible for parole, two provisions of the Virginia Code were amended in relation to the roles and responsibilities of state probation and parole officers regarding fingerprinting.

First, Virginia Code § 53.1-145 was amended to require state probation officers to verify that the offense for which a defendant is being supervised appears on his criminal history record. For defendants currently on probation as of July 1, 2019, probation officers must verify that the offense for which the defendant is being supervised appears on his criminal history record prior to *release* from supervision, and if it does not, the officer must take and submit the defendant's fingerprints to the CCRE and provide notice to the CCRE that the offense does not appear on the criminal history record.

For defendants reporting to supervised probation on or after July 1, 2019, upon *intake* the probation officer must take and submit the defendant's fingerprints to the CCRE, review the defendant's criminal history record to ensure the offense for which he is being supervised appears on the record and, if it does not, provide notice to the CCRE.

Second, Virginia Code § 53.1-165 was amended to require DOC to take fingerprints and a photograph of any defendant whose parole was revoked for an underlying felony offense and to submit such information to the CCRE. This provision ensures that parole violations, like violations of a suspended sentence and probation, are communicated to the CCRE.

Additionally, as noted in the above restitution review hearings section, Virginia Code § 19.2-305.1 was amended to require probation officers to provide criminal history records of defendants who are on supervised probation to the court at such hearings. If it is determined during the restitution review hearing that fingerprints were taken and the offense for which the defendant was convicted still does not appear on his criminal history record, the probation officer must notify the CCRE.

LOCAL COMMUNITY-BASED PROBATION OFFICERS¹¹¹

Local community-based probation officers can also serve an important role in verifying that convictions appear on defendants' criminal history records. Existing Virginia law neither defined a role in the fingerprinting process nor granted express authority to local community-based probation officers to collect fingerprints.¹¹² As

such, Virginia Code § 9.1-176.1 was amended to require local officers to review a defendant's criminal history record at least 60 days prior to release from supervision to verify that the offense for which a defendant was being supervised appears on his criminal history record. If the offense does not appear, the local probation officer must:

- order the offender to report to the law enforcement agency that made the arrest for such offense or to the Department of State Police and submit to having his fingerprints and photograph taken;
- provide notification of such to the CCRE; and,
- verify that the fingerprints and photographs were taken as directed.

A third enactment clause in the legislation required VSP, in coordination with DCJS, to develop a form for local probation officers to use when directing the defendant to submit to fingerprinting. The purpose of this form is to provide (i) a uniform method of ordering such fingerprinting, (ii) information to law enforcement agencies about the defendant and the offenses for which fingerprinting is required, and (iii) a method for verifying that fingerprinting was completed as directed.

Additionally, as detailed in the restitution review hearings section above, Virginia Code § 19.2-305.1 was amended to require probation officers to provide criminal history records of defendants who are on supervised probation to the court at such hearings. If it is determined during the restitution review hearing that fingerprints were taken and the offense for which the defendant was convicted still does not appear on his criminal history record, the probation officer must notify the CCRE.

OFFICE OF THE EXECUTIVE SECRETARY OF THE SUPREME COURT OF VIRGINIA¹¹³

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) is responsible for maintaining the Uniform Statute Table (UST) in Virginia. The UST is used by various agencies, such as VSP, OES, and the Department of Motor Vehicles, and is in the software for Live Scan devices, to determine whether or not a specific offense is reportable to the CCRE.¹¹⁴ DCJS was tasked with managing this table before OES assumed responsibility for its maintenance.¹¹⁵ While the table is updated annually to reflect newly enacted laws, some portions of the table are under- or over-inclusive and do not accurately reflect whether an offense is or is not reportable to the CCRE.¹¹⁶ Based on this information, the Crime Commission sent a letter requesting that OES work with other users of the table to update and implement a revised version of the UST by July 2019.

ADMINISTRATIVE REGULATIONS (DCJS AND VSP)¹¹⁷

While the CCRE operates as a division within VSP, the agency responsible for the regulations relating to criminal history record information is DCJS.¹¹⁸ Several of these regulations have a significant impact on fingerprinting and criminal history record policies and procedures. One regulation outlines the challenge process by which an individual may petition to have an offense or disposition removed from their criminal history record.¹¹⁹ Another requires DCJS to conduct an annual audit of state and local criminal justice agencies to ensure compliance with the regulations and to ensure that

criminal history records are accurate and complete.¹²⁰ A third details administrative sanctions DCJS may impose on law enforcement agencies and courts when they fail to comply with fingerprinting and CCRE report submission requirements.¹²¹ It is significant to note that in the event of any conflicts of law, DCJS determinations relating to the CCRE will take precedence over VSP policies and procedures.¹²²

Staff encouraged VSP and DCJS to work jointly in reviewing these regulations to ensure that they are up-to-date, consistent with state and federal law, and to minimize any duplication of efforts or resources by each agency. Staff further requested that VSP and DCJS examine whether any of the existing regulatory duties should be transferred from DCJS to VSP.

TRAINING¹²³

Staff recommended that training be provided to numerous agencies and entities in regard to the fingerprinting process and the link between fingerprints and criminal history records. The Crime Commission sent letters requesting that the following agencies and entities provide training to their personnel and/or membership in regard to these matters:

- Commonwealth's Attorneys' Services Council;
- Office of the Executive Secretary (judges and clerks of court);
- Virginia Association of Chiefs of Police & Foundation, Inc.;
- Virginia Community Criminal Justice Association;
- Virginia Court Clerks' Association;
- Virginia Department of Corrections;
- Virginia Department of Criminal Justice Services (law enforcement officers and local community-based probation officers);
- Virginia Sheriffs' Association; and,
- Virginia State Police.

OTHER RELEVANT STATUTES AND CONSIDERATIONS

Several other existing statutes and factors impact when defendants may be fingerprinted. District court judges may require law enforcement agencies to take the fingerprints of any person who has been arrested and charged with a misdemeanor other than a traffic offense.¹²⁴ Any judicial officer is authorized to order a defendant to accompany the arresting officer to the jurisdiction's fingerprinting facility and submit to having fingerprints taken as a condition of bond.¹²⁵

Further, as previously noted, fingerprints cannot be collected from a person charged via summons until a certain qualifying disposition occurs.¹²⁶ Several issues can interfere with the collection of fingerprints following one of these dispositions. First, a person may be tried in their absence and thus not present to submit to fingerprinting. Second, there may not be an adequate number of law enforcement personnel available at the courthouse to perform fingerprinting. Third, electronic fingerprinting technology may not be available at the courthouse.¹²⁷ Fourth, not all judges, clerks of court, and law enforcement officers may be aware of this specific requirement and the defendant may leave the courthouse without being ordered to submit fingerprints. Finally, even if the court orders fingerprinting, there may be a

lack of coordination between stakeholders to ensure that the defendant submitted fingerprints as required.

FINGERPRINTING OF JUVENILES

Fingerprinting of juvenile defendants is required for delinquent acts which, if committed by an adult, would require a CCRE report.¹²⁸ The CCRE is required to maintain juvenile records separate from adult records.¹²⁹ The reporting requirements and maintenance of juvenile records differ significantly from the requirements for adult records.¹³⁰ Due to the complexity of the juvenile fingerprinting process and special considerations surrounding the maintenance of juvenile court records, staff did not undertake an examination of this process. Staff determined that a comprehensive review of these matters would require significant time and resources and that a separate study would need to be undertaken in order to thoroughly examine these matters.

ADDITIONAL OFFENSES REQUIRING A CCRE REPORT

Staff noted that under existing Virginia law prior to July 1, 2019, only the following offenses were required to be reported to the CCRE for inclusion on an defendant's criminal history record:

- treason;
- any felony;
- any offense punishable as a misdemeanor under Title 54.1 (Professions and Occupations);
- any misdemeanor punishable by confinement in jail under Title 18.2 (Crimes and Offenses Generally) or 19.2 (Criminal Procedure), or any similar ordinance of any county, city or town;
- Virginia Code § 20-61 (failure to pay spousal or child support); and,
- Virginia Code § 16.2-253.2 (violation of family protective order).¹³¹

Staff identified 727 statutes in the Virginia Code that containedailable offenses for which a report to the CCRE was not required.¹³² Staff proposed amending the Virginia Code to require additional offenses be reported to the CCRE.¹³³ Crime Commission members endorsed an expansion of the list to require CCRE reports for certain additional offenses.¹³⁴ These particular offenses were selected because they were serious in nature, charged frequently, or served as predicate offenses to enhance punishments for future criminal violations. Ultimately, fourteen new offenses were added to the list of crimes that require a report to the CCRE, including the following Code sections:

- 3.2-6570 (cruelty to animals);
- 4.1-309.1 (school bus, possess or consume alcohol while transporting children);
- 5.1-13 (aircraft DWI);
- 15.2-1612 (impersonate sheriff, unauthorized person);
- 46.2-339 (drive school bus while required to register w/ sex offender registry);
- 46.2-341.21 (drive commercial vehicle after being disqualified);

- 46.2-341.24 (commercial DWI);
- 46.2-341.26:3 (refusal of breath test, 2nd DWI/refusal within 10 years);
- 46.2-817 (elude police);
- 58.1-3141 (embezzlement, <\$500 by treasurer);
- 58.1-4018.1 (larceny of lottery tickets, <\$500);
- 60.2-632 (false statement to obtain increased benefits);
- 63.2-1509 (fail to report rape of child); and,
- 63.2-1727 (allow sex offender to reside/work/volunteer in day home).

Conclusion

Crime Commission members reviewed study findings at the October meeting and unanimously endorsed all 19 Recommendations from staff, along with Policy Decision Option 1-B, at the December meeting. No motions were made by the Crime Commission in regard to Policy Decision Options 1-A or 2.

Legislation was enacted for Recommendations 1 through 14 and Policy Decision Option 1-B during the Regular Session of the 2019 General Assembly.¹³⁵ Bills introduced by Delegate Robert B. Bell (House Bill 2343) and Senator Mark D. Obenshain (Senate Bill 1602) encompassed all of the legislative recommendations and added fourteen new offenses that require a report to the CCRE. Legislation introduced by Senator A. Benton Chafin (Senate Bill 1529) also requires a report be submitted to the CCRE for certain new offenses. Additionally, the Crime Commission sent letters to numerous agencies and entities requesting that administrative action be taken to address Recommendations 15 through 18. Finally, in accordance with Recommendation 19, Crime Commission staff will continue to monitor VSP's efforts to address unapplied criminal history record information currently in the CCRE Hold File.

Acknowledgements

The Virginia State Crime Commission extends its appreciation to the following agencies and organizations for their assistance and cooperation on this study:

Office of the Executive Secretary of the Supreme Court of Virginia

Office of the Secretary of Public Safety and Homeland Security

Virginia Association of Chiefs of Police & Foundation, Inc.

Virginia Association of Commonwealth's Attorneys

Virginia Criminal Sentencing Commission

Virginia Department of Corrections

Virginia Department of Criminal Justice Services

Virginia Department of Forensic Science

Virginia Sheriffs' Association

Virginia State Police

The Crime Commission also wishes to thank all clerks of court, law enforcement agencies, and local and regional jail administrators who provided survey responses.

Appendix 1: New Fingerprinting Responsibilities by Entity

Effective July 1, 2019

Entity	New Responsibilities
Virginia State Police	<ol style="list-style-type: none"> 1. Submit reports to various stakeholders which identify offenses that have not been applied to criminal history records (Va. Code § 19.2-388(C)). 2. Reconcile offenses in the CCRE Hold File that cannot be applied to criminal history records (Va. Code § 19.2-388(D)). 3. Submit an annual report to the General Assembly and Governor (Va. Code § 19.2-388(E)). 4. Classify and file information received from DOC or any correctional institution as criminal history record information (Va. Code § 19.2-390(D)). 5. Develop and disseminate a model policy to law enforcement agencies on the collection of fingerprints (Va. Code § 19.2-390.03). 6. Apply offenses currently in the CCRE Hold File to criminal history records and report on progress by November 1, 2019 (2nd enactment clause). 7. Develop a form, in coordination with DCJS, to be used by local community-based probation officers when ordering fingerprinting (3rd enactment clause).
Law Enforcement Agencies	<ol style="list-style-type: none"> 1. Submit a report and fingerprints to the CCRE for each required offense when any person is arrested (Va. Code § 19.2-390(A)(1)). 2. Submit a report and fingerprints to the CCRE for any arrest on a <i>capias</i> charging that the defendant violated the terms of a suspended sentence or probation for a felony offense (Va. Code § 19.2-390(A)(1)).
Courts	<ol style="list-style-type: none"> 1. <u>Direct indictment</u>: Order fingerprints be taken at first appearance for defendants in custody at the time of indictment (Va. Code §§ 19.2-232 and 390(A)(5)). 2. <u>Deferred and dismissed offenses</u>: Order fingerprints be taken at the time of deferral, if not previously taken, and confirm that fingerprints were taken prior to dismissal of drug possession, domestic battery, and property offenses (Va. Code §§ 18.2-57.3, 18.2-251, 19.2-74, 19.2-303.2, 19.2-390(A)(2)(ii), and 19.2-392(A)(iii)). 3. <u>Sentencing</u>: Determine at sentencing (felony and misdemeanor) whether fingerprints were taken for any CCRE reportable offense and, if not taken, order fingerprinting as a condition of the suspended sentence or probation (Va. Code § 19.2-303). 4. <u>Violations of suspended sentence or probation (felonies)</u>: Order that fingerprints be taken and a report be submitted to the CCRE when a defendant is found in violation of the terms of a suspended sentence or probation for a felony offense (Va. Code § 19.2-390(A)(3)-(4)). 5. <u>Restitution review hearings</u>: Review criminal history record for accuracy at restitution review hearings, if not previously done, and order fingerprints be taken for any unapplied conviction(s) (Va. Code § 19.2-305.1(F)(7)-(8)). 6. <u>Modification of terms of suspended sentence/probation</u>: Allows for modification of the terms of a suspended sentence or probation at any time during the suspension or probation period for purposes of ordering that fingerprints be taken (Va. Code § 19.2-303.02).

Entity	New Responsibilities
Clerks of Court	<ol style="list-style-type: none"> 1. Submit case disposition reports to the CCRE for felony violations of suspended sentences or probation (Va. Code § 19.2-390(C)). 2. Allows case disposition reports to the CCRE for offenses charged via summons to be submitted at the conclusion of the case (Va. Code § 19.2-390(C)).
Commonwealth's Attorneys	<ol style="list-style-type: none"> 1. <u>Direct indictment</u>: notify the court at first appearance, if the defendant was in custody at the time of indictment, that a report and fingerprints must be submitted to the CCRE for the offense (Va. Code §§ 19.2-232 and 390(A)(5)). 2. <u>Restitution review hearings</u>: Provide criminal history records of defendants not on supervised probation, if the Commonwealth's Attorney prosecuted the offense, and notify the CCRE if fingerprints were taken and an offense was not applied to the criminal history record (Va. Code § 19.2-305.1(F)(7)-(8)).
DOC State Correctional Facilities	<ol style="list-style-type: none"> 1. Submit fingerprints to the CCRE for defendants it receives who are serving a sentence for an offense that requires a report to CCRE (Va. Code § 53.1-23(A)). 2. Verify that the offense for which a defendant is serving a sentence appears on their criminal history record at least 60 days prior to release and, if the offense does not appear, take and submit fingerprints to the CCRE and notify the CCRE that such offense does not appear (Va. Code § 53.1-23(B)).
DOC State Probation and Parole Officers	<ol style="list-style-type: none"> 1. For defendants on probation as of July 1, 2019, verify at least 60 days prior to release from probation that the offense for which the defendant is being supervised appears on his criminal history record and, if it does not appear, take and submit fingerprints to the CCRE and notify the CCRE that such offense does not appear (Va. Code § 53.1-145 (13)). 2. For defendants reporting to probation on or after July 1, 2019, take and submit fingerprints to the CCRE upon intake, verify that the offense for which the defendant is being supervised appears on his criminal history record and, if it does not appear, notify the CCRE (Va. Code § 53.1-145(14)). 3. Provide criminal history records to the court at restitution review hearings for defendants who are on probation and notify the CCRE prior to release from supervision if fingerprints were taken and an offense was not applied to the criminal history record (Va. Code § 19.2-305.1(F)(7)). 4. Take and submit fingerprints to the CCRE upon revocation of parole for a felony offense (Va. Code § 53.1-165(A)).
Local Community-Based Probation Officers	<ol style="list-style-type: none"> 1. Verify at least 60 days prior to release from probation that the offense for which the defendant is being supervised appears on his criminal history record and, if it does not appear, order that fingerprints be taken, notify the CCRE that the offense does not appear on the criminal history record, and verify that fingerprints were taken (Va. Code § 9.1-176.1(A)(12)). 2. Provide criminal history records to the court at restitution review hearings for defendants who are on probation and notify the CCRE prior to release from supervision if fingerprints were taken and an offense was not applied to the criminal history record (Va. Code § 19.2-305.1(F)(7)).

Additional offenses requiring a CCRE report, including fingerprints, as of July 1, 2019:

- Virginia Code §§ 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, and 63.2-1727.

Endnotes

- ¹ See Virginia State Crime Commission. *2017 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>. Discrepancies were identified in the *Decriminalization of Possession of Marijuana* and *DNA Databank: Expansion of Misdemeanor Crimes* studies.
- ² Va. Code § 19.2-387 (2018).
- ³ *Id.*
- ⁴ Va. Code §§ 19.2-387.2(Art. I) and 19.2-390(A) (2018). *See also* 6 Va. Admin. Code § 20-120-40(A) (2018).
- ⁵ Va. Code § 19.2-390(C) (2018).
- ⁶ There are currently two systems that maintain CCRE Hold File information. The original system is called the CCRE *Legacy System* and maintains offenses occurring from the 1970s to October 7, 2016. On October 8, 2016, the CCRE *Legacy System* was replaced with a newer system designated as the CCRE *Replacement System*.
- ⁷ The remaining 10% were due to other errors, such as a discrepancy in court record identification numbering or defendant identification information.
- ⁸ The analysis in this report does not include any offenses contained within the CCRE *Replacement System* as VSP discovered a defect where some offenses in this Hold File had been successfully applied to criminal history records, but not subsequently removed from the Hold File. Such a defect does not exist in the CCRE *Legacy System*. As such, all figures reported are from the CCRE *Legacy System* Hold File received on November 28, 2018.
- ⁹ Staff conducted a review of Virginia’s existing legal and policy framework related to fingerprinting, including an examination of relevant statutes and regulations, consultations with practitioners, and surveys to law enforcement agencies, local and regional jail administrators, and clerks of court.
- ¹⁰ *See* Va. Code §§ 18.2-456(5), 19.2-303, 19.2-304, 19.2-306, 19.2-390(D), and 53.1-23 (2018).
- ¹¹ *See* Virginia Criminal Sentencing Commission. *2018 Virginia Crime Code*. The 727 statutes encompassed 977 distinct Virginia Crime Codes (VCC).
- ¹² Policy Decision Option 1.
- ¹³ Policy Decision Option 1-B.
- ¹⁴ 2019 Va. Acts ch. 115, 782, and 783.
- ¹⁵ Va. Code § 19.2-389 (2018).
- ¹⁶ Va. Code §§ 19.2-387.2(Art. I) and 19.2-390(A) (2018). *See also* 6 Va. Admin. Code § 20-120-40 (2018).
- ¹⁷ *See* Federal Bureau of Investigation. *Fingerprint Recognition*. Retrieved from <https://www.fbi.gov/file-repository/about-us-cjis-fingerprints-biometrics-biometric-center-of-excellences-fingerprint-recognition.pdf/view>.
- ¹⁸ Va. Code §§ 19.2-390(A) and 19.2-390(C) (2018). *But see* Va. Code § 19.2-390(D) (2018). The CCRE may receive, classify, and file information for any offense for which a report is received.
- ¹⁹ Va. Code § 19.2-392(A) (2018).
- ²⁰ Va. Code § 19.2-390(C) (2018).
- ²¹ The record link is automated via a “Document Control Number” (DCN), which is assigned to the case at the time that fingerprinting is completed.

²² Va. Code § 19.2-387.2(Art. I) (2018).

²³ *Id.*

²⁴ Virginia State Police, personal communication, July 25, 2018. *See* 28 C.F.R. § 20.36(a) (2018). *See also* Federal Bureau of Investigation. (2018, August 16). *Criminal Justice Information Services (CJIS) Security Policy* Version 5.7, Appendix D. Retrieved from https://www.fbi.gov/file-repository/cjis-security-policy_v5-7_20180816.pdf/view.

²⁵ *See* Federal Bureau of Investigation. *National Crime Information Center (NCIC)*. Retrieved from <https://www.fbi.gov/services/cjis/ncic>.

²⁶ *See* Federal Bureau of Investigation. *Privacy Impact Assessment for the Fingerprint Identification Records System (FIRS) Integrated Automated Fingerprint Identification System (IAFIS) Outsourcing for Noncriminal Justice Purposes – Channeling, I-2.3*. Retrieved from <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/firs-iafis>. *See also* 34 U.S.C. § 40316(Art. I)(13) (2018). *See also* Va. Code § 19.2-387.2(Art. I) (2018).

²⁷ *Id.* at I-2.3 and I-2.4.

²⁸ *See* Federal Bureau of Investigation. *The CJIS Advisory Process*. Retrieved from <https://www.fbi.gov/services/cjis/the-cjis-advisory-process>. *See also* Federal Bureau of Investigation. *National Crime Information Center Audit*. Retrieved from <https://www.fbi.gov/file-repository/ncic-audit.pdf/view>. *See also* 28 C.F.R. § 20.38 (2018).

²⁹ Virginia State Police, email correspondence, June 4, 2019.

³⁰ *See* Va. Code § 19.2-392.2 (2018). *See also* 6 Va. Admin. Code §§ 20-120-70 and 20-120-80 (2018). *See also* Virginia State Police. *Central Criminal Records Exchange (CCRE): Challenge of a Criminal Record*. Retrieved from http://www.vsp.virginia.gov/CJIS_CCRE.shtm.

³¹ Va. Code §§ 19.2-392.2(B) and 19.2-392.2(E) (2018).

³² There are currently two systems that maintain CCRE Hold File information. The original system is called the CCRE *Legacy System* and maintains offenses occurring from the 1970s to October 7, 2016. On October 8, 2016, the CCRE *Legacy System* was replaced with a newer system designated as the CCRE *Replacement System*.

³³ The analysis in this report does not include any offenses contained within the CCRE *Replacement System* as VSP discovered a defect where some offenses in this Hold File had been successfully applied to criminal history records but not subsequently removed from the Hold File. Such a defect does not exist in the CCRE *Legacy System*. As such, all figures reported are from the CCRE *Legacy System* Hold File received on November 28, 2018.

³⁴ Approximately 90% of the offenses not applied were due to missing fingerprints. The remaining 10% were due to other errors, such as a discrepancy in court record identification numbering or defendant identification information.

³⁵ Staff completed a detailed analysis of a subset of misdemeanor offenses contained in the CCRE *Legacy System* Hold File that were filed between January 1, 2013, to October 7, 2016, to gain a better understanding of where gaps in misdemeanor fingerprinting may have occurred over the past five years. Staff matched this subset of 101,987 misdemeanors with court data provided by OES to determine how the offenses were charged (summons or warrant) or commenced (appeal, reinstatement, direct indictment). Most of the offenses were charged in district courts and nearly half of the misdemeanor subset, 49% (50,124 of 101,987), resulted in a conviction. Specifically, 43,750 misdemeanors had a disposition of

guilty and 6,374 misdemeanors had a disposition of guilty *in absentia*, with the large majority of both dispositions requiring a CCRE report (i.e., fingerprints required). Of the 50,124 misdemeanor convictions in this subset analysis, 78% (39,116) required a CCRE report.

³⁶ 97% (129,747 of 134,258) of felony convictions resulted from arrests made between January 1, 2000, to October 7, 2016. It should be further noted that 60% (80,789 of 134,258) of felony convictions resulted from arrests made between January 1, 2010, to October 7, 2016. Electronic reporting of offense dispositions to the CCRE began around the year 2000, making it difficult to determine how widespread the problem of missing fingerprints was prior to that time.

³⁷ See Va. Code § 19.2-390 (2018). Virginia law was unclear whether suspended sentence revocations and/or probation violations require a CCRE report.

³⁸ As of November 28, 2018. The Virginia Criminal Sentencing Commission has defined categories (VCC) of criminal offenses across all statutes within the Virginia Code.

³⁹ The cursory estimate was based on the culmination of unique full name, date of birth, and social security number, when available, as provided within the CCRE *Legacy System* Hold File.

⁴⁰ As defined per the FBI, a SID number is an identifying number assigned to the subject of record by the state in which the arrest occurred: See <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission>. The SID number is important as it is designed to provide a unique identification number for each unique individual (akin to a social security number) with a criminal history record.

⁴¹ In 1,224 of these offenses the individual was linked to more than one unique SID number. This can occur for a number of reasons, but most frequently is due to a defendant's initial fingerprints being of such low quality that they do not "match" to any subsequent higher quality fingerprints of that same defendant. This results in more than one SID number being assigned to that individual defendant.

⁴² Va. Code § 19.2-303 (2018).

⁴³ *Id.*

⁴⁴ A sample of Form CC-1390 was retrieved from <http://www.courts.state.va.us/forms/circuit/cc1390inst.pdf>.

⁴⁵ Va. Code § 19.2-306 (2018).

⁴⁶ Va. Code § 18.2-456(5) (2018).

⁴⁷ Va. Code § 19.2-303 (2018).

⁴⁸ *Id.*

⁴⁹ Va. Code § 19.2-304 (2018).

⁵⁰ *Id.* See, e.g., *Cook v. Commonwealth*, 211 Va. 290, 176 S.E.2d 815 (Va. 1970).

⁵¹ Va. Code § 53.1-23 (2018).

⁵² *Id.*

⁵³ Va. Code § 19.2-390(D) (2018). See also National Crime Prevention and Privacy Compact Council. *National Fingerprint File Qualification Requirements*, 70 Fed. Reg. 119, 36211 at footnote 3 (June 22, 2005). Retrieved from <https://www.govinfo.gov/content/pkg/FR-2005-06-22/pdf/05-12329.pdf>.

⁵⁴ Va. Sup. Ct. R. 1:1(a) (2018).

⁵⁵ Staff conducted a review of Virginia's existing legal and policy framework related to fingerprinting, including an examination of relevant statutes and regulations, consultations with practitioners, and surveys to law enforcement agencies, local and regional jail administrators, and clerks of court.

- ⁵⁶ 2019 Va. Acts ch. 782 and 783.
- ⁵⁷ The enacted legislation takes effect on July 1, 2019. The remainder of this report addresses both amendments and additions to Virginia law as a result of this legislation, as well as Virginia law as it existed during the study.
- ⁵⁸ Recommendation 1.
- ⁵⁹ Recommendations 1, 6, 8, 14, 15, 16, and 17.
- ⁶⁰ Va. Code § 19.2-387 (2018). *See also* http://www.vsp.virginia.gov/CJIS_CCRE.shtm.
- ⁶¹ Va. Code §§ 19.2-388, 19.2-389, 19.2-389.1, and 19.2-389.2 (2018).
- ⁶² Virginia State Police, email correspondence, Nov. 30, 2018.
- ⁶³ *See* Va. Code §§ 19.2-390(A) and 19.2-390(E) (2018).
- ⁶⁴ 2019 Va. Acts ch. 854. Item 419(O) of the 2019 Appropriations Act. Retrieved from <https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/419/>.
- ⁶⁵ Recommendations 2 and 3.
- ⁶⁶ Va. Code § 19.2-390(A)(1) (2018). Reports to the CCRE are required when an individual is arrested for certain offenses, including (i) treason, (ii) any felony, (iii) any offense punishable as a misdemeanor under Title 54.1 (Professions and Occupations), (iv) any misdemeanor punishable by confinement in jail under Title 18.2 (Crimes and Offenses Generally) or 19.2 (Criminal Procedure), or any similar ordinance of any county, city or town, (v) under Virginia Code § 20-61 (failure to pay spousal or child support), or (vi) under Virginia Code § 16.2-253.2 (violation of family protective order).
- ⁶⁷ Va. Code § 19.2-390(A)(1) (2018).
- ⁶⁸ Va. Code §§ 19.2-74(A)(3) and 19.2-390(A)(2) (2018). Fingerprints can only be taken after (i) a conviction is entered and no appeal is noted, (ii) if an appeal is noted, the conviction is upheld on appeal or the person withdraws his appeal, (iii) the court dismisses the proceeding pursuant to the first offender drug possession statute (Virginia Code § 18.2-251), or (iv) an acquittal by reason of insanity is entered.
- ⁶⁹ There is no associated recommendation with this portion of the legislation. This measure was included during the drafting process to clarify the responsibilities of law enforcement agencies.
- ⁷⁰ Live Scan devices allow for electronic fingerprinting and transmission of arrest reports to the CCRE. Additional information about these devices was retrieved from http://www.vsp.virginia.gov/CJIS_LiveScan.shtm. VSP provides a map of Live Scan devices across the Commonwealth, which was retrieved from http://www.vsp.virginia.gov/CJIS_LiveScan_maps.shtm.
- ⁷¹ Virginia State Police, personal communication, July 25, 2018.
- ⁷² Va. Code § 19.2-390(A)(1) (2018).
- ⁷³ Va. Code § 18.2-57.3 (2018).
- ⁷⁴ Va. Code § 18.2-251 (2018).
- ⁷⁵ Va. Code § 19.2-303.2 (2018).
- ⁷⁶ Recommendation 7.
- ⁷⁷ Va. Code § 19.2-303 (2018).
- ⁷⁸ Recommendation 2.
- ⁷⁹ Va. Code § 19.2-390(C) (2018).
- ⁸⁰ Va. Code § 19.2-390(A)(1)(b) (2018).
- ⁸¹ *See, e.g., Walker v. Forbes*, 292 Va. 417, 422-423, 790 S.E.2d 240, 243-244 (2016).
- ⁸² Va. Code § 19.2-390(A)(1) (2018).

- ⁸³ 2009 Op. Va. Att’y Gen. 09-070. Retrieved from <https://www.oag.state.va.us/files/Opinions/2009/09-070-Proffitt.pdf>.
- ⁸⁴ Recommendations 3 and 4.
- ⁸⁵ Va. Code §§ 19.2-74(A)(3) and 19.2-390(A)(2) (2018).
- ⁸⁶ Va. Code §§ 18.2-57.3(B) and 18.2-251 (2018).
- ⁸⁷ Va. Code § 18.2-57.3 (2018).
- ⁸⁸ Va. Code § 18.2-251 (2018).
- ⁸⁹ Va. Code § 19.2-303.2 (2018).
- ⁹⁰ Recommendation 5.
- ⁹¹ Va. Code § 19.2-390(A)(1) (2018).
- ⁹² Va. Code § 19.2-232 (2018).
- ⁹³ *Id.*
- ⁹⁴ *Id.*
- ⁹⁵ Recommendation 11.
- ⁹⁶ 2018 Va. Acts ch. 316 and 671.
- ⁹⁷ Recommendation 12.
- ⁹⁸ Va. Sup. Ct. R. 1:1(a) (2018). *See also* Va. Code §§ 19.2-303 and 19.2-304 (2018).
- ⁹⁹ Recommendation 13.
- ¹⁰⁰ Va. Code §§ 19.2-390(A)(2) and 19.2-390(C) (2018).
- ¹⁰¹ Recommendations 5 and 11.
- ¹⁰² Recommendation 8.
- ¹⁰³ Va. Code § 53.1-23 (2018).
- ¹⁰⁴ *Id.*
- ¹⁰⁵ Va. Code § 19.2-390(E) (2018).
- ¹⁰⁶ Recommendations 9 and 11. The original Recommendation 9 dealt solely with state probation officers; however, state parole officers were also identified as an area to address during the legislative drafting process.
- ¹⁰⁷ Va. Code § 19.2-303 (2018).
- ¹⁰⁸ Va. Code § 53.1-145 (2018).
- ¹⁰⁹ Va. Code § 53.1-145(6) (2018).
- ¹¹⁰ Va. Code §§ 53.1-145(10) and 53.1-145(11) (2018).
- ¹¹¹ Recommendations 10 and 11.
- ¹¹² Va. Code § 9.1-176.1 (2018).
- ¹¹³ Recommendation 18.
- ¹¹⁴ Office of the Executive Secretary of the Supreme Court of Virginia, personal communication, Oct. 3, 2018. *See also* Office of the Executive Secretary of the Supreme Court of Virginia. *Uniform Statute Table (UST) Data*. Retrieved from http://www.courts.state.va.us/courtadmin/aoc/djs/resources/ust/ust_table.pdf, for the 2016, 2017, and 2018 tables.
- ¹¹⁵ *Id.*
- ¹¹⁶ *Id.*
- ¹¹⁷ There is no associated recommendation relating to these regulations because VSP and DCJS had already begun examining the regulations prior to the October presentation to the Crime Commission.
- ¹¹⁸ Va. Code § 9.1-126 *et. seq.* (2018). *See also* 6 Va. Admin. Code § 20-120-20 *et. seq.* (2018).
- ¹¹⁹ 6 Va. Admin. Code § 20-120-70 (2018).
- ¹²⁰ 6 Va. Admin. Code § 20-120-90 (2018).
- ¹²¹ 6 Va. Admin. Code §§ 20-120-90 and 20-120-100 (2018).
- ¹²² Va. Code § 9.1-137 (2018).

- ¹²³ Recommendation 17.
- ¹²⁴ Va. Code § 19.2-392.01 (2018).
- ¹²⁵ Va. Code § 19.2-123(A)(3c) (2018).
- ¹²⁶ Va. Code §§ 19.2-74(A)(3) and 19.2-390(A)(2) (2018). Fingerprints can only be taken after (i) a conviction is entered and no appeal is noted, (ii) if an appeal is noted, the conviction is upheld on appeal or the person withdraws his appeal, (iii) the court dismisses the proceeding pursuant to the first offender drug possession statute (Virginia Code § 18.2-251), or (iv) an acquittal by reason of insanity is entered.
- ¹²⁷ Fingerprints may be taken electronically via a Live Scan device or manually using an inkpad and cardstock. VSP provides a map of Live Scan devices across the Commonwealth, which was retrieved from [http://www.vsp.virginia.gov/CJIS LiveScan maps.shtm](http://www.vsp.virginia.gov/CJIS_LiveScan_maps.shtm).
- ¹²⁸ Va. Code § 16.1-299 (2018).
- ¹²⁹ Va. Code § 19.2-388(B) (2018).
- ¹³⁰ Va. Code § 19.2-390(C) (2018).
- ¹³¹ Va. Code § 19.2-390(A)(1) (2018).
- ¹³² See Virginia Criminal Sentencing Commission. *2018 Virginia Crime Code*. The 727 statutes encompassed 977 distinct Virginia Crime Codes (VCC).
- ¹³³ Policy Decision Option 1.
- ¹³⁴ Policy Decision Option 1-B.
- ¹³⁵ 2019 Va. Acts ch. 115, 782, and 783.