



# Fingerprinting of Defendants

October 11, 2018



# Fingerprinting of Defendants

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# Fingerprinting in Virginia

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Why does fingerprinting of defendants matter?

- A significant number of criminal charges and convictions do not appear on criminal history records due to missing fingerprints.
- Fingerprints must be collected and submitted to the Central Criminal Records Exchange (CCRE) before an offense will appear on a criminal history record.
- Virginia State Police (VSP) identified the issue and is addressing it, but the problem persists.



# Fingerprinting in Virginia

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## According to VSP data:

- The CCRE contains approximately 10.5 million offenses applied to criminal history records.
- In addition, VSP maintains a “CCRE Hold File” with at least **751,154** offenses not applied to criminal history records due to errors:
  - 90% lack fingerprints (675,081)
  - 10% are due to other errors (76,073)



# Fingerprinting in Virginia

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Crime Commission staff analyzed the 675,081 offenses not applied to the CCRE due to missing fingerprints:

- 35% were felonies
  - 234,727 of 675,081
- 65% were misdemeanors
  - 440,354 of 675,081



# Fingerprinting in Virginia

Felonies not applied to the CCRE due to missing fingerprints:

Rank	Felony VCC Category	Total	Percent
1	Probation/Supervision Violations	95,072	40.5%
2	Fraud	26,601	11.3%
3	Larceny	25,475	10.9%
4	Narcotics	20,280	8.6%
5	Assault	11,582	4.9%
6	Burglary	8,285	3.5%
7	Robbery	5,331	2.3%
8	Fugitive/Extradition	4,800	2.0%
9	Failure to Appear	4,787	2.0%
10	Rape	4,682	2.0%
---	<i>All Other Felonies</i>	27,832	11.9%
	<b>TOTAL FELONIES</b>	<b>234,727</b>	<b>100.0%</b>

Source: Virginia State Police, CCRE Hold File as of October 5, 2018. Analysis by Crime Commission staff.



# Fingerprinting in Virginia

Misdemeanors not applied to the CCRE due to missing fingerprints:

Rank	Misdemeanor VCC Category	Total	Percent
1	Assaults	70,592	16.0%
2	Narcotics	70,350	16.0%
3	Contempt of Court	53,772	12.2%
4	Larceny	44,992	10.2%
5	Failure to Appear	38,854	8.8%
6	DWI	37,392	8.5%
7	Fraud	28,012	6.4%
8	Obstruction of Justice	16,077	3.7%
9	Vandalism	14,567	3.3%
10	Family (Abuse/Neglect)	10,415	2.4%
---	<i>All Other Misdemeanors</i>	55,331	12.6%
	<b>TOTAL MISDEMEANORS</b>	<b>440,354</b>	<b>100.0%</b>

Source: Virginia State Police, CCRE Hold File as of October 5, 2018. Analysis by Crime Commission staff.



# Fingerprinting in Virginia

- 56% (132,083 of 234,727) of felonies in the CCRE Hold File due to missing fingerprints had a GUILTY disposition.
- VCC categories of potential concern include:
  - 318 murder/homicide convictions (MUR);
  - 1,308 rape convictions (RAP);
  - 2,508 robbery convictions (ROB);
  - 4,602 felony assault convictions (ASL);
  - 367 kidnapping/abduction convictions (KID);
  - 1,602 DWI convictions (DWI); and,
  - 1,478 weapon offense convictions (WPN).





# Fingerprinting in Virginia

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- 59% (258,775 of 440,354) of misdemeanors in the CCRE Hold File due to missing fingerprints had a GUILTY disposition.
- VCC categories of potential concern include:
  - 3,634 sex offense convictions (RAP and SEX);
  - 20,636 assault convictions (ASL);
  - 47,219 narcotics convictions (NAR);
  - 28,587 DWI convictions (DWI);
  - 37,292 larceny convictions (LAR);
  - 5,241 weapon offense convictions (WPN); and,
  - 1,788 protective order violation convictions (PRT).



# Fingerprinting in Virginia

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Criminal history records are used for:

- Sex Offender Registry inclusion;
- DNA database inclusion;
- Firearms background checks;
- Barrier crime exclusions;
- Employment eligibility; and,
- Licensing eligibility.



# Fingerprinting in Virginia

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Criminal history records are also used for:

- First offender eligibility;
- Bail determinations;
- Sentencing guidelines;
- Predicate offenses;
- Expungements; and,
- Latent fingerprint comparison.



# Fingerprinting in Virginia

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When is fingerprint collection required?

- The charge is a CCRE reportable offense, AND:
  - The defendant is taken into custody (e.g., warrantless arrest, warrant, capias for failure to appear, direct indictment, information); OR,
  - The defendant is charged on a summons that results in a conviction, dismissal pursuant to the drug first offender statute, or a finding of not guilty by reason of insanity.



# Fingerprinting in Virginia

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Offenses which require a CCRE report include:

- Any felony;
- Any jailable misdemeanor in Titles 18.2 or 19.2;
- Any misdemeanor in Title 54.1;
- Protective order violations; and
- Non-payment of spousal and child support.



# Fingerprinting in Virginia

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## Why are fingerprints not being collected?

- Misunderstanding of statutory requirements;
  - Summons
  - Direct indictments
  - Probation violations
  - *Capias* and show cause
- Submitting only one set of fingerprints for multiple charges;
- Personnel and resources;
- Accessibility of fingerprinting technology;
- Juvenile fingerprinting process;
- Remote magistrates; and,
- Non-electronic fingerprint submissions.



# Recommendations

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Recommendation 1: Amend the Va. Code to require a monthly notification by VSP of any offenses that could not be applied to the CCRE due to an error to the following:

- Agencies that report to the CCRE;
- Office of the Executive Secretary of the Supreme Court of Virginia (OES); and,
- Clerks of Court.



# Recommendations

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Recommendation 2: Amend the Va. Code to require VSP to review the CCRE Hold File on a monthly basis, so that such offenses can be applied to criminal history records, in cooperation with the following agencies:

- Law enforcement;
- OES;
- Department of Corrections (DOC);
- Department of Forensic Science; and,
- Local probation and community corrections.





# Recommendations

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Recommendation 3: Amend the Va. Code to require the VSP to submit an annual report to the Governor and General Assembly on the status of offenses that could not be applied to criminal history records due to an error, and any updates to fingerprinting policies and procedures.



# Recommendations

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Recommendation 4: Request VSP to reconcile unapplied offenses which are reportable to the CCRE for persons currently in the custody of, or under the supervision of, DOC.



# Recommendations

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Recommendation 5: Request VSP to develop a brief reference guide for law enforcement of CCRE reportable offenses for fingerprinting.



# Recommendations

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Recommendation 6: 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; and,
- Law enforcement employment background checks.



# Recommendations

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Recommendation 7: Request VSP to identify staffing needs for processing fingerprints and managing the CCRE.



# Recommendations

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Recommendation 8: Amend Va. Code § 19.2-390 to require CCRE reports for probation violations.



# Recommendations

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Recommendation 9: Amend the Va. Code to require fingerprinting of incarcerated defendants following service of a direct indictment.



# Recommendations

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Recommendation 10: Amend the drug, domestic assault, and property first offender statutes to require the court to verify fingerprints have been collected at the time of deferral and prior to dismissing the charge. If fingerprints have not previously been collected, the court shall order the defendant to submit fingerprints.





# Recommendations

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## Recommendation 11: Amend Va. Code § 19.2-390 to:

- Include charges brought via summons and dismissed after being taken under advisement pursuant to the property and domestic assault first offender statutes to the events that require a CCRE report, and
- Include charges originating from an arrest and taken under advisement and dismissed pursuant to the drug, property, and domestic assault first offender statutes to the events that require Clerks of Court to submit an electronic report to the CCRE.



# Recommendations

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Recommendation 12: Require training for law enforcement, prosecutors, court clerks, state probation officers, and judges on the collection and submission of fingerprints and the vital relationship between fingerprint collection and criminal history records.



# Recommendations

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Recommendation 13: Request that Crime Commission staff continue to work with the Secretary of Public Safety's Internal Dispositions Workgroup to consider the following issues:

- Determine responsibility for collecting fingerprints from defendants charged via summons.
- Determine how the submission of juvenile fingerprints and offenses should be handled.
- Determine how the Uniform Statute Table (UST) should be updated and implemented.



# Recommendations

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## Recommendation 13: Dispositions Workgroup (cont.):

- Determine fingerprinting procedures for defendants released on an unsecured bond by a magistrate.
- Consider issues related to Live Scan systems, such as availability in courthouses and software updates.
- Develop solutions to assist localities with high rates of unapplied offenses.



# Recommendations

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## Recommendation 13: Dispositions Workgroup (cont.):

- Determine which agency should administer and maintain regulations related to fingerprinting procedure and CCRE submission and maintenance.
- Determine how local probation can assist in identifying unapplied offenses and collecting fingerprints.
- Develop a plan to collect missing fingerprints for defendants who have offenses in the CCRE Hold File.



# Policy Decision Options

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- The following options will require statutory changes, as well as extensive modifications to current fingerprinting policies and procedures.



# Policy Decision Options

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Policy Decision Option 1: Amend the Va. Code 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, such as:
  - Underage possession of alcohol (Va. Code § 4.1-305)
  - Dangerous dog violations (Va. Code § 3.2-6540)
  - Violation of home electronic incarceration (Va. Code § 53.1-131.2)



# Policy Decision Options

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## 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

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



# Policy Decision Options

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## 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

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## 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.



# Discussion