

UPDATE ON HB2113 (2021) AND THE SEALING AND EXPUNGEMENT OF CRIMINAL HISTORY RECORDS

Comprehensive Review and Update of 6 VAC 20-120

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HB2113

- **Sealing of criminal records; penalties.** Establishes a process for the automatic sealing of police and court records, defined in the bill, for certain convictions, deferred dispositions, and acquittals and for offenses that have been nolle prossed or otherwise dismissed. The bill also allows a person to petition for the sealing of police and court records relating to certain convictions, and has a staggered delayed effective date(s) in order to develop systems for implementing the provisions listed within the bill. HB2113 was a recommendation of the Virginia State Crime Commission.
- Amends and reenacts §§ [9.1-101](#), as it is currently effective and as it shall become effective, [9.1-128](#), [9.1-134](#), [17.1-293.1](#), [17.1-502](#), [19.2-72](#), [19.2-74](#), [19.2-310.7](#), [19.2-340](#), [19.2-389.3](#), and [19.2-390](#) of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 2 of Title 17.1 a section numbered [17.1-205.1](#) and by adding in Title 19.2 a chapter numbered 23.2, consisting of sections numbered [19.2-392.5](#) through [19.2-392.17](#), relating to sealing of criminal records; penalties.

BRIEF HISTORY OF 6 VAC 20-120

Regulations Relating to Criminal
History Record Information Use and
Security



1

Became regulation as a result of legislation
in 1986



2

Amended in 2006 to transfer the handling
of expungement orders from DCJS to CCRE



3

Despite delayed effective date, 2021
legislation conflicted with marijuana bill of
that same year; issues fixed in 2023

DCJS TIMELINE

April 1, 2024

Periodic Review of 6 VAC20-120 filed on Town Hall website

April-May 2024

Periodic Review published; 30-day public comment period on regulation held from 4/22/24 – 5/13/24 with one comment received

October 2024

DCJS obtained CJSB approval to open NOIRA and begin regulatory process to make amendments; conversations with VSP ongoing; NOIRA submitted to DPB

Comment Received via Town Hall website:



Commenter: Stephaney

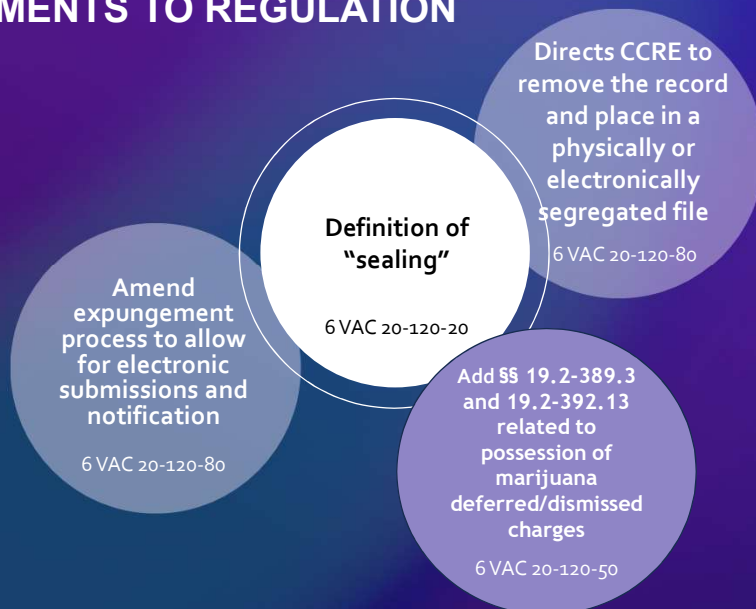
This change request should be denied.

The public puts their trust in that they will be looked out for and protected by state regulations. Trusting that licensed service technicians and sales representatives are not going to be a threat to them, their families, or their employees. The change being discussed, if approved, is going to take away a layer of protection and trust for the public. It will allow persons who have been and may again become a threat to individuals a free pass to enter their homes and business in an industry that is supposed to be offering protection options. This change request should be denied.

WHERE ARE WE HEADED?

PROPOSED AMENDMENTS TO REGULATION

- DCJS obtained formal approval from the Criminal Justice Services Board in October to open a NOIRA to make amendments agreed upon by VSP
- Amendments will improve efficiency for VSP and bring the regulation current with system planned to be implemented in 2025 as well as ensure compliance with HB2113 (2021)



STILL TO WORK ON WITH VSP- DO WE NEED TO INCORPORATE INTO REGULATION?



D. Except as otherwise provided in this section, upon entry of an order for sealing, the person who was arrested, charged, or convicted of the offense that was ordered to be sealed may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, charge, or conviction occurred. Except as otherwise provided in this section, no person as to whom an order for sealing has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of that person's denial or failure to disclose any information concerning an arrest, charge, or conviction that has been sealed.

*** The filing of a NOIRA does not require DCJS to have finalized regulatory text prior to beginning Executive Branch review!**

STILL TO WORK ON WITH VSP



E. A person who is the subject of the order of sealing entered pursuant to § [19.2-392.7](#), [19.2-392.8](#), [19.2-392.9](#), [19.2-392.11](#), or [19.2-392.12](#) may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered to be sealed if:

- 1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;*
- 2. This Code requires the employer to make such an inquiry;*
- 3. Federal law requires the employer to make such an inquiry;*
- 4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; or*
- 5. The rules and regulations adopted pursuant to § [9.1-128](#) and procedures adopted pursuant to § [9.1-134](#) allow the employer to access such sealed records.*

Failure to disclose such sealed arrest, charge, or conviction, if such failure to disclose was knowing or willful, shall be a ground for prosecution of perjury as provided for in § [18.2-434](#).

STILL TO WORK ON WITH VSP



§ [19.2-392.6](#). Automatic sealing of offenses resulting in a deferred and dismissed disposition or conviction.

A. If a person was charged with an offense in violation of § [4.1-305](#) or [18.2-250.1](#), and such offense was deferred and dismissed as provided in § [4.1-305](#) or [18.2-251](#), such offense, including any records relating to such offense, shall be ordered to be automatically sealed in the manner set forth in § [19.2-392.7](#), subject to the provisions of subsections C and D.

B. If a person was convicted of a violation of any of the following sections, such conviction, including any records relating to such conviction, shall be ordered to be automatically sealed in the manner set forth in § [19.2-392.7](#), subject to the provisions of subsections C and D: § [4.1-305](#), [18.2-96](#), [18.2-103](#), [18.2-119](#), [18.2-120](#), or [18.2-134](#); a misdemeanor violation of § [18.2-248.1](#); or § [18.2-250.1](#) or [18.2-415](#).

QUESTIONS? COMMENTS?



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