



SEALING OF CRIMINAL RECORDS UPDATE

Colin L. Drabert, Deputy Director

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SEALING OF CRIMINAL RECORDS UPDATE

- Sealing Laws
- Staff Activities
- Draft Legislation
- Further Study Needed



SEALING DEFINED

- Virginia's sealing laws took effect July 1, 2026.
- Sealing means a criminal record is no longer publicly accessible.
 - The record still exists and can be shared for various reasons, such as:
 - Firearm transaction background checks;
 - Criminal justice purposes (DNA, fingerprints, exculpatory evidence); and,
 - Certain types of employment (law enforcement, federal contractors).
 - Sealed records can also be shared within or between government agencies for purposes required under state or federal law.



RECORDS SEALED

- Sealing applies to the records of:
 - Central Criminal Records Exchange (Virginia State Police);
 - Virginia courts;
 - Virginia law enforcement agencies; and,
 - Virginia Department of Motor Vehicles.

- Business screening services are also notified and prohibited from sharing sealed records.



AUTOMATIC SEALING PROCESSES

1. Certain misdemeanor convictions
2. Possession of marijuana offenses
3. Misdemeanor non-convictions at case conclusion
4. Felony non-convictions at case conclusion
5. Previously concluded misdemeanor non-convictions
6. Traffic infractions



PETITION SEALING PROCESSES

- Automatic Petition Sealing
 - Narrow class of misdemeanors that qualify for automatic sealing.
- General Petition Sealing
 - Misdemeanors and felonies, with more eligibility requirements.
- Ancillary matters can also be sealed under both processes.



DISCLOSURE OF SEALED RECORDS

- A person whose record was sealed generally does not have to disclose the existence of the record in Virginia.
 - Disclosure is required for certain types of employment, childcare or custody proceedings, and jury service.
- It is a Class 1 misdemeanor for a government employee to knowingly and intentionally disclose a sealed record.
- A business screening service that discloses a sealed record faces civil liability and/or Attorney General enforcement action.



STAFF ACTIVITIES



PUBLIC AWARENESS

- Developed a sealing brochure for public distribution.
- Created an informational page on the agency website.
- Assisted the IDC Expungement and Sealing Resource Attorney with development of informational material.
- Attended community outreach events in Portsmouth and Newport News.



TRAINING CONDUCTED

- Leroy Rountree Hassell, Sr. Indigent Criminal Defense Seminar
- Virginia Indigent Defense Commission Conference
- Virginia Court Clerks' Association Conference
- Virginia State Bar Pro Bono Conference (virtual)



TRAINING CONDUCTED

- Virginia Sheriff's Institute Conference
- Virginia Chiefs of Police and Virginia Campus Law Enforcement Administrators Conference
- Law Enforcement Agency Sealing (virtual)
- Virginia Press Association Webinar (virtual)
- City and County Attorneys (informational material)



MONITORED IMPLEMENTATION

- Participated in weekly meetings with the Office of the Executive Secretary (OES), Virginia State Police (VSP), and Fairfax County Circuit Court.
- Attended trainings for Circuit Court Clerks and Judges, as well as Commonwealth's Attorneys.
- Observed hearings on sealing petitions.
- Consulted with the Sealing Implementation Work Group and the Sealing Resource Needs Work Group.



DRAFT LEGISLATION



DRAFT LEGISLATION

1. Requires VSP to develop a process for a person to electronically request and receive their criminal record.
2. Allows a person to request and receive their criminal record at a reduced cost for sealing and expungement purposes.
3. Allows a person, or their counsel, to access their own juvenile record from the CCRE.
4. Allows law enforcement agencies to reply that a sealed record exists, but can only be disclosed for specific statutory reasons.
5. Specifies that a previously sealed conviction is not deemed a conviction for purposes of sealing eligibility.



DRAFT LEGISLATION

6. Clarifies that any offense that was at any point in time a possession of marijuana charge (§ 18.2-250.1) be automatically sealed.
7. Specifies that possession of marijuana non-convictions can be expunged after being sealed.
8. Removes the requirement to seal an offense after it has already been sealed under another statute.
9. Clarifies that VSP is not required to conduct manual research on offenses for purposes of automatic sealing.
10. Clarifies that deferred and dismissed offenses and ancillary matters are not sealed at case conclusion.



DRAFT LEGISLATION

11. Allows a person to petition for sealing if the imposition or execution of the sentence was suspended.
12. Directs the Clerk of Court to provide a copy of the sealing petition to the Commonwealth's Attorney when it is filed.
13. Clarifies that the lifetime limit on sealing petitions is based on offenses from the same transaction or occurrence.
14. Requires that the sealing petition and related pleadings be kept under seal once the petition is granted.
15. Clarifies that the petition sealing exclusions are based on the charge at the final disposition of the case.



DRAFT LEGISLATION

16. Authorizes disclosure of sealed records for additional purposes:
 - Eligibility for a concealed handgun permit;
 - Use by the Virginia Longitudinal Data System;
 - Certify victims of qualifying criminal activity (T and U visas); and,
 - Counsel for the person whose record was sealed.
17. Clarifies that government agencies can access sealed records for the administration of criminal justice.
18. Requires VSP to notify business screening services of all sealing orders, even if an order cannot be matched within the CCRE.
19. Allows the Library of Virginia to treat expunged records in the same manner as sealed records.
20. Aligns certain expungement procedures with sealing procedures.



POLICY DECISION

- Va. Code § 19.2-392.11(A) requires VSP to automatically seal misdemeanor “*dismissal[s], excluding any charge that was deferred and dismissed...*”
- VSP identified nearly 100,000 misdemeanor dismissals in the CCRE.
 - It cannot be determined which of these 100,000 charges were “dismissed” versus “deferred and dismissed”.
- Because this distinction cannot be made, it is unclear whether all or none of the dismissals should be automatically sealed.



POLICY DECISION

- If VSP automatically seals all misdemeanor dismissals, then numerous charges that were deferred and dismissed will be sealed.
- This will result in the automatic sealing of charges that are not eligible for sealing, such as domestic assault and battery.



DISMISSED MISDEMEANOR CHARGES

Rank	Misdemeanor Charges	Total
1	Domestic Assault & Battery (§ 18.2-57.2)	22,389 (23%)
2	Assault & Battery (§ 18.2-57)	12,348 (13%)
3	Contempt (§ 18.2-456)	11,359 (12%)
4	Petit Larceny (§ 18.2-96)	7,331 (7%)
5	Trespass (§ 18.2-119)	5,672 (6%)
6	Failure to Appear (§ 19.2-128)	5,276 (5%)
7	Driving While Intoxicated (§ 18.2-266)	3,111 (3%)
8	Destruction of Property (§ 18.2-137)	2,949 (3%)
9	Concealment of Goods (§ 18.2-103)	2,569 (3%)
10	Disorderly Conduct (§ 18.2-415)	2,168 (2%)
All Other Code Sections		23,134 (24%)
Total Dismissed Charges		98,306

The number of charges that were dismissed versus deferred and dismissed cannot be determined.

Source: Virginia State Police, Central Criminal Records Exchange, as of 10/1/26. Analysis by Crime Commission staff.



POLICY DECISION

- Amend Va. Code § 19.2-392.11(A) to:
 1. Remove the requirement to automatically seal dismissals.
 - Neither dismissed nor deferred and dismissed charges will be automatically sealed.
 - Remedies will still exist under expungement and petition sealing.

OR

2. Allow all dismissals to be automatically sealed.
 - Nearly 100,000 misdemeanor dismissals will be sealed, including both dismissed and deferred and dismissed charges.



FURTHER STUDY NEEDED

1. Notification process when an offense is sealed.
 - No process exists to notify individuals that their record was sealed.
2. Screening process for sealing eligibility.
 - No process exists to determine whether a person qualifies for sealing.
3. Waiting period for automatic sealing of convictions.
 - Different interpretations exist about whether the 7-year waiting period for the automatic sealing of misdemeanor convictions begins immediately following the conviction, or includes any 7-year period after that date.
4. Errors on automatic sealing lists sent by VSP to OES.
 - No mechanism exists to correct lists of offenses for automatic sealing sent by VSP to OES if any errors are identified before an order is entered.



FURTHER STUDY NEEDED

5. Incomplete criminal history records.
 - Charges and dispositions are not being applied to criminal history records.
6. Reporting of deferred dismissals.
 - Deferred dismissals are not being reported on criminal history records.
7. Business screening services fee.
 - Litigation is pending over the fee for notifications of sealed records.



NEXT STEPS

- Consult with stakeholders on the draft legislation.
- Identify any fiscal impacts or additional resource needs.
- Continue to promote public awareness and conduct trainings.



DISCUSSION