

# 2019 VIRGINIA LAW ENFORCEMENT LEGISLATIVE UPDATE

## SUPPLEMENT

### HB 2343/SB 1602 – Omnibus Fingerprinting Bill

2019 Acts of Assembly Ch. 782

1. Amends § 9.1-176.1 to require local probation officers to run each probationer's record at least 60 days prior to discharge to determine if the offense for which he is on probation is on his record (assuming it's reportable pursuant to § 19.2-390). **If the offense is not on the record, the probation officer must order the offender to report to the arresting local law enforcement agency or VSP to have his fingerprints and photograph taken and submitted to the CCRE.** The local probation officer will also have to notify the CCRE of the missing offense and subsequently verify that the fingerprints and photographs were taken. VSP is putting out guidance to law enforcement and probation offices on implementation of this provision.
2. **Amends various code sections dealing with court-ordered fingerprinting of subjects whose cases are before the court, when the defendant was not previously fingerprinted for the offense. Short version: fingerprints will now be taken, if the underlying charge is not already on the record: (1) before a deferred disposition can be entered; (2) after conviction for any reportable offense (previously just for felonies); (3) at any time during a period of probation or suspended sentence; or (4) at a hearing for failure to pay restitution.** The details are discussed below:
  - a. Amends §§ 18.2-57.3, 18.2-251, and 19.2-303.2 to require the court to determine whether booking fingerprints were taken prior to entering a deferred disposition, and if not, to order a law enforcement officer to take them. The amendments to these sections also provide that a court cannot dismiss the proceedings until the fingerprints are taken. Also amends § 19.2-392 to authorize law enforcement to take the fingerprints required by these amendments.
  - b. Amends §19.2-303 to broaden the requirement that after conviction of a felony, the court must determine whether a subject has been fingerprinted so that it now applies to all reportable offenses. If fingerprints have not been taken, the court is to order law enforcement to take them. In addition, this amendment specifies that the court is verifying whether the arresting/booking agency provided the clerk with a copy of the fingerprints or "fingerprint identification information," rather than verifying that the fingerprints are on file with CCRE. This is in keeping with the arrest/disposition workflow between the CCRE and the Supreme Court, whereby the booking agency provides the clerk with a copy of the arrest record and the subsequent disposition information sent back to the CCRE by the court includes the Document Control Number (DCN) from the arrest record so that arrests and dispositions are properly matched.
  - c. Amends §19.2-303.02 to give courts the authority to order fingerprinting at any time within the period of a suspended sentence or supervision (after notice and a hearing).
  - d. Amends §19.2-305.1 to require fingerprinting of subjects who are before the court on hearings for failure to pay restitution if they were not previously fingerprinted on the underlying charge. (Also discussed at #5, below.)

3. Amends § 19.2-74. Adds “Unless otherwise authorized by law” to the prohibition on holding someone in custody for the sole purpose of taking arrest fingerprints. This change was necessary to authorize custodial fingerprinting after-the-fact when it is determined that an offense is not on the record (in accordance with other sections of this bill).
4. Amends §§ 19.2-232 and 19.2-390 to require the Commonwealth’s Attorney to notify the court at first appearance when an indictment/presentment is found against an accused who is in custody where no arrest process is issued so that the accused can be booked for the new offense.
5. Amends §19.2-305.1 to require that at any hearing on unpaid restitution, the court shall review the criminal record provided by the probation officer to determine whether the underlying offense appears on a defendant’s criminal history and, if fingerprints have not previously been taken, to order that the fingerprints and photograph be taken by a law enforcement officer. If the person was previously fingerprinted, the probation officer is required to notify the State Police that the offense does not appear on the record. In cases where the offender is not placed on active supervision, the Commonwealth’s Attorney, rather than the probation officer, provides the record to the court and notifies the State Police, as necessary (assuming the Commonwealth was involved in the prosecution).
6. Amends §19.2-388 to require the CCRE to submit periodic reports to the Office of the Executive Secretary, the clerk of each court, the Commonwealth’s Attorneys, and law enforcement agencies containing a list of unapplied criminal history record information. The purpose of this report is to identify for these agencies those offenses or dispositions that cannot be applied because of missing information so that, where feasible, the agencies can submit the necessary information for the criminal record to be updated. This section requires criminal justice agencies to cooperate with or assist State Police in resolving errors, inconsistencies, or omissions in unapplied criminal history records. This section also requires the State Police to 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.
7. Amends § 19.2-390:
  - a. Specifies that fingerprint booking is required for each reportable offense for which a subject is charged;
  - b. Expands the list of reportable offenses to include cruelty to animals (§ 3.2-6570), possessing/consuming alcohol while operating a school bus (§ 4.1-309.1), flying while intoxicated or recklessly (§ 5.1-13), wearing a uniform with the intent to impersonate a sheriff (§ 15.2-1612), operating a school bus without a license/endorsement or as a sex offender (§ 46.2-339), driving a commercial vehicle while suspended/revoked/disqualified (§ 46.2-341.21), driving a commercial vehicle while intoxicated or above .04 (§ 46.2-341.24), refusal of blood or breath test/commercial motor vehicle (§ 46.2-341.26:3), fail to stop for or eluding police (§ 46.2-817), embezzlement by Treasurer (§ 58.1-3141), larceny of lottery tickets (§ 58.1-4018.1), false statements to obtain benefits (§ 60.2-632), failure to make mandatory abuse/neglect report (§ 63.2-1509), and sex offender or child abuser residing in family day home (§ 63.2-1727).
  - c. Requires fingerprinting of persons released on a summons when charges are deferred (previously, fingerprints were only taken upon final disposition).
  - d. Requires fingerprinting of for a violation of the terms of probation or suspended sentence for a felony under §§ 18.2-456, 19.2-306, or 53.1-165. If the person is brought before the

court on a show cause, fingerprinting is only required when the Court determines the violation to have occurred. If on a *capias*, fingerprinting is required both on arrest and upon finding.

- e. Requires clerks to notify the CCRE of dismissals pursuant to a deferred disposition under §§ 18.2-57.3, 18.2-251, or 19.2-303.2, and “deferrals” (generally). When charges were placed on a summons such reports may be submitted, but are not required, until final disposition, deferral/dismissal under the above sections, or NGRI. Finally, subsection C requires the court to report to the CCRE when a person charged on a summons is in violation of the terms and conditions of a suspended sentence or probation for a felony. I’m not sure what that would be...
  - f. Authorizes the CCRE to use Department of Correction fingerprints to apply criminal history record information. Virginia Code § 53.1-23 was also amended in this Bill to require the Department of Corrections to send correctional prints for reportable offenses to the CCRE and to allow the CCRE to make them a part of the subject’s criminal history record.
8. The Department of State Police is required to develop a model policy on the collection of fingerprints and reporting of criminal history record information to the CCRE and disseminate it to all law enforcement agencies in the Commonwealth.
  9. Amends § 53.1-23 to require the Department of Corrections to run each prisoner’s record at least 60 days prior to discharge to determine if the offense for which he is incarcerated is on his record (assuming it’s reportable pursuant to § 19.2-390). If the offense is not on the record, DOC will fingerprint and notify the CCRE of the missing offense.
  10. Amends § 53.1-145 to require state probation officers to run each probationer’s record at least 60 days prior to discharge (for offenders under supervision prior to July 1, 2019) or upon intake (for offenders taken under probation beginning on or after July 1, 2019) to determine if the offense for which he is on probation is on his record (assuming it’s reportable pursuant to § 19.2-390). If the offense is not on the record, the probation officer must fingerprint and notify the CCRE of the missing offense. This section also requires the Department of Corrections to submit fingerprints and a photograph to the CCRE upon revocation of parole.
  11. Enacts as Acts of Assembly Chapter 782, Section 2, the requirement that the State Police make reasonable efforts to ensure that unapplied criminal history records are applied to the subject’s record. This section compels local agencies to assist in these efforts and authorizes the exchange of information as may be necessary. The State Police are required to submit a progress report to the Governor and Crime Commission by November 1, 2019.

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