



VIRGINIA CRIMINAL SENTENCING COMMISSION



Access to Criminal History Information

September 9, 2019

Access to Criminal History Information

- **While the Commission has sufficient access to Virginia criminal history records, the process required to access out-of-state criminal history records is cumbersome and time-consuming.**
- **The US Sentencing Commission and other state sentencing commissions face the same challenges.**
- **Directors from the Virginia, Pennsylvania and Maryland sentencing commissions discussed the issue at the most recent NASC conference.**
 - **There is interest in working together to seek change at the federal level to simplify the process and ease access for commissions.**



Definition of a Criminal Justice Agency in Virginia

Code of Virginia § 9.1-101

- **"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.**
- **"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so..."**



Definition of a Criminal Justice Agency in Virginia

Code of Virginia § 9.1-101

- **"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.**
- **"Criminal justice agency" includes the Department of Criminal Justice Services.**
- **"Criminal justice agency" includes the Virginia State Crime Commission.**



Exchange of Criminal Justice Information
Federal Code
28 USC § 534

§534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

- **(a) The Attorney General shall...**
 - **(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, including State sentencing commissions, Indian tribes, cities, and penal and other institutions.**

~ H.R. 6412 (111th Congress)
Signed by the President in January 2011



Exchange of Criminal Justice Information Code of Federal Regulation *28 CFR § 20.3*

§ 20.3 Definitions.

- **As used in these regulations...**
 - **(b) *Administration of criminal justice* means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.**



Exchange of Criminal Justice Information

Code of Federal Regulation

28 CFR § 20.3

§ 20.3 Definitions.

- **As used in these regulations...**
 - **(g) *Criminal justice agency* means:**
 - **(1) Courts; and**
 - **(2) A governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included.**



Federal Bureau of Investigation CJILU Research Policy

While state sentencing commissions are authorized pursuant to 28 USC § 534 to obtain FBI criminal history record information, each study must be approved by the FBI's Institutional Review Board.



VIRGINIA CRIMINAL
SENTENCING COMMISSION

FBI CJILU Research Policy

Requests for FBI criminal history record information (CHRI) for research purposes must be submitted on official letterhead by an authorized criminal justice agency, or the governmental agency with which the researcher is working, consistent with Title 28, Code of Federal Regulations (C.F.R.) Part 22. The request must contain a privacy certificate or reference to a privacy certification that contains the following information as identified in 28 C.F.R. § 22.23:

1. point of contact and telephone number,
2. title of study or project, along with a brief statement concerning the nature of the research and the intended goals,
3. specific statutory authority, if any, under which the project is being conducted,
4. any grants/agreements/funding, citing the source and grant number(s),
5. the identities of all participants, *i.e.* private researchers, universities, other government agencies, etc., including complete names, titles, addresses, and telephone numbers,
6. the identities of individuals authorized to execute an Information Transfer Agreement (ITA) on behalf of his/her respective agency, including complete names, titles, addresses, and telephone numbers, and email addresses,
7. if any human subjects are directly involved and to what extent,
8. if human subjects are involved, have they consented to allow researchers access to their FBI CHRI, along with copies of any consent forms,
9. a description of physical and/or administrative procedures to be followed to insure the security of the data to meet the requirements of § 22.25,
10. copies of any Institutional Review Board (IRB) certification/approval.

Requests should be directed to:

Betsy C. Taylor
Acting Unit Chief
Criminal Justice Information Law Unit
Office of the General Counsel
Federal Bureau of Investigation
1000 Custer Hollow Road
Clarksburg, WV 26306
CJILU@FBI.gov

The Office of the General Counsel will review the request to determine if access to CHRI is consistent with federal law and regulations and advise accordingly. The FBI will provide the ITA for signature by all parties once the project/study has been approved. No data will be transferred until the ITA have been signed and returned to the FBI.

Interest in Change

- **Directors of the Virginia, Pennsylvania and Maryland sentencing commissions are interested in seeking amendment to Federal code (statutory and/or regulatory) to provide more direct access to sentencing commissions in order to:**
 - **Assist users with the completion of sentencing guidelines worksheets, and**
 - **Conduct research studies, including recidivism and risk assessment, based on the most complete and accurate criminal history information.**



Possible Next Steps

- **Does the Commission wish to pursue amendment to the *Code of Virginia* to explicitly name the Sentencing Commission as a state criminal justice agency?**
 - **This may prove beneficial in pursuing change at the federal level.**
- **Commission directors could meet with FBI representatives to determine what must be changed to clear the path for more direct access to criminal history information.**
- **A delegation from the states could meet with members of Congress to gauge support and discuss a course of action.**



