

 <p style="text-align: center;">Winchester City Sheriff's Office Manual of General Orders</p> <p style="text-align: center;">Administration 124</p>	Effective Date: May 1, 2014 Accreditation Standards:
	Original Policy: May 1, 2014 Last Review Date: October 31, 2023 Next Review Date: October 31, 2024
Subject: Criminal History	By Authority of: <hr/> William E Sales, Sheriff

I. PURPOSE

The purpose of this order is to establish policy and procedure governing the control and dissemination of criminal history record information. Additionally, this order will make every Sheriff's Office employee aware of the laws of the Virginia Code pertaining to criminal history record information.

II. POLICY

The dissemination of criminal history record information is a very serious and sensitive matter. In the interest of protecting the rights of individuals and providing the proper authorities with necessary information, the Winchester City Sheriff's Office requires all employees to be knowledgeable in regard to criminal history procedures and the dissemination thereof. Sheriff's Office personnel shall disseminate criminal history record information as defined in Virginia Code § 9.1-101 in accordance to this policy and Virginia law. No employee shall disseminate by unofficial means any criminal history record information.

III. PROCEDURES: ADULT CRIMINAL RECORDS

- A. Criminal history record information will be maintained by the Sheriff's Office records section. The secretaries, record's clerks, and personnel designated by the Sheriff will be the only personnel allowed to input criminal history record information. A Sheriff's Office Administrator must approve the release of any criminal history records/information by non-sworn Sheriff's Office personnel. All employees accessing criminal history information will do so by using a user ID and a password exclusive to that employee. All hard copy record information will be kept under close security and remain secured when authorized personnel are not present.
- B. Employees that are VCIN certified can access state and national criminal histories through the Central Criminal Records Exchange. This policy also governs the dissemination of those criminal histories by Sheriff's Office personnel. Whenever the official reason for having the criminal history is completed the criminal history shall be destroyed.
- C. All persons requesting criminal history record information from the Central Criminal Records Exchange will sign the log book for the records check regardless of whether a criminal history exists or not. A criminal justice reason is needed to request a criminal history through the Central Criminal Records Exchange. There are incidents when it is appropriate to mail criminal history record information. The records section personnel will do this.
- D. Dissemination-Virginia Code § 19.2-389 states:

1. (A) Who may have access to criminal history record information and that it shall be disseminated, whether directly or indirectly, through an intermediary only to these approved agencies and personnel. (See the code section for the list)
 2. (B) Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.
 3. (C) No criminal justice agency or person shall confirm the existence or nonexistence of criminal history information for employment or licensing inquiries except as provided by law.
 4. (D) Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to which a request has been made for the dissemination of criminal history information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
- E. Reporting-Virginia Code § 19.2-390 states:
1. (A) 1 Every agency having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or a warrant for failure to appear, and the service of a warrant for another jurisdiction, on the following charges: treason; any felony; any offense punishable as a misdemeanor under Title 54.1; any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest for a violation of Virginia Code § 18.2-119 (Trespassing), Virginia Code § 18.2-415 (Disorderly Conduct), or Virginia Code § 20-61 (Desertion or Nonsupport). The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006 the corresponding photograph of an individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database.
 2. (A) 2 For persons arrested and released on a summons in accordance with Virginia Code § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if the conviction is upheld upon appeal of the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to Virginia Code § 18.2- 251; or (iii) an acquittal by reason of insanity pursuant to Virginia Code § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court imposed a jail sentence to be served by him or ordered him committed.

3. (B) Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to Virginia Code § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information system" known as the Virginia Criminal Information Network (VCIN), and the National Crime Information Center (NCIC) maintained by the FBI. The report shall include the person's name, date of birth, social security number, and such other known information which the State Police or FBI may require. When criminal process has been ordered destroyed pursuant to Virginia Code § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC systems.

IV. PROCEDURES: JUVENILE CRIMINAL RECORDS

Juvenile Criminal Records will be maintained according to the Code of Virginia.

A. Reporting-Virginia Code § 16.1-299 states:

1. (A) All duly constituted police authorities having the power to arrest may take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange pursuant to Virginia Code § 19.2-390(A). Whenever fingerprints are taken, they shall be maintained separately from adult records and a copy shall be filed with the juvenile court on forms provided by the Central Criminal Records Exchange.
2. (B) If a juvenile of any age is adjudicated delinquent or found guilty of any offense which would be a felony if committed by an adult or any other offense for which a report to the Central Criminal Records Exchange is required by Virginia Code of § 19.2-390(C) if the offense were committed by an adult, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange and to the jurisdiction making the arrest by the clerk of the court which heard the case.
3. (C) If a petition or warrant is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed sixty (60) days after fingerprints were taken. If a juvenile charged with a delinquent act other than a violent juvenile felony or a crime ancillary thereto is found not guilty, or in any other case resulting in a disposition for which fingerprints are not required to be forwarded to the Central Criminal Records Exchange, the court shall order that the fingerprint card, all copies of the fingerprints and all photographs be destroyed within six months of the date of disposition of the case.

B. Dissemination -Virginia Code § 16.1-301 states:

1. (A) The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The sheriffs of counties shall keep separate records as to violations of the law other than violations of motor vehicle laws committed by juveniles. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile 14 years of age or older is charged with a violent juvenile felony as specified in Virginia Code § 16.1-269.1 (B) (C).

2. (B) Notwithstanding any other provision of law, the sheriff or his designee may disclose for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile is a suspect in or has been charged with (i) a violent felony, as specified in Virginia Code § 16.1-269.1 (B) (C); a violation of any of the provisions of Article 1 of Chapter 5 or 18.2 (Arson/Bombs); or a violation of law involving any weapon as described in subsection A of Virginia Code § 18.2-308. (If notice is provided to a principal about pending charges under this section, then the principal must be advised of the disposition within 15 days after the final disposition [convicted, dismissed diverted, etc.]. Also if charges haven't been filed within 90 days the principal must also be notified of this.)
3. (C) Inspection of such records shall be permitted only by the following:
 - a) A Court having the child currently before it in any proceeding;
 - b) The officers of public and non-governmental institutions or agencies to which the child is currently committed, and those responsible for his supervision after release;
 - c) Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;
 - d) Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;
 - e) The probation and other professional staff of a court in which the child is subsequently convicted of a criminal offense for the purpose of a pre-sentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed or by a parole board in considering his parole or discharge or in exercising supervision over him; and
 - f) The child, parent, guardian or other custodian and counsel for the child by order of the court.
 - g) As provided in Virginia Code § 19.2-389 & § 19.2-390.
4. (D) The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of a new file or records on individual juveniles on the part of the receiving agency.
5. (E) Upon request sheriffs of counties may release current information on juvenile arrests or juvenile victims to the Virginia Workers' Compensation Commission solely for the purpose of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used for any other purpose.
6. (F) That nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies

V. PENALTIES FOR VIOLATIONS

- A. Virginia Code § 9.1-135 states any person may institute a civil action in the circuit court of the jurisdiction in which the Board has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, for actual damages resulting from violation of this article or to restrain any violation therefore, or both.

- B. Virginia Code § 9.1-136 states any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information to any agency or person in violation of this article or Chapter 23 of Title 19.2 shall be guilty of a Class 2 misdemeanor.

VI. FREEDOM OF INFORMATION ACT

- A. All members of the Sheriff's Office shall familiarize themselves with Virginia Code § 2.2-3706-Disclosure of criminal records limitations.
- B. Refer to ADM 110 for further guidance on the Freedom of Information Act.
- C. All members of the Sheriff's Office shall familiarize themselves with all Virginia Codes pertaining to criminal history record information.

