



**VIRGINIA CRIMINAL
SENTENCING COMMISSION**

Release of Guidelines & Pretrial Data

Pending an Attorney General Opinion



Release of Guidelines & Pretrial Data

The Supreme Court addressed access to circuit court records held by the Office of the Executive Secretary (OES) in [Daily Press v. Office of the Executive Secretary](#) (Va. 2017) and held that such records must be requested from the clerks of each circuit court due to Code § 17.1-242: "The circuit court clerks shall have custody of and shall keep all court records, including books, evidence, records, maps, and papers, deposited in their offices or at such location otherwise designated by the clerk, as well as records stored in electronic format whether the storage media for such electronic records are on premises or elsewhere."

Subsequently, the General Assembly addressed court records and FOIA by adding what is now Code § 2.2-3703 (A)(6):

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:

6. The records maintained by the clerks of the courts of record, as defined in § 1-212, for which clerks are custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which clerks are custodians under § 16.1-69.54, including those transferred for storage, maintenance, or archiving. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-208, as appropriate. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

Additionally, I would note that the Part 11 of the Rules of the Supreme Court, adopted in 2019, also addresses access to court records (as do various other provisions in the Code outside of FOIA). In light of this precedent, the statutory changes, and the adoption of Part 11 of the Rules, I would interpret the language of Code § 19.2-298.01 stating that "the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection" [to mean that such worksheets are part of the case file open to inspection at the clerk's office, but not "public records" subject to FOIA.](#)

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Under Library of Virginia records retention policies, the data, rather than the Guidelines form itself, is the official record that the VCSC must retain for 10 years.



A prior Attorney General opinion determined that the Guidelines constitute public documents. Consequently, the data extracted from or contained within the Guidelines should be treated as public information as well.

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§ 19.2-392.5



A clerk of any court and the Executive Secretary of the Supreme Court shall be immune from any cause of action arising from the production of sealed court records, including electronic records, absent gross negligence or willful misconduct.

Release of Guidelines & Pretrial Data

§ 19.2-392.13 (F)



If a pleading or case document in a court record that was sealed is included among other court records that have not been ordered to be sealed, the clerk of the court shall not be required to prohibit dissemination of that record.

Release of Guidelines & Pretrial Data

Modification of Statutes and Policies Related to Sealing

Any modifications to existing statutes governing sealed records should incorporate the following provisions:

1. Protection for Staff

Statutory protections should be provided for Commission staff in instances where data related to sealed records are inadvertently released with personal identifying information, provided the release was unintentional and occurred in the course of official duties. (§ 19.2-392.5)

2. Release of Identified and De-Identified Data

Commission staff may release identified data only to criminal justice entities or individuals who are expressly authorized by statute to access sealed records. All other requests for Commission data involving sealed records shall be limited to de-identified information.



Release of Guidelines & Pretrial Data

Modification of Statutes and Policies Related to Sealing

Any modifications to existing statutes governing sealed records should incorporate the following provisions:

3. No Requirement to Independently Verify Sealed Records

Staff should not be required to independently review current offense or prior record data sources to identify sealed cases, as no comprehensive procedure exists that can reliably identify all sealed records across data systems.

4. Access to Individual Sentencing Guidelines Forms

Individual Sentencing Guidelines forms may only be obtained through the Clerk of the Circuit Court. The Virginia Criminal Sentencing Commission may provide the general public with a summary sheet containing information from the Cover Page and Disposition Page, excluding the listing of convicted additional offenses. (§ 19.2-392.13 – add an exception)





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Code of Virginia
 Title 19.2. Criminal Procedure
 Chapter 23.2. Sealing of Criminal History Record Information and Court Records

§ 19.2-392.13. (Effective July 1, 2026) Disposition of records when an offense is sealed; permitted uses of sealed records.

A. Upon electronic notification that a court order for sealing has been entered pursuant to § [19.2-392.7](#), [19.2-392.10](#), [19.2-392.11](#), [19.2-392.12](#), or 19.2-392.12:1, or upon the sealing of an offense without a court order pursuant to § 19.2-392.6:1 or [19.2-392.17](#), the Department of State Police shall not disseminate any criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, that was ordered to be sealed, except for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § [9.1-128](#) and procedures adopted pursuant to § [9.1-134](#). Upon receipt of such electronic notification, the Department of State Police shall electronically notify those agencies and individuals known to maintain or to have obtained such a record that such record has been ordered to be sealed and may only be disseminated for purposes set forth in this section and pursuant to rules and regulations adopted pursuant to § [9.1-128](#) and procedures adopted pursuant to § [9.1-134](#). Any records maintained electronically that are transformed or transferred by whatever means to an offline system or to a confidential and secure area inaccessible from normal use within the system in which the record is maintained shall be considered sealed, provided that such records are accessible only to the manager of the records or their designee.

B. Upon entry of a court order for sealing pursuant to § [19.2-392.7](#), [19.2-392.8](#), [19.2-392.11](#), [19.2-392.12](#), or 19.2-392.12:1, or upon the sealing of an offense without a court order pursuant to § 19.2-392.6:1 or [19.2-392.17](#), the Executive Secretary of the Supreme Court and any circuit court clerk who maintains a case management system that interfaces with the Department of State Police under subsection B1 of § [17.1-502](#) shall ensure that the court record of such arrest, charge, or conviction is not available for public online viewing as directed by subsections B and C of § [17.1-293.1](#). Additionally, upon entry of such an order for sealing, the clerk of the court shall not disseminate any court record of such arrest, charge, or conviction, except as provided in subsections D and E.

C. Records relating to an arrest, charge, or conviction that was ordered to be sealed pursuant to § [19.2-392.7](#), [19.2-392.8](#), [19.2-392.11](#), [19.2-392.12](#), 19.2-392.12:1, or upon the sealing of an offense without a court order pursuant to § 19.2-392.6:1 or [19.2-392.17](#), shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated and used for the following purposes: (i) to make the determination as provided in § [18.2-308.2:2](#) or through the National Instant Criminal Background Check System of eligibility to possess or purchase a firearm; (ii) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System; (iii) to the Virginia Criminal Sentencing Commission, the Virginia State Crime Commission, and the Joint Legislative Audit and Review Commission for research purposes; (iv) to any full-time or part-time employee of 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 for the purpose of screening any person 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; (v) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § [32.1-111.5](#); (vi) to any full-time or

regulations of the Federal Motor Carrier Safety Administration; (ix) to any employer or prospective employer or its designee where federal law requires the employer to inquire about prior criminal charges or convictions; (x) to any employer or prospective employer or its designee where the position that a person is applying for, or where 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; (xi) to any person authorized to engage in the collection of court costs, fines, or restitution under subsection C of § [19.2-349](#) for purposes of collecting such court costs, fines, or restitution; (xii) to administer and utilize the DNA Analysis and Data Bank set forth in Article 1.1 (§ [19.2-310.2](#) et seq.) of Chapter 18; (xiii) to publish decisions of the Supreme Court, Court of Appeals, or any circuit court; (xiv) to any full-time or part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative Services, or the Chairs of the House and Senate Committees for Courts of Justice for the purpose of screening any person for full-time or part-time employment as a clerk, magistrate, or judge with a court or the Office of the Executive Secretary; (xv) to any employer or prospective employer or its designee where this Code or a local ordinance requires the employer to inquire about prior criminal charges or convictions; (xvi) to any employer or prospective employer or its designee that is allowed access to such sealed records in accordance with the rules and regulations adopted pursuant to § [9.1-128](#) and procedures adopted pursuant to § [9.1-134](#); (xvii) to any business screening service for purposes of complying with § [19.2-392.16](#); (xviii) to any attorney for the Commonwealth and any person accused of a violation of law, or counsel for the accused, in order to comply with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment evidence to an accused; (xix) to any party in a criminal or civil proceeding for use as authorized by law in such proceeding; (xx) to any party for use in a protective order hearing as authorized by law; (xxi) to the Department of Social Services or any local department of social services for purposes of performing any statutory duties as required under Title 63.2; (xxii) to any party in a proceeding relating to the care and custody of a child for use as authorized by law in such proceeding; (xxiii) to the attorney for the Commonwealth and the court for purposes of determining eligibility for sealing pursuant to the provisions of § [19.2-392.12](#), whether the court or parties failed to strictly comply with sealing procedures, or whether an order for sealing was entered contrary to law; (xxiv) to determine a person's eligibility to be empaneled as a juror; (xxv) to the Auditor of Public Accounts for audit purposes; (xxvi) to the Department of Behavioral Health and Developmental Services and any entity defined under § [37.2-100](#) for purposes of providing any services or functions as defined in such section; (xxvii) to the attorney for the Commonwealth, the defendant or his counsel, any magistrate, any local community-based probation services agency or pretrial services agency, the Department of State Police, any police department, any sheriff's office, any campus police department, the Department of Corrections, any court, and the Virginia Criminal Sentencing Commission for the purposes set forth in subsection H of § [19.2-392.5](#); and (xxviii) to the person arrested, charged, or convicted of the offense that was sealed.

C1. In addition to the purposes set forth in subsection C, a sealed record may be disseminated without a court order within or between any department, division, board, bureau, commission, branch, authority or other agency created by the Commonwealth, or to which the Commission is a party or any political subdivision thereof, or with any federal agency, for the purpose of administering any duties or functions required by state or federal law. Nothing in this subsection shall authorize a business screening service to allow dissemination of a sealed record due to its continued existence in any such record.

E. No access shall be provided to electronic records in an appellate court, circuit court, or district court case management system or other system containing electronic case information maintained by the Executive Secretary of the Supreme Court or in a case management system maintained by a clerk of the circuit court for any arrest, charge, or conviction that was ordered to be sealed pursuant to § [19.2-392.7](#), [19.2-392.8](#), [19.2-392.11](#), [19.2-392.12](#), [19.2-392.12:1](#), or upon the sealing of an offense without a court order pursuant to § 19.2-392.6:1 or [19.2-392.17](#), except to (i) the Virginia Criminal Sentencing Commission, the Virginia State Crime Commission, and the Joint Legislative Audit and Review Commission for research purposes; (ii) the Auditor of Public Accounts for audit purposes; (iii) any person authorized to engage in the collection of court costs, fines, or restitution under subsection C of § [19.2-349](#) for the purposes of collection of such court costs, fines, or restitution; and (iv) any person authorized to submit a request for payment to the Office of the Executive Secretary of the Supreme Court for services provided in a criminal case. Electronic records may be disseminated as authorized in this subsection without a court order.

F. If a pleading or case document in a court record that was sealed is included among other court records that have not been ordered to be sealed, the clerk of the court shall not be required to prohibit dissemination of that record. If an appellate court record contains court records that have been sealed, with or without a court order, and court records that have not been sealed, the clerk of the Supreme Court or Court of Appeals shall not be required to prohibit dissemination of such appellate record. Any circuit court shall not be required to prohibit dissemination of any published or unpublished opinion relating to an arrest, charge, or conviction that was ordered to be sealed. The Supreme Court and Court of Appeals shall not be required to prohibit dissemination of any (i) published or unpublished opinion, order, or summary of a case; (ii) court records for matters in which the Supreme Court or Court of Appeals has original jurisdiction; or (iii) appellate court record of a traffic infraction under Title 46.2 that is not punishable as a criminal offense relating to an arrest, charge, or conviction that was sealed. A clerk of the court shall not be required to redact information pertaining to a court record that has been sealed in any reports or electronic transmissions of case information that are required by statute or prepared and distributed to a state or local government entity in the normal course of business. Nothing in this subsection shall authorize a business screening service to allow dissemination of a sealed record due to its continued existence in any appellate record.

G. The clerk of any circuit court shall not be required to redact any sealed record contained in (i) an order book or order book index; (ii) a land record, as defined in subsection B of § [17.1-292](#); or (iii) on microfilm or microfiche. The clerk of any circuit court shall not be required to redact or seal any paper record for an offense that has been sealed pursuant to § 19.2-392.6:1 or [19.2-392.17](#). The clerk of any circuit court who physically removes the paper record of the primary case file for any other charge or conviction that has been sealed and maintains that file in a physically secure location that is not accessible to the public shall be in compliance with the requirement to seal the paper record. For the purposes of this subsection, the primary case file includes the indictment or warrant and any other papers relating to any proceedings on such indictment or warrant. Nothing in this subsection shall authorize a business screening service to allow dissemination of a sealed record due to its continued existence in any such record.

H. The Department of Motor Vehicles shall not seal any conviction or any charge that was deferred and dismissed after a finding of facts sufficient to justify a finding of guilt (i) in violation of federal regulatory record retention requirements or (ii) in violation of federal program requirements if the Department of Motor Vehicles is required to suspend a person's driving privileges as a result of a conviction or deferral and dismissal ordered to be sealed. Upon receipt of an electronic notification of an order directing that an offense be sealed, the Department of Motor Vehicles

J. No arrest, charge, or conviction that has been sealed may be used to impeach the credibility of a testifying witness at any hearing or trial unless (i) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect and (ii) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

K. The provisions of this section shall not prohibit the disclosure of sealed criminal history record information or any information from such records among law-enforcement officers and attorneys when such disclosures are made by such officers or attorneys while engaged in the performance of their duties for purposes solely relating to the disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the Commonwealth when related to the prosecution of a separate crime.

2021, Sp. Sess. I, cc. [524](#), [542](#); 2023, cc. [554](#), [555](#); 2025, cc. [634](#), [671](#).