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HOUSE BILL NO. 1627

Offered January 8, 2025

Prefiled January 3, 2025

A BILL to amend and reenact § 19.2-389 of the Code of Virginia, relating to dissemination of criminal history record information.

Patron—Thomas

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis

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HB1627

59 pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further
60 disseminated to any party other than a federal or state authority or court as may be required to comply with an
61 express requirement of law;

62 9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for
63 the conduct of investigations of applicants for employment when such employment involves personal contact
64 with the public or when past criminal conduct of an applicant would be incompatible with the nature of the
65 employment under consideration;

66 10. The appropriate authority for purposes of granting citizenship and for purposes of international travel,
67 including, but not limited to, issuing visas and passports;

68 11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at
69 his cost, except that criminal history record information shall be supplied at no charge to a person who has
70 applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer
71 fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse,
72 Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been
73 offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in §
74 15.2-1713.1;

75 12. Administrators and board presidents of and applicants for licensure or registration as a child welfare
76 agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative
77 pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such
78 facilities, caretakers, and foster and adoptive parent applicants of private child-placing agencies, pursuant to
79 §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further
80 disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social
81 Services' representative or a federal or state authority or court as may be required to comply with an express
82 requirement of law for such further dissemination; however, nothing in this subdivision shall be construed to
83 prohibit the Commissioner of Social Services' representative from issuing written certifications regarding the
84 results of a background check that was conducted before July 1, 2021, in accordance with subsection J of §
85 22.1-289.035 or § 22.1-289.039;

86 13. The Department of Social Services for the purpose of screening individuals as a condition of licensure,
87 employment, volunteering, or providing services on a regular basis in a licensed child welfare agency
88 pursuant to §§ 63.2-1721 and 63.2-1726 or foster or adoptive home approved by a child-placing agency
89 pursuant to § 63.2-901.1;

90 14. The school boards of the Commonwealth for the purpose of screening individuals who are offered or
91 who accept public school employment and those current school board employees for whom a report of arrest
92 has been made pursuant to § 19.2-83.1;

93 15. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-
94 4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the
95 Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article
96 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

97 16. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of
98 applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
99 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the
100 limitations set out in subsection E;

101 17. Licensed assisted living facilities and licensed adult day centers for the conduct of investigations of
102 applicants for compensated employment in licensed assisted living facilities and licensed adult day centers
103 pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

104 18. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in §
105 4.1-103.1;

106 19. The State Board of Elections and authorized officers and employees thereof and general registrars
107 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter
108 registration, limited to any record of felony convictions;

109 20. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) or his
110 designees for individuals who are committed to the custody of or being evaluated by the Commissioner
111 pursuant to §§ 19.2-168.1, 19.2-169.1, 19.2-169.2, 19.2-169.5, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-
112 182.8, and 19.2-182.9 where such information may be beneficial for the purpose of placement, evaluation,
113 treatment, or discharge planning;

114 21. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action
115 Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders under § 18.2-
116 51.4, 18.2-266, or 18.2-266.1;

117 22. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
118 Department of Education, or the Department of Behavioral Health and Developmental Services for the
119 purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

120 23. The Department of Behavioral Health and Developmental Services and facilities operated by the

121 Department for the purpose of determining an individual's fitness for employment pursuant to departmental
122 instructions;

123 24. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary
124 schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records
125 information on behalf of such governing boards or administrators pursuant to a written agreement with the
126 Department of State Police;

127 25. Public institutions of higher education and nonprofit private institutions of higher education for the
128 purpose of screening individuals who are offered or accept employment;

129 26. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a
130 public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher
131 education, for the purpose of assessing or intervening with an individual whose behavior may present a threat
132 to safety; however, no member of a threat assessment team shall redisclose any criminal history record
133 information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose
134 that such disclosure was made to the threat assessment team;

135 27. Executive directors of community services boards or the personnel director serving the community
136 services board for the purpose of determining an individual's fitness for employment, approval as a sponsored
137 residential service provider, permission to enter into a shared living arrangement with a person receiving
138 medical assistance services pursuant to a waiver, or permission for any person under contract with the
139 community services board to serve in a direct care position on behalf of the community services board
140 pursuant to §§ 37.2-506, 37.2-506.1, and 37.2-607;

141 28. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
142 determining an individual's fitness for employment, approval as a sponsored residential service provider,
143 permission to enter into a shared living arrangement with a person receiving medical assistance services
144 pursuant to a waiver, or permission for any person under contract with the behavioral health authority to
145 serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506, 37.2-506.1
146 , and 37.2-607;

147 29. The Commissioner of Social Services for the purpose of locating persons who owe child support or
148 who are alleged in a pending paternity proceeding to be a putative father, provided that only the name,
149 address, demographics and social security number of the data subject shall be released;

150 30. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
151 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose
152 of determining if any applicant who accepts employment in any direct care position or requests approval as a
153 sponsored residential service provider, permission to enter into a shared living arrangement with a person
154 receiving medical assistance services pursuant to a waiver, or permission for any person under contract with
155 the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have
156 responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or
157 substance abuse pursuant to §§ 37.2-416, 37.2-416.1, 37.2-506, 37.2-506.1, and 37.2-607;

158 31. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for
159 and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et
160 seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

161 32. The Chairman of the Senate Committee for Courts of Justice or the Chairman of the House Committee
162 for Courts of Justice for the purpose of determining if any person being considered for election to any
163 judgeship has been convicted of a crime;

164 33. Heads of state agencies in which positions have been identified as sensitive for the purpose of
165 determining an individual's fitness for employment in positions designated as sensitive under Department of
166 Human Resource Management policies developed pursuant to § 2.2-1201.1;

167 34. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
168 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent
169 Predators Act (§ 37.2-900 et seq.);

170 35. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction,
171 overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for
172 the conduct of investigations of applications for employment or for access to facilities, by contractors, leased
173 laborers, and other visitors;

174 36. Any employer of individuals whose employment requires that they enter the homes of others, for the
175 purpose of screening individuals who apply for, are offered, or have accepted such employment;

176 37. Public agencies when and as required by federal or state law to investigate (i) applicants as providers
177 of adult foster care and home-based services or (ii) any individual with whom the agency is considering
178 placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the
179 restriction that the data shall not be further disseminated by the agency to any party other than a federal or
180 state authority or court as may be required to comply with an express requirement of law for such further
181 dissemination, subject to limitations set out in subsection G;

182 38. The Department of Medical Assistance Services, or its designee, for the purpose of screening

183 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or
184 have accepted a position related to the provision of transportation services to enrollees in the Medicaid
185 Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program
186 administered by the Department of Medical Assistance Services;

187 39. The State Corporation Commission for the purpose of investigating individuals who are current or
188 proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter
189 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2.
190 Notwithstanding any other provision of law, if an application is denied based in whole or in part on
191 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title
192 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant
193 or its designee;

194 40. The Department of Professional and Occupational Regulation for the purpose of investigating
195 individuals for initial licensure pursuant to § 54.1-2106.1;

196 41. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision
197 Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the
198 purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et
199 seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

200 42. Bail bondsmen, in accordance with the provisions of § 19.2-120;

201 43. The State Treasurer for the purpose of determining whether a person receiving compensation for
202 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

203 44. The Department of Education or its agents or designees for the purpose of screening individuals
204 seeking to enter into a contract with the Department of Education or its agents or designees for the provision
205 of child care services for which child care subsidy payments may be provided;

206 45. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a
207 juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or
208 a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

209 46. The State Corporation Commission, for the purpose of screening applicants for insurance licensure
210 under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

211 47. Administrators and board presidents of and applicants for licensure or registration as a child day
212 program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the
213 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of
214 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034
215 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility
216 or agency to any party other than the data subject, the Superintendent of Public Instruction's representative, or
217 a federal or state authority or court as may be required to comply with an express requirement of law for such
218 further dissemination; however, nothing in this subdivision shall be construed to prohibit the Superintendent
219 of Public Instruction's representative from issuing written certifications regarding the results of prior
220 background checks in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

221 48. The National Center for Missing and Exploited Children for the purpose of screening individuals who
222 are offered or accept employment or will be providing volunteer or contractual services with the National
223 Center for Missing and Exploited Children;

224 49. The Executive Director or investigators of the Board of Accountancy for the purpose of the
225 enforcement of laws relating to the Board of Accountancy in accordance with § 54.1-4407; and

226 50. Other entities as otherwise provided by law.

227 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested
228 may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange
229 to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on
230 whom a report has been made under the provisions of this chapter.

231 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
232 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
233 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy
234 of conviction data covering the person named in the request to the person making the request; however, such
235 person on whom the data is being obtained shall consent in writing, under oath, to the making of such
236 request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as
237 he deems appropriate. In the event no conviction data is maintained on the data subject, the person making
238 the request shall be furnished at his cost a certification to that effect.

239 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
240 section shall be limited to the purposes for which it was given and may not be disseminated further, except as
241 otherwise provided in subdivision A 47.

242 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history
243 record information for employment or licensing inquiries except as provided by law.

244 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange

245 prior to dissemination of any criminal history record information on offenses required to be reported to the
 246 Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used.
 247 Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the
 248 essence and the normal response time of the Exchange would exceed the necessary time period. A criminal
 249 justice agency to whom a request has been made for the dissemination of criminal history record information
 250 that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the
 251 Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses
 252 not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the
 253 record as required by § 15.2-1722.

254 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
 255 organizations pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for
 256 any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

257 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
 258 centers pursuant to subdivision A 17 shall be limited to the convictions on file with the Exchange for any
 259 offense specified in § 63.2-1720.

260 G. Criminal history information provided to public agencies pursuant to subdivision A 37 shall be limited
 261 to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier
 262 crime in § 19.2-392.02.

263 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
 264 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
 265 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the
 266 request to the employer or prospective employer making the request, provided that the person on whom the
 267 data is being obtained has consented in writing to the making of such request and has presented a photo-
 268 identification to the employer or prospective employer. In the event no conviction data is maintained on the
 269 person named in the request, the requesting employer or prospective employer shall be furnished at his cost a
 270 certification to that effect. The criminal history record search shall be conducted on forms provided by the
 271 Exchange.

272 I. ~~Nothing in this section shall preclude the dissemination~~ *The attorney for the Commonwealth shall*
 273 *provide a copy of a person's criminal history record information, including criminal history record*
 274 *information maintained in the National Crime Information Center (NCIC) and the Interstate Identification*
 275 *Index System (III System) that is in his possession, pursuant to the rules of court for obtaining discovery or for*
 276 *review by the court.*