

25102372D

HOUSE BILL NO. 2314

Offered January 13, 2025

Prefiled January 8, 2025

A BILL to amend and reenact §§ 19.2-265.4 and 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 15 of Title 19.2 an article numbered 4.3, consisting of a section numbered 19.2-264.15, relating to discovery.

Patron—Davis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-265.4 and 19.2-389 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 19.2 an article numbered 4.3, consisting of a section numbered 19.2-264.15, as follows:

§ 19.2-265.4. Failure to provide discovery.

A. In any criminal prosecution for a felony in a circuit court or for a misdemeanor brought on direct indictment, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 3A:11 of the Rules of the Supreme Court. Rule 3A:11 shall be construed to apply to such felony and misdemeanor prosecutions. This duty to disclose shall be continuing and shall apply to any additional evidence or material discovered by the Commonwealth prior to or during trial which is subject to discovery or inspection and has been previously requested by the accused. In any criminal prosecution for a misdemeanor by trial de novo in circuit court, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 7C:5 of the Rules of the Supreme Court. *For any discovery materials or evidence that the accused is permitted to inspect and review, the accused may request the Commonwealth to copy or photograph such discovery materials or evidence, including relevant police reports, witness statements, and the name and contact information of any potential witness. The Commonwealth shall provide such copies or photographs, electronically or otherwise, to the accused or his counsel.*

B. If at any time during the course of the proceedings it is brought to the attention of the court that the attorney for the Commonwealth has failed to comply with this section, the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances.

*Article 4.3.**Electronic Discovery.***§ 19.2-264.15. Discovery; electronic means.**

A. As used in this section, "electronic means" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities and includes the use of a flash drive, thumb drive, disc drive, PDF transmitted via email, or electronic file sharing.

B. All attorneys for the Commonwealth shall provide discovery material for all courts to counsel of record for the accused, if requested, by electronic means unless such material is prohibited from being distributed by law or impossible to provide by electronic means.

C. In any district court, the attorney for the Commonwealth shall provide to counsel of record for the accused, if requested, by electronic means a copy of any police report at least 10 days prior to the date the case is set for trial.

§ 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

INTRODUCED

HB2314

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

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

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

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

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

13. The Department of Social Services for the purpose of screening individuals as a condition of licensure,

employment, volunteering, or providing services on a regular basis in a licensed child welfare agency pursuant to §§ 63.2-1721 and 63.2-1726 or foster or adoptive home approved by a child-placing agency pursuant to § 63.2-901.1;

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

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

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

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

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

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

20. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) or his designees for individuals who are committed to the custody of or being evaluated by the Commissioner 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, 19.2-182.8, and 19.2-182.9 where such information may be beneficial for the purpose of placement, evaluation, treatment, or discharge planning;

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

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

23. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

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

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

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

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

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

29. The Commissioner of Social Services for the purpose of locating persons who owe child support or

182 who are alleged in a pending paternity proceeding to be a putative father, provided that only the name,
183 address, demographics and social security number of the data subject shall be released;

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

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

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

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

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

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

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

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

216 38. The Department of Medical Assistance Services, or its designee, for the purpose of screening
217 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or
218 have accepted a position related to the provision of transportation services to enrollees in the Medicaid
219 Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program
220 administered by the Department of Medical Assistance Services;

221 39. The State Corporation Commission for the purpose of investigating individuals who are current or
222 proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter
223 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.
224 Notwithstanding any other provision of law, if an application is denied based in whole or in part on
225 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title
226 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant
227 or its designee;

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

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

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

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

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

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

243 46. The State Corporation Commission, for the purpose of screening applicants for insurance licensure

under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

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

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

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

50. Other entities as otherwise provided by law.

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

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

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, except as otherwise provided in subdivision A 47.

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

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 whom a request has been made for the dissemination of criminal history record 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. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

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

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

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

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

305 Exchange.

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