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HOUSE BILL NO. 1627**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on January 24, 2025)

(Patrons Prior to Substitute—Delegates Thomas and Davis [HB 2314])

*A BILL to amend and reenact §§ 19.2-265.4 and 19.2-389 of the Code of Virginia, relating to discovery.***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 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.

§ 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;

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

66 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title
67 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position
68 of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation
69 District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction
70 record would be compatible with the nature of the employment under consideration;

71 8. Public or private agencies when authorized or required by federal or state law or interstate compact to
72 investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of
73 that individual's household, with whom the agency is considering placing a child or from whom the agency is
74 considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis
75 pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further
76 disseminated to any party other than a federal or state authority or court as may be required to comply with an
77 express requirement of law;

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

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

84 11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at
85 his cost, except that criminal history record information shall be supplied at no charge to a person who has
86 applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer
87 fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse,
88 Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been
89 offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in §
90 15.2-1713.1;

91 12. Administrators and board presidents of and applicants for licensure or registration as a child welfare
92 agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative
93 pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such
94 facilities, caretakers, and foster and adoptive parent applicants of private child-placing agencies, pursuant to
95 §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further
96 disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social
97 Services' representative or a federal or state authority or court as may be required to comply with an express
98 requirement of law for such further dissemination; however, nothing in this subdivision shall be construed to
99 prohibit the Commissioner of Social Services' representative from issuing written certifications regarding the
100 results of a background check that was conducted before July 1, 2021, in accordance with subsection J of §
101 22.1-289.035 or § 22.1-289.039;

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

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

109 15. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§
110 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
111 Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article
112 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

120 18. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in §

- 121 4.1-103.1;
- 122 19. The State Board of Elections and authorized officers and employees thereof and general registrars
- 123 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter
- 124 registration, limited to any record of felony convictions;
- 125 20. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) or his
- 126 designees for individuals who are committed to the custody of or being evaluated by the Commissioner
- 127 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,
- 128 19.2-182.8, and 19.2-182.9 where such information may be beneficial for the purpose of placement,
- 129 evaluation, treatment, or discharge planning;
- 130 21. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action
- 131 Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders under §
- 132 18.2-51.4, 18.2-266, or 18.2-266.1;
- 133 22. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
- 134 Department of Education, or the Department of Behavioral Health and Developmental Services for the
- 135 purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;
- 136 23. The Department of Behavioral Health and Developmental Services and facilities operated by the
- 137 Department for the purpose of determining an individual's fitness for employment pursuant to departmental
- 138 instructions;
- 139 24. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary
- 140 schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records
- 141 information on behalf of such governing boards or administrators pursuant to a written agreement with the
- 142 Department of State Police;
- 143 25. Public institutions of higher education and nonprofit private institutions of higher education for the
- 144 purpose of screening individuals who are offered or accept employment;
- 145 26. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a
- 146 public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher
- 147 education, for the purpose of assessing or intervening with an individual whose behavior may present a threat
- 148 to safety; however, no member of a threat assessment team shall redisclose any criminal history record
- 149 information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose
- 150 that such disclosure was made to the threat assessment team;
- 151 27. Executive directors of community services boards or the personnel director serving the community
- 152 services board for the purpose of determining an individual's fitness for employment, approval as a sponsored
- 153 residential service provider, permission to enter into a shared living arrangement with a person receiving
- 154 medical assistance services pursuant to a waiver, or permission for any person under contract with the
- 155 community services board to serve in a direct care position on behalf of the community services board
- 156 pursuant to §§ 37.2-506, 37.2-506.1, and 37.2-607;
- 157 28. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
- 158 determining an individual's fitness for employment, approval as a sponsored residential service provider,
- 159 permission to enter into a shared living arrangement with a person receiving medical assistance services
- 160 pursuant to a waiver, or permission for any person under contract with the behavioral health authority to
- 161 serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506, 37.2-506.1
- 162 , and 37.2-607;
- 163 29. The Commissioner of Social Services for the purpose of locating persons who owe child support or
- 164 who are alleged in a pending paternity proceeding to be a putative father, provided that only the name,
- 165 address, demographics and social security number of the data subject shall be released;
- 166 30. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
- 167 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose
- 168 of determining if any applicant who accepts employment in any direct care position or requests approval as a
- 169 sponsored residential service provider, permission to enter into a shared living arrangement with a person
- 170 receiving medical assistance services pursuant to a waiver, or permission for any person under contract with
- 171 the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have
- 172 responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or
- 173 substance abuse pursuant to §§ 37.2-416, 37.2-416.1, 37.2-506, 37.2-506.1, and 37.2-607;
- 174 31. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for
- 175 and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et
- 176 seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;
- 177 32. The Chairman of the Senate Committee for Courts of Justice or the Chairman of the House Committee
- 178 for Courts of Justice for the purpose of determining if any person being considered for election to any
- 179 judgeship has been convicted of a crime;
- 180 33. Heads of state agencies in which positions have been identified as sensitive for the purpose of
- 181 determining an individual's fitness for employment in positions designated as sensitive under Department of

182 Human Resource Management policies developed pursuant to § 2.2-1201.1;

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

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

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

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

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

203 39. The State Corporation Commission for the purpose of investigating individuals who are current or
204 proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter
205 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.
206 Notwithstanding any other provision of law, if an application is denied based in whole or in part on
207 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title
208 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant
209 or its designee;

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

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

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

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

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

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

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

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

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

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

242 50. Other entities as otherwise provided by law.

243 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested

244 may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange
 245 to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on
 246 whom a report has been made under the provisions of this chapter.

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

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

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

260 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange
 261 prior to dissemination of any criminal history record information on offenses required to be reported to the
 262 Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used.
 263 Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the
 264 essence and the normal response time of the Exchange would exceed the necessary time period. A criminal
 265 justice agency to whom a request has been made for the dissemination of criminal history record information
 266 that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the
 267 Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses
 268 not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the
 269 record as required by § 15.2-1722.

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

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

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

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

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