

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-389 of the Code of Virginia, relating to dissemination of criminal history*
 3 *record information.*

4 [S 1193]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 19.2-389 of the Code of Virginia is amended and reenacted as follows:**8 **§ 19.2-389. Dissemination of criminal history record information.**9 A. Criminal history record information shall be disseminated, whether directly or through an intermediary,
 10 only to:

11 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of
 12 the administration of criminal justice and the screening of an employment application or review of
 13 employment by a criminal justice agency with respect to its own employees or applicants, and dissemination
 14 to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible
 15 inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, 4, and 6 of §
 16 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this
 17 subdivision, criminal history record information includes information sent to the Central Criminal Records
 18 Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee
 19 of the State Police, a police department or sheriff's office that is a part of or administered by the
 20 Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection
 21 of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of
 22 the administration of criminal justice;

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

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

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

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

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

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

46 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title
 47 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position
 48 of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation
 49 District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction
 50 record would be compatible with the nature of the employment under consideration;

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

ENROLLED

SB1193ER

57 express requirement of law;

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

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

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

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

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

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

89 15. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§
90 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
91 Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article
92 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

100 18. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in §
101 4.1-103.1;

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

105 20. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) or his
106 designees for individuals who are committed to the custody of or being evaluated by the Commissioner
107 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,
108 19.2-182.8, and 19.2-182.9 where such information may be beneficial for the purpose of placement,
109 evaluation, treatment, or discharge planning;

110 21. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action
111 Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders under §
112 18.2-51.4, 18.2-266, or 18.2-266.1;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

178 38. The Department of Medical Assistance Services, or its designee, for the purpose of screening
 179 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or
 180 have accepted a position related to the provision of transportation services to enrollees in the Medicaid

181 Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program
182 administered by the Department of Medical Assistance Services;

183 39. The State Corporation Commission for the purpose of investigating individuals who are current or
184 proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter
185 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.
186 Notwithstanding any other provision of law, if an application is denied based in whole or in part on
187 information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title
188 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant
189 or its designee;

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

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

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

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

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

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

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

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

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

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

222 50. Other entities as otherwise provided by law.

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

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

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

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

240 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange
241 prior to dissemination of any criminal history record information on offenses required to be reported to the
242 Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used.

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

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

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

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

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

268 I. ~~Nothing in this section shall preclude the dissemination~~ *The attorney for the Commonwealth shall*
269 *provide a physical or electronic copy of a person's criminal history record information, including criminal*
270 *history record information maintained in the National Crime Information Center (NCIC) and the Interstate*
271 *Identification Index System (III System) that is in his possession, pursuant to the rules of court for obtaining*
272 *discovery or for review by the court. No criminal history record information provided under this subsection*
273 *shall be disseminated further.*