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SENATE BILL NO. 330**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on _____)

(Patron Prior to Substitute—Senator Perry)

A BILL to amend and reenact §§ 17.1-293, 17.1-295, and 53.1-145 of the Code of Virginia and to amend the Code of Virginia by adding in Article 8 of Chapter 2 of Title 17.1 sections numbered 17.1-296 and 17.1-297, relating to Virginia Criminal Sentencing Commission; Department of Corrections; probation and parole officers; subscriber agreements with clerks' offices; secure remote access to nonconfidential court records.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-293, 17.1-295, and 53.1-145 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 8 of Chapter 2 of Title 17.1 sections numbered 17.1-296 and 17.1-297 as follows:

§ 17.1-293. Posting and availability of certain information on the Internet; prohibitions.

A. Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 or subsection B, it is unlawful for any court clerk to disclose the social security number or other identification numbers appearing on driver's licenses or other documents issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to a court clerk for the purpose of paying fees, fines, taxes, or other charges collected by such court clerk. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

B. Beginning January 1, 2004, no court clerk shall post on the Internet any document that contains the following information: (i) an actual signature, (ii) a social security number, (iii) a date of birth identified with a particular person, (iv) the maiden name of a person's parent so as to be identified with a particular person, (v) any financial account number or numbers, or (vi) the name and age of any minor child.

C. Each such clerk shall post notice that includes a list of the documents routinely posted on its website. However, the clerk shall not post information on his website that includes private activity for private financial gain.

D. Nothing in this section shall be construed to prohibit access to any original document as provided by law.

E. This section shall not apply to the following:

1. Providing access to any document among the land records via secure remote access pursuant to § 17.1-294;

2. Postings related to legitimate law-enforcement purposes;

3. Postings of historical, genealogical, interpretive, or educational documents and information about historic persons and events;

4. Postings of instruments and records filed or recorded that are more than 100 years old;

5. Providing secure remote access to any person, his counsel, or staff which counsel directly supervises to documents filed in matters to which such person is a party;

6. Providing official certificates and certified records in digital form of any document maintained by the clerk pursuant to § 17.1-258.3:2; ~~and~~

7. Providing secure remote access to nonconfidential court records, subject to any fees charged by the clerk, to members in good standing with the Virginia State Bar and their authorized agents, pro hac vice attorneys authorized by the court for purposes of the practice of law, and such governmental agencies as authorized by the clerk;

8. Providing access to any nonconfidential court records to the Virginia Criminal Sentencing Commission as required by § 17.1-296; and

9. Providing access to any nonconfidential court records to the Department of Corrections as required by § 17.1-297.

F. Nothing in this section shall prohibit the Supreme Court or any other court clerk from providing online access to a case management system that may include abstracts of case filings and proceedings in the courts of the Commonwealth, including online access to subscribers of nonconfidential criminal case information to confirm the complete date of birth of a defendant.

G. The court clerk shall be immune from suit arising from any acts or omissions relating to providing remote access on the Internet pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.

This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already

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existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2005.

H. Nothing in this section shall be construed to permit any data accessed by secure remote access to be sold or posted on any other website or in any way redistributed to any third party, and the clerk, in his discretion, may deny secure remote access to ensure compliance with these provisions. However, the data accessed by secure remote access may be included in products or services provided to a third party of the subscriber provided that (i) such data is not made available to the general public and (ii) the subscriber maintains administrative, technical, and security safeguards to protect the confidentiality, integrity, and limited availability of the data.

§ 17.1-295. Definitions.

As used in this title, *unless the context requires a different meaning*:

"Confidential court records" means any civil or criminal record maintained by a clerk of the circuit court designated by this Code as confidential or any such record sealed pursuant to court order.

"Electronic filing of court records" means the networks or systems maintained by a clerk of the circuit court, or the clerk's designated application service providers, for the submittal of instruments for electronic filing of court records in accordance with this title, the Rules of the Supreme Court of Virginia, and the secure remote access standards developed by the Virginia Information Technologies Agency.

"Electronic recording of land records" means the networks or systems maintained by a clerk of the circuit court, or the clerk's designated application service providers, for the submittal of instruments for electronic filing of land records in accordance with the provisions of Article 3 (§ 55.1-346 et seq.) of Chapter 3 of Title 55.1 regarding the satisfaction of mortgages, the Uniform Real Property Electronic Recording Act (§ 55.1-661 et seq.), and the provisions of this title.

"Operational expenses" means expenses of the clerk of court used to maintain the clerk's office and includes, but is not limited to, (i) computer support, maintenance, enhancements, upgrades, and replacements and office automation and information technology equipment, including software and conversion services; (ii) preserving, maintaining, and enhancing court records, including, but not limited to, the costs of repairs, maintenance, consulting services, service contracts, redaction of social security numbers from certain records, and system replacements or upgrades; and (iii) improving public access to records maintained by the clerk, including locating technology in an offsite facility for such purposes or for implementation of a disaster recovery plan.

"Public access" means that the clerk of the circuit court has made available to subscribers that are other than governmental agencies, secure remote access to records maintained by the clerk in accordance with § 17.1-294.

"Secure remote access to court records" means public access by electronic means on a network or system to court records maintained by the clerk of the circuit court or the clerk's designated application service providers, in compliance with this title, the Rules of the Supreme Court of Virginia, and the secure remote access standards developed by the Virginia Information Technologies Agency.

"Secure remote access to land records" means public access by electronic means on a network or system to land records maintained by the clerk of the circuit court or the clerk's designated application service providers, in compliance with the Secure Remote Access Standards developed by the Virginia Information Technologies Agency.

"Subscriber" means any person who has entered into a subscriber agreement with the clerk of the circuit court authorizing the subscriber to have secure remote access to land records or secure remote access to court records maintained by the clerk or the clerk's designated application service providers. If the subscriber is an entity with more than one person who will use the network or system to access land records maintained by the clerk, or the clerk's designated application service providers, each individual user shall execute a subscriber agreement and obtain a separate "user id" and "password" from the clerk. The subscriber is responsible for the fees due under this title and the proper use of the secure remote access system pursuant to the subscriber agreement, applicable Virginia law, and Secure Remote Access Standards developed by the Virginia Information Technologies Agency.

§ 17.1-296. Access to records by the Virginia Criminal Sentencing Commission; subscriber agreement; requirements.

A. Any clerk of a circuit court who provides secure remote access to nonconfidential court records maintained by the clerk shall allow the Virginia Criminal Sentencing Commission (the Commission) to enter into a single subscriber agreement authorizing the Commission to have secure remote access to nonconfidential court records, including court orders, sentencing guidelines, and sentencing revocation reports maintained by the clerk or the clerk's designated application service providers, provided that such subscriber agreement identifies all staff members of the Commission who require such secure remote access and that otherwise satisfies all other requirements of this article or other relevant provisions of law.

B. The subscriber agreement shall identify any staff member of the Commission who requires secure remote access to nonconfidential records to (i) carry out the powers and duties conferred upon the Commission by Chapter 8 (§ 17.1-800 et seq.) or any other provision of law; (ii) assist the clerk of the circuit court with preparing or sending any sentencing or revocation documents as required by subsection E of

§ 19.2-298.01 and subsection C of § 19.2-306.2; or (iii) assist an attorney for the Commonwealth with the preparation of a discretionary sentencing guidelines worksheet, including helping to resolve issues relating to docket numbers or identification numbers, in accordance with subsection C of § 19.2-298.01. If such secure remote access to any nonconfidential court records is not available, the clerk shall provide access to a hard copy of such nonconfidential court records either in person or via mail or an electronic copy of such nonconfidential court records via electronic mail.

For purposes of this section, no clerk of a circuit court shall require that the Commission enter into individual subscriber agreements for each staff member who requires secure remote access to nonconfidential court records.

§ 17.1-297. Access to records by the Department of Corrections; subscriber agreement; requirements.

A. Any clerk of a circuit court who provides secure remote access to nonconfidential court records maintained by the clerk shall allow the Department of Corrections (the Department) to enter into a single subscriber agreement authorizing the Department to have secure remote access to nonconfidential court records, including court orders, sentencing guidelines, and sentencing revocation reports maintained by the clerk or the clerk's designated application service providers, provided that such subscriber agreement identifies all staff members of the Department who require such secure remote access and that otherwise satisfies all other requirements of this article or other relevant provisions of law.

B. The subscriber agreement shall identify any staff member of the Department who requires secure remote access to nonconfidential records to (i) carry out the powers and duties conferred upon the Department by Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1 or any other provision of law or (ii) prepare a discretionary sentencing guidelines worksheet in accordance with subsection C of § 19.2-298.01. If such secure remote access to any nonconfidential court records is not available, the clerk shall provide access to a hard copy of such nonconfidential court records either in person or via mail or an electronic copy of such nonconfidential court records via electronic mail.

For the purposes of this section, no clerk of a circuit court shall require that the Department enter into individual subscriber agreements for each staff member who requires secure remote access to nonconfidential court records.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;

2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein; if any such person has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation or parole, any probationer supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director and the court or judge by whom he was authorized;

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Director;

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Director and upon the certification of appropriate training and specific authorization by a judge of a circuit court;

8. Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services pursuant to § 37.2-912;

9. Pursuant to any contract entered into between the Department of Corrections and the Department of

Behavioral Health and Developmental Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);

10. Determine by reviewing the Department of Forensic Science DNA data bank sample tracking system upon intake and again prior to release whether a blood, saliva, or tissue sample is stored in the data bank for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if a person's sample is not stored in the data bank, require the person placed on probation or parole to submit a sample for DNA analysis;

11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would require the offender to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2, take a sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the Commonwealth;

12. Monitor the collection and payment of restitution to the victims of crime for offenders placed on supervised probation;

13. Prior to the release from supervision of any offender on probation as of July 1, 2019, review the criminal history record of the offender at least 60 days prior to release from supervision, or immediately if the offender is scheduled to be released from supervision within less than 60 days, to determine whether all offenses for which the offender is being supervised appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record; ~~and~~

14. Upon intake of any offender on or after July 1, 2019, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390, (ii) review the criminal history record of the offender to determine whether all offenses for which the offender is being supervised appear on such record, and (iii) if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record; *and*

15. *Access any nonconfidential court records pursuant to § 17.1-297 to carry out the powers and duties required by this section or any other provision of law.*

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.