

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 17.1-293, 17.1-295, and 53.1-145 of the Code of Virginia and to amend the*  
 3 *Code of Virginia by adding in Article 8 of Chapter 2 of Title 17.1 sections numbered 17.1-296 and*  
 4 *17.1-297, relating to Virginia Criminal Sentencing Commission; Department of Corrections; probation*  
 5 *and parole officers; subscriber agreements with clerks' offices; secure remote access to nonconfidential*  
 6 *court records.*

7 [S 330]

8 Approved

9 **Be it enacted by the General Assembly of Virginia:**

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

13 **§ 17.1-293. Posting and availability of certain information on the Internet; prohibitions.**

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

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

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

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

31 E. This section shall not apply to the following:

32 1. Providing access to any document among the land records via secure remote access pursuant to  
 33 § 17.1-294;

34 2. Postings related to legitimate law-enforcement purposes;

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

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

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

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

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

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

48 9. *Providing access to any nonconfidential court records to the Department of Corrections as required by*  
 49 *§ 17.1-297.*

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

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

57 This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity already  
 58 existing in statutory or common law, or to affect any cause of action accruing prior to July 1, 2005.

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

66 **§ 17.1-295. Definitions.**

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

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

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

74 "Electronic recording of land records" means the networks or systems maintained by a clerk of the circuit  
 75 court, or the clerk's designated application service providers, for the submittal of instruments for electronic  
 76 filing of land records in accordance with the provisions of Article 3 (§ 55.1-346 et seq.) of Chapter 3 of Title  
 77 55.1 regarding the satisfaction of mortgages, the Uniform Real Property Electronic Recording Act  
 78 (§ 55.1-661 et seq.), and the provisions of this title.

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

87 "Public access" means that the clerk of the circuit court has made available to subscribers that are other  
 88 than governmental agencies, secure remote access to records maintained by the clerk in accordance with  
 89 § 17.1-294.

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

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

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

107 **§ 17.1-296. Access to records by the Virginia Criminal Sentencing Commission; subscriber agreement;  
 108 requirements.**

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

116 B. *The subscriber agreement shall identify any staff member of the Commission who requires secure  
 117 remote access to nonconfidential records to (i) carry out the powers and duties conferred upon the  
 118 Commission by Chapter 8 (§ 17.1-800 et seq.) or any other provision of law; (ii) assist the clerk of the circuit*

119 court with preparing or sending any sentencing or revocation documents as required by subsection E of  
 120 § 19.2-298.01 and subsection C of § 19.2-306.2; or (iii) assist an attorney for the Commonwealth with the  
 121 preparation of a discretionary sentencing guidelines worksheet, including helping to resolve issues relating  
 122 to docket numbers or identification numbers, in accordance with subsection C of § 19.2-298.01. If such  
 123 secure remote access to any nonconfidential court records is not available, the clerk shall provide access to a  
 124 hard copy of such nonconfidential court records either in person or via mail or an electronic copy of such  
 125 nonconfidential court records via electronic mail.

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

129 **§ 17.1-297. Access to records by the Department of Corrections; subscriber agreement; requirements.**

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

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

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

147 **§ 53.1-145. Powers and duties of probation and parole officers.**

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

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

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

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

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

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

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

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

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

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

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

190 11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders  
191 (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would require the  
192 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  
193 sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the  
194 Commonwealth;

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

197 13. Prior to the release from supervision of any offender on probation as of July 1, 2019, review the  
198 criminal history record of the offender at least 60 days prior to release from supervision, or immediately if the  
199 offender is scheduled to be released from supervision within less than 60 days, to determine whether all  
200 offenses for which the offender is being supervised appear on such record and, if any such offense that is  
201 required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i)  
202 take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to  
203 be classified and filed as part of the criminal history record information pursuant to subsection D of  
204 § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange  
205 within the Department of State Police that such offense does not appear on the offender's criminal history  
206 record; ~~and~~

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

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

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