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HOUSE BILL NO. 1720

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice)

(Patron Prior to Substitute—Delegate Byron)

House Amendments in []—January 24, 2001

A BILL to amend and reenact §§ 16.1-69.9 and 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 17.1-105.1, relating to criminal history record information; judicial candidates.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.9 and 19.2-389 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 17.1-105.1 as follows:

§ 16.1-69.9. Judges in office continued; terms of judges; how elected or appointed.

Every judge or justice and every associate, assistant and substitute judge or justice of a court not of record in office January 1, 1973, shall continue in office as a judge or substitute judge of such court under its designation as a general district court or juvenile and domestic relations district court until the expiration of the term for which he was appointed or elected, or until a vacancy shall occur in his office or until a successor shall be appointed or elected, whichever is the latter.

Upon the expiration of such terms, or when a vacancy occurs, successors shall be elected only as authorized pursuant to §§ 16.1-69.10 and 16.1-69.14 and for the term and in the manner following:

(a), (a1) [Repealed.]

(b) With respect to terms expiring on or after July 1, 1980, successors to judges shall be elected for a term of six years by the General Assembly as provided in (c) hereof.

Any vacancy in the office of any full-time district court judge shall be filled for a full term of six years in the manner prescribed herein; provided that such vacancy shall not be filled except as provided in § 16.1-69.9:3;

(c) Full-time district court judges shall be elected by the majority of the members elected to each house of the General Assembly. The judges of the circuit court having jurisdiction over the district shall nominate a panel of no more than three persons for each judgeship within the district who are deemed qualified to hold the office; the General Assembly may consider such nominations in electing a judge to fill the office but may elect a person not on such panel to fill the office. Nominations shall be forwarded to the clerks of both houses of the General Assembly on or before December 15.

If an appointment is to be made by two or more judges and there is a tie vote, then the senior judge of the circuit court having jurisdiction in the district shall make the appointment.

The General Assembly [~~may~~ shall], through the chairmen of the Committees for Courts of Justice in the Senate and House of Delegates as authorized by § 19.2-389, require that a nominee for election as a judge, [~~other than a nominee for re-election,~~] submit to fingerprinting and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining his criminal history record information. The Commonwealth may pay or require the nominee to pay for all or a portion of the cost of the fingerprinting and criminal records check.

17.1-105.1. Criminal history records check [~~may~~ shall] be required.

The General Assembly [~~may~~ shall], through the chairmen of the Committees for Courts of Justice in the Senate and House of Delegates as authorized by § 19.2-389, require that a nominee for election as a judge of a court of record, other than a nominee for re-election, submit to fingerprinting and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining his criminal history record information. The Commonwealth may pay or require the nominee to pay for all or a portion of the cost of the fingerprinting and criminal records check.

§ 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 § 9-169, 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, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor

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60 that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based
61 upon such conduct, except that information concerning the arrest of an individual may not be
62 disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from
63 the date of the arrest and no disposition of the charge has been recorded and no active prosecution of
64 the charge is pending;

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

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

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

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

77 7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of
78 applicants for public employment, permit, or license whenever, in the interest of public welfare or
79 safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a
80 person with a conviction record would be compatible with the nature of the employment, permit, or
81 license under consideration;

82 8. Public or private agencies when and as required by federal or state law or interstate compact to
83 investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not
84 be further disseminated by the agency to any party other than a federal or state authority or court as
85 may be required to comply with an express requirement of law for such further dissemination;

86 9. To the extent permitted by federal law or regulation, public service companies as defined in
87 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
88 personal contact with the public or when past criminal conduct of an applicant would be incompatible
89 with the nature of the employment under consideration;

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

92 11. A person requesting a copy of his own criminal history record information as defined in § 9-169
93 at his cost, except that criminal history record information shall be supplied at no charge to a person
94 who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America,
95 (ii) with a volunteer fire company or volunteer rescue squad, (iii) with the Volunteer Emergency
96 Families for Children, or (iv) with any affiliate of Prevent Child Abuse, Virginia;

97 12. Administrators and board presidents of and applicants for licensure or registration as a child
98 welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services'
99 representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and
100 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
101 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
102 agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further
103 disseminated by the facility or agency to any party other than the data subject, the Commissioner of
104 Social Services' representative or a federal or state authority or court as may be required to comply with
105 an express requirement of law for such further dissemination;

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

109 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
110 Law (§ 58.1-4000 et seq.);

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

115 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers
116 for the conduct of investigations of applicants for compensated employment in licensed homes for adults
117 pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed
118 adult day-care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F;

119 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
120 § 4.1-103.1;

121 18. The State Board of Elections and authorized officers and employees thereof in the course of

conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under §§ 18.2-51.4, 18.2-266 or § 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to § 37.1-197.2;

26. Executive directors of behavioral health authorities as defined in § 37.1-243 for the purpose of determining an individual's fitness for employment pursuant to § 37.1-197.2;

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

28. Authorized officers or directors of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining if any applicant who accepts employment in any direct consumer care position has been convicted of a crime that affects their fitness to have responsibility for the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant to §§ 37.1-183.3 and 37.1-197.2; and

29. *The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime; and*

30. Other entities as otherwise provided by law.

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

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

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

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

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

183 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
184 where time is of the essence and the normal response time of the Exchange would exceed the necessary
185 time period. A criminal justice agency to whom a request has been made for the dissemination of
186 criminal history record information that is required to be reported to the Central Criminal Records
187 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
188 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
189 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

190 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
191 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
192 for any offense specified in §§ 32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

193 F. Criminal history information provided to licensed assisted living facilities, licensed district homes
194 for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the
195 convictions on file with the Exchange for any offense specified in §§ 63.1-173.2, 63.1-189.1 or
196 § 63.1-194.13.