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SENATE BILL NO. 1164

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact § 19.2-390 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-390.02, relating to reports made by local law enforcement to the Central Criminal Records Exchange.

Patrons—Stolle, Howell and Norment; Delegates: Albo, Kilgore, McDonnell and Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-390 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 19.2-390.02 as follows:

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1; or

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, or (ii) under § 20-61.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints *and the corresponding mug shot* of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. *Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate mug shot database.*

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or *capias* may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias* to the local police department or sheriff's office. When criminal process has been ordered destroyed

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59 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of
60 any information relating to the destroyed criminal process from the VCIN and NCIC systems.

61 C. The clerk of each circuit court and district court shall make a report to the Central Criminal
62 Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due
63 to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including any sentence
64 imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed
65 in subsection A, including any action which may have resulted from an indictment, presentment or
66 information, and (ii) any adjudication of delinquency based upon an act which, if committed by an
67 adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not
68 required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions
69 shall be filed by the law-enforcement agency making the arrest with the arrest record required to be
70 maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in
71 the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for
72 which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing
73 submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry
74 shall include the name of the person convicted and all aliases which he is known to have used, the date
75 and locality of the conviction for which registration is required, his date of birth, social security number,
76 last known address, and specific reference to the offense for which he was convicted. No report of
77 conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has
78 elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show
79 that any conviction or adjudication has been nullified in any manner, he shall also make a report of that
80 fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon
81 receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or
82 to the law-enforcement agency making the arrest in the case of offenses not required to be reported to
83 the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other
84 amendment to a prior sentence or disposition previously reported. When criminal process is ordered
85 destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that
86 entered the warrant or capias into the VCIN system.

87 D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal
88 Records Exchange may receive, classify and file any other fingerprints, *mug shots*, and records of arrest
89 or confinement submitted to it by any law-enforcement agency or any correctional institution.

90 E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining
91 correctional status information, as required by the regulations of the Department of Criminal Justice
92 Services, with respect to individuals about whom reports have been made under the provisions of this
93 chapter shall make reports of changes in correctional status information to the Central Criminal Records
94 Exchange. The reports to the Exchange shall include any commitment to or release or escape from a
95 state or local correctional facility, including commitment to or release from a parole or probation
96 agency.

97 F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to
98 the Exchange by the office of the Secretary of the Commonwealth.

99 G. Officials responsible for reporting disposition of charges, and correctional changes of status of
100 individuals under this section, including those reports made to the Registry, shall adopt procedures
101 reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible
102 by the most expeditious means and in no instance later than 30 days after occurrence of the disposition
103 or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the
104 information.

105 H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records
106 Exchange shall notify all criminal justice agencies known to have previously received the information.

107 As used in this section, the term "chief law-enforcement officer" means the chief of police of cities
108 and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief
109 law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall
110 be controlling.

111 § 19.2-390.02. *Policies and procedures for law enforcement to conduct in-person and photo lineups.*

112 *The Department of State Police and each local police department and sheriff's office shall establish a*
113 *written policy and procedure for conducting in-person and photographic lineups.*