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HOUSE BILL NO. 91

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 8, 2008)

(Patrons Prior to Substitute—Delegates Albo, Marshall, R.G. [HB 63] and Rust [HB 104])

*A BILL to amend and reenact §§ 19.2-390 and 46.2-936 of the Code of Virginia, relating to driving without a driver's license; penalties.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-390 and 46.2-936 of the Code of Virginia are amended and reenacted 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; or

e. Any violation of § 46.2-300 when an arrest is made under the provisions of § 46.2-936.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. 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 photographic 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 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC systems.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal

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

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

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

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

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

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

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

109 § 46.2-936. Arrest for misdemeanor; release on summons and promise to appear; right to demand
110 hearing immediately or within ~~twenty-four~~ 24 hours; issuance of warrant on request of officer for
111 violations of §§ 46.2-301 and 46.2-302; refusal to promise to appear; violations.

112 Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a
113 warrant, for a violation of any provision of this title punishable as a misdemeanor, the arresting officer
114 shall, except as otherwise provided in § 46.2-940, take the name and address of such person and the
115 license number of his motor vehicle and issue a summons or otherwise notify him in writing to appear
116 at a time and place to be specified in such summons or notice. Such time shall be at least five days
117 after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he so
118 desires, have a right to an immediate hearing, or a hearing within ~~twenty-four~~ 24 hours at a convenient
119 hour, before a court having jurisdiction under this title within the county, city, or town wherein such
120 offense was committed. Upon the giving by such person of his written promise to appear at such time
121 and place, the officer shall forthwith release him from custody.

Notwithstanding the foregoing provisions of this section, if prior general approval has been granted by order of the general district court for the use of this section in cases involving violations of §§ 46.2-300, 46.2-301 and 46.2-302, the arresting officer may take the person before the appropriate judicial officer of the county or city in which the violation occurred and make oath as to the offense and request issuance of a warrant. If a warrant is issued, the judicial officer shall proceed in accordance with the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2.

Notwithstanding any other provision of this section, in cases involving a violation of § 46.2-341.24 or § 46.2-341.31, the arresting officer shall take the person before a magistrate as provided in §§ 46.2-341.26:2 and 46.2-341.26:3. The magistrate may issue either a summons or a warrant as he shall deem proper.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction who shall proceed according to the provisions of § 46.2-940.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 46.2-938.

Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a law-enforcement officer for other misconduct in office.