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SENATE BILL NO. 515

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 19.2-390, 46.2-300, and 46.2-301.1 of the Code of Virginia, relating to driving without an operator's license; fingerprints and impoundment.

Patron—Cuccinelli

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-390, 46.2-300, and 46.2-301.1 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.

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~~ Except as provided in subsection D1, 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, photographs, and records of
89 arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

90 *D1. The Central Criminal Records Exchange shall receive, classify, and file any fingerprints,*
91 *photographs, and records submitted to it by any law-enforcement agency in connection with any*
92 *summons or warrants issued for a violation of § 46.2-300.*

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

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

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

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

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

114 § 46.2-300. Driving without license prohibited; penalties.

115 No person, except those expressly exempted in §§ 46.2-303 through 46.2-308, shall drive any motor
116 vehicle on any highway in the Commonwealth until such person has applied for a driver's license, as
117 provided in this article, satisfactorily passed the examination required by § 46.2-325, and obtained a
118 driver's license, nor unless the license is valid.

119 A violation of this section is a Class 2 misdemeanor. A second or subsequent violation of this
120 section is a Class 1 misdemeanor.

Notwithstanding any other provision of law, any person issued a summons for a violation of this section may be placed in custodial detention at the scene of the offense and law enforcement may take the person's fingerprints using a portable fingerprint device.

§ 46.2-301.1. Administrative impoundment of motor vehicle for certain driving while license suspended or revoked offenses; judicial impoundment upon conviction; penalty for permitting violation with one's vehicle.

A. The motor vehicle being driven by any person (i) whose driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for a violation of § 18.2-266, 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction; (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2; ~~or~~ (iii) driving after such person's driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for unreasonable refusal of tests in violation of § 18.2-268.3, 46.2-341.26:3 or a substantially similar ordinance or law in any other jurisdiction, *or (iv) driving while 18 years of age or older in violation of § 46.2-300 after having been previously convicted of such offense*, shall be impounded or immobilized by the arresting law-enforcement officer at the time the person is arrested for ~~driving after his driver's license, learner's permit or privilege to drive has been so revoked or suspended~~ *such offense*. The impoundment or immobilization shall be for a period of 30 days.

The arresting officer, acting on behalf of the Commonwealth, shall serve notice of the impoundment upon the arrested person. The notice shall include information on the person's right to petition for review of the impoundment pursuant to subsection B. A copy of the notice of impoundment shall be delivered to the magistrate and thereafter promptly forwarded to the clerk of the general district court of the jurisdiction where the arrest was made. Transmission of the notice may be by electronic means.

At least five days prior to the expiration of the period of impoundment imposed pursuant to this section or § 46.2-301, the clerk shall provide the offender with information on the location of the motor vehicle and how and when the vehicle will be released.

All reasonable costs of impoundment or immobilization, including removal and storage expenses, shall be paid by the offender prior to the release of his motor vehicle. Notwithstanding the above, where the arresting law-enforcement officer discovers that the vehicle was being rented or leased from a vehicle renting or leasing company, the officer shall not impound the vehicle or continue the impoundment but shall notify the rental or leasing company that the vehicle is available for pickup and shall notify the clerk if the clerk has previously been notified of the impoundment.

B. Any driver who is the owner of the motor vehicle that is impounded or immobilized under subsection A may, during the period of the impoundment, petition the general district court of the jurisdiction in which the arrest was made to review that impoundment. The court shall review the impoundment within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting law-enforcement officer did not have probable cause for the arrest, or that the magistrate did not have probable cause to issue the warrant, the court shall rescind the impoundment. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs paid or incurred by him. Otherwise, the court shall affirm the impoundment. If the person requesting the review fails to appear without just cause, his right to review shall be waived.

The court's findings are without prejudice to the person contesting the impoundment or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

C. The owner or co-owner of any motor vehicle impounded or immobilized under subsection A who was not the driver at the time of the violation, may petition the general district court in the jurisdiction where the violation occurred for the release of his motor vehicle. The motor vehicle shall be released if the owner or co-owner proves by a preponderance of the evidence that he (i) did not know that the offender's driver's license was suspended or revoked when he authorized the offender to drive such motor vehicle or (ii) did not consent to the operation of the motor vehicle by the offender. If the owner proves by a preponderance of the evidence that his immediate family has only one motor vehicle and will suffer a substantial hardship if that motor vehicle is impounded or immobilized for 30 days, the court, in its discretion, may release the vehicle after some period of less than 30 days.

D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge ~~of driving on a suspended or revoked license leading to the impoundment of the vehicle~~, shall result in an immediate rescission of the impoundment or immobilization provided in subsection A. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all

182 reasonable costs of impoundment or immobilization, including removal or storage costs, incurred or paid
183 by him.

184 E. Any person who knowingly authorizes the operation of a motor vehicle by a person he knows has
185 had his driver's license, learner's permit or privilege to drive a motor vehicle suspended or revoked for
186 any of the reasons set forth in subsection A, shall be guilty of a Class 1 misdemeanor.

187 F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede
188 or infringe upon a valid lienholder's rights to cure a default under an existing security agreement.
189 Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization,
190 including removal or storage expenses which may accrue pursuant to the provisions of this section or
191 § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an
192 existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or
193 immobilization, including removal and storage expenses, to any person or entity providing such services
194 to the Commonwealth, except to the extent such costs or expenses have already been paid by the
195 offender to such person or entity. Such payment shall be made within seven calendar days after a
196 request is made by such person or entity to the Commonwealth for payment. Nothing herein, however,
197 shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such
198 reasonable costs and expenses.

199 G. *The provisions of this section applicable to a violation of § 46.2-300 shall not apply when the*
200 *person's Virginia operator's license had been allowed to expire and the expiration was less than one*
201 *year prior to the conviction.*