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HOUSE BILL NO. 2637

Offered January 23, 2009

A *BILL to amend and reenact § 19.2-390 of the Code of Virginia, relating to arrests for which fingerprints are required.*

Patron—Cline

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 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 (iii) under § 16.1-253.2.

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.

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

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:

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

109 "Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal
110 Records Exchange in an electronic format approved by the Exchange. The report shall contain the name
111 of the person convicted and all aliases, which he is known to have used, the date and locality of the
112 conviction, his date of birth, social security number, last known address, and specific reference to the
113 offense including the Virginia Code section and any subsection, the Virginia crime code for the offense,
114 and the offense tracking number for the offense for which he was convicted.