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SENATE BILL NO. 1299

Offered January 16, 2013

A BILL to amend and reenact §§ 18.2-308.2:2, 19.2-387.1, 19.2-389, and 19.2-389.1 of the Code of Virginia, relating to criminal history record information checks; maintenance and dissemination of registry information.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.2:2, 19.2-387.1, 19.2-389, and 19.2-389.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, or been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction.

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense, and other documentation of residence. Except where the photo-identification was issued by the United States Department of Defense, the other documentation of residence shall show an address identical to that shown on the photo-identification form, such as evidence of currently paid personal property tax or real estate tax, or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; other current identification allowed as evidence of residency by Part 178.124 of Title 27 of the Code of Federal Regulations and ATF Ruling 2001-5; or other documentation of residence determined to be acceptable by the Department of Criminal Justice Services, that corroborates that the prospective purchaser currently resides in Virginia. Where the photo-identification was issued by the Department of Defense, permanent orders assigning the purchaser to a duty post in Virginia, including the Pentagon, shall be the only other required documentation of residence. For the purposes of this section and establishment of residency for firearm purchase, residency shall be deemed to be the permanent duty post of a member of the armed forces. When the photo-identification presented to a dealer by the prospective purchaser is a driver's license or other photo-identification issued by the Department of Motor Vehicles, and such identification form contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo-identification issued by the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license unless the

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59 prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record
60 showing that the original date of issue of the driver's license was more than 30 days prior to the
61 attempted purchase.

62 In addition, no dealer shall sell, rent, trade or transfer from his inventory any assault firearm to any
63 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent
64 residence. To establish citizenship or lawful admission for a permanent residence for purposes of
65 purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth
66 certificate or a certificate of birth abroad issued by the United States State Department, a certificate of
67 citizenship or a certificate of naturalization issued by the United States Citizenship and Immigration
68 Services, an unexpired U.S. passport, a United States citizen identification card, a current voter
69 registration card, a current selective service registration card, or an immigrant visa or other
70 documentation of status as a person lawfully admitted for permanent residence issued by the United
71 States Citizenship and Immigration Services.

72 Upon receipt of the request for a criminal history record information check, the State Police shall (1)
73 review its criminal history record information to determine if the buyer or transferee is prohibited from
74 possessing or ~~transporting~~, *purchasing, or receiving* a firearm by state or federal law, (2) inform the
75 dealer if its record indicates that the buyer or transferee is so prohibited, and (3) provide the dealer with
76 a unique reference number for that inquiry.

77 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
78 by return call without delay. If the criminal history record information check indicates the prospective
79 purchaser or transferee has a ~~disqualifying criminal record or has been acquitted by reason of insanity~~
80 ~~and committed to the custody of the Commissioner of Behavioral Health and Developmental Services, is~~
81 ~~prohibited from possessing, purchasing, or receiving a firearm pursuant to state or federal law,~~ the
82 State Police shall have until the end of the dealer's next business day to *so* advise the dealer if its
83 records indicate the buyer or transferee is prohibited from possessing or ~~transporting~~ a firearm by state
84 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled
85 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be
86 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or
87 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of
88 the reason for such delay and be given an estimate of the length of such delay. After such notification,
89 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business
90 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from
91 possessing or ~~transporting~~, *purchasing, or receiving* a firearm by state or federal law. A dealer who
92 fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be
93 available by the end of the dealer's next business day may immediately complete the sale or transfer and
94 shall not be deemed in violation of this section with respect to such sale or transfer.

95 3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer
96 than 30 days, except for multiple handgun transactions for which records shall be maintained for 12
97 months, from any dealer's request for a criminal history record information check pertaining to a buyer
98 or transferee who is not found to be prohibited from possessing ~~and transporting~~, *purchasing, or*
99 *receiving* a firearm under state or federal law. However, the log on requests made may be maintained
100 for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer
101 identification number, the unique approval number and the transaction date.

102 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
103 deliver the written consent form required by subsection A to the Department of State Police. The State
104 Police shall immediately initiate a search of all available criminal history record information to
105 determine if the purchaser is prohibited from possessing, *purchasing, or transporting* ~~receiving~~ a firearm
106 under state or federal law. If the search discloses information indicating that the buyer or transferee is so
107 prohibited from possessing, *purchasing, or transporting* ~~receiving~~ a firearm, the State Police shall inform
108 the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer
109 without delay.

110 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
111 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
112 residents of other states under the terms of subsections A and B upon furnishing the dealer with proof
113 of citizenship or status as a person lawfully admitted for permanent residence and one
114 photo-identification form issued by a governmental agency of the person's state of residence and one
115 other form of identification determined to be acceptable by the Department of Criminal Justice Services.

116 6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include
117 December 25.

118 C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the
119 transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of
120 subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the

121 Department of State Police a report indicating that a search of all available criminal history record
 122 information has not disclosed that the person is prohibited from possessing, *purchasing*, or ~~transporting~~
 123 *receiving* a firearm under state or federal law. The dealer shall obtain the required report by mailing or
 124 delivering the written consent form required under subsection A to the State Police within 24 hours of
 125 its execution. If the dealer has complied with the provisions of this subsection and has not received the
 126 required report from the State Police within 10 days from the date the written consent form was mailed
 127 to the Department of State Police, he shall not be deemed in violation of this section for thereafter
 128 completing the sale or transfer.

129 D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting
 130 or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check
 131 through the dealer as provided in subsection C.

132 E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may
 133 exercise his right of access to and review and correction of criminal history record information under
 134 § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within
 135 30 days of such denial.

136 F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history
 137 record information under false pretenses, or who willfully and intentionally disseminates or seeks to
 138 disseminate criminal history record information except as authorized in this section shall be guilty of a
 139 Class 2 misdemeanor.

140 G. For purposes of this section:

141 "Actual buyer" means a person who executes the consent form required in subsection B or C, or
 142 other such firearm transaction records as may be required by federal law.

143 "Antique firearm" means:

144 1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of
 145 ignition system) manufactured in or before 1898;

146 2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not
 147 designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire
 148 or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that
 149 is not readily available in the ordinary channels of commercial trade;

150 3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use
 151 black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this
 152 subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame
 153 or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon
 154 that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any
 155 combination thereof; or

156 4. Any curio or relic as defined in this subsection.

157 "Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple
 158 projectiles by action of an explosion of a combustible material and is equipped at the time of the
 159 offense with a magazine which will hold more than 20 rounds of ammunition or designed by the
 160 manufacturer to accommodate a silencer or equipped with a folding stock.

161 "Curios or relics" means firearms that are of special interest to collectors by reason of some quality
 162 other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To
 163 be recognized as curios or relics, firearms must fall within one of the following categories:

164 1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or
 165 conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is
 166 not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

167 2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits
 168 firearms to be curios or relics of museum interest; and

169 3. Any other firearms that derive a substantial part of their monetary value from the fact that they
 170 are novel, rare, bizarre, or because of their association with some historical figure, period, or event.
 171 Proof of qualification of a particular firearm under this category may be established by evidence of
 172 present value and evidence that like firearms are not available except as collectors' items, or that the
 173 value of like firearms available in ordinary commercial channels is substantially less.

174 "Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

175 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be
 176 converted to expel single or multiple projectiles by action of an explosion of a combustible material.

177 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to
 178 fire single or multiple projectiles by means of an explosion of a combustible material from one or more
 179 barrels when held in one hand.

180 "Lawfully admitted for permanent residence" means the status of having been lawfully accorded the
 181 privilege of residing permanently in the United States as an immigrant in accordance with the

182 immigration laws, such status not having changed.

183 H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,
184 confidentiality and security of all records and data provided by the Department of State Police pursuant
185 to this section.

186 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
187 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)
188 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
189 or any local government, or any campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of
190 Title 23; or (iii) antique firearms, curios or relics.

191 J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a
192 resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another
193 state, in which case the laws and regulations of that state and the United States governing the purchase,
194 trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS)
195 check shall be performed prior to such purchase, trade or transfer of firearms.

196 J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal
197 history record information check is required pursuant to this section, except that a fee of \$5 shall be
198 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the
199 Department of State Police by the last day of the month following the sale for deposit in a special fund
200 for use by the State Police to offset the cost of conducting criminal history record information checks
201 under the provisions of this section.

202 K. Any person willfully and intentionally making a materially false statement on the consent form
203 required in subsection B or C or on such firearm transaction records as may be required by federal law,
204 shall be guilty of a Class 5 felony.

205 L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades
206 or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

207 L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or
208 otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and
209 intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not
210 apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the
211 performance of his official duties, or other person under his direct supervision.

212 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
213 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
214 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
215 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
216 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 5 felony. However, if the
217 violation of this subsection involves such a transfer of more than one firearm, the person shall be
218 sentenced to a mandatory minimum term of imprisonment of five years.

219 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the
220 Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of
221 a Class 5 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

222 O. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating
223 whether the driver's license is an original, duplicate or renewed driver's license.

224 P. [Repealed.]

225 **§ 19.2-387.1. Protective Order Registry; maintenance; access.**

226 A. The Department of State Police shall keep and maintain a computerized Protective Order Registry.
227 The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their
228 communities and their citizens. The Department of State Police shall make Registry information
229 available, upon request, to criminal justice agencies, including local law-enforcement agencies *and the*
230 *Attorney General of the United States or his designee*, through the Virginia Criminal Information
231 Network (VCIN). Registry information provided under this section shall be used only for the purposes
232 of the administration of criminal justice *and, in the case of providing such information to the Attorney*
233 *General of the United States or his designee, for the purpose of administering the National Instant*
234 *Criminal Background Check System.*

235 B. No liability shall be imposed upon any law-enforcement official who disseminates information or
236 fails to disseminate information in good faith compliance with the requirements of this section, but this
237 provision shall not be construed to grant immunity for gross negligence or willful misconduct.

238 **§ 19.2-389. Dissemination of criminal history record information.**

239 A. Criminal history record information shall be disseminated, whether directly or through an
240 intermediary, only to:

241 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
242 purposes of the administration of criminal justice and the screening of an employment application or
243 review of employment by a criminal justice agency with respect to its own employees or applicants, and

244 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
245 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
246 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

247 2. Such other individuals and agencies that require criminal history record information to implement
248 a state or federal statute or executive order of the President of the United States or Governor that
249 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such
250 conduct, *including the Attorney General of the United States or his designee for the purpose of*
251 *administering the National Instant Criminal Background Check System*, except that information
252 concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or
253 individual if an interval of one year has elapsed from the date of the arrest and no disposition of the
254 charge has been recorded and no active prosecution of the charge is pending;

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

259 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
260 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
261 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
262 security of the data;

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

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

267 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
268 owned, operated or controlled by any political subdivision, and any public service corporation that
269 operates a public transit system owned by a local government for the conduct of investigations of
270 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
271 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
272 conviction record would be compatible with the nature of the employment, permit, or license under
273 consideration;

274 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.)
275 and their contractors, for the conduct of investigations of individuals who have been offered a position
276 of employment whenever, in the interest of public welfare or safety and as authorized in the
277 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
278 with a conviction record would be compatible with the nature of the employment under consideration;

279 8. Public or private agencies when authorized or required by federal or state law or interstate
280 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
281 adult members of that individual's household, with whom the agency is considering placing a child or
282 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
283 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
284 the data shall not be further disseminated to any party other than a federal or state authority or court as
285 may be required to comply with an express requirement of law;

286 9. To the extent permitted by federal law or regulation, public service companies as defined in
287 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
288 personal contact with the public or when past criminal conduct of an applicant would be incompatible
289 with the nature of the employment under consideration;

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

292 11. A person requesting a copy of his own criminal history record information as defined in
293 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
294 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
295 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency
296 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of
297 Compeer; or (vi) any board member or any individual who has been offered membership on the board
298 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

299 12. Administrators and board presidents of and applicants for licensure or registration as a child
300 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
301 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
302 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
303 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
304 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data

305 shall not be further disseminated by the facility or agency to any party other than the data subject, the
306 Commissioner of Social Services' representative or a federal or state authority or court as may be
307 required to comply with an express requirement of law for such further dissemination;

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

311 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
312 Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
313 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

318 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers
319 for the conduct of investigations of applicants for compensated employment in licensed homes for adults
320 pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed
321 adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

322 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
323 § 4.1-103.1;

324 18. The State Board of Elections and authorized officers and employees thereof in the course of
325 conducting necessary investigations with respect to registered voters, limited to any record of felony
326 convictions;

327 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
328 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
329 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

333 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
334 Department of Education, or the Department of Behavioral Health and Developmental Services for the
335 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
336 services;

337 22. The Department of Behavioral Health and Developmental Services and facilities operated by the
338 Department for the purpose of determining an individual's fitness for employment pursuant to
339 departmental instructions;

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

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

347 25. Members of a threat assessment team established by a public institution of higher education
348 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of
349 assessing or intervening with an individual whose behavior may present a threat to safety; however, no
350 member of a threat assessment team shall disclose any criminal history record information obtained
351 pursuant to this section or otherwise use any record of an individual beyond the purpose that such
352 disclosure was made to the threat assessment team;

353 26. Executive directors of community services boards or the personnel director serving the
354 community services board for the purpose of determining an individual's fitness for employment
355 pursuant to §§ 37.2-506 and 37.2-607;

356 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
357 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

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

361 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
362 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
363 purpose of determining if any applicant who accepts employment in any direct care position has been
364 convicted of a crime that affects his fitness to have responsibility for the safety and well-being of
365 individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416,
366 37.2-506, and 37.2-607;

367 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
 368 for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.)
 369 and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

373 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
 374 determining an individual's fitness for employment in positions designated as sensitive under Department
 375 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal
 376 history record information to the agencies shall be limited to those positions generally described as
 377 directly responsible for the health, safety and welfare of the general populace or protection of critical
 378 infrastructures;

379 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
 380 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
 381 Violent Predators Act (§ 37.2-900 et seq.);

382 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
 383 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
 384 companies, for the conduct of investigations of applications for employment or for access to facilities,
 385 by contractors, leased laborers, and other visitors;

386 35. Any employer of individuals whose employment requires that they enter the homes of others, for
 387 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

388 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
 389 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
 390 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
 391 subject to the restriction that the data shall not be further disseminated by the agency to any party other
 392 than a federal or state authority or court as may be required to comply with an express requirement of
 393 law for such further dissemination, subject to limitations set out in subsection G;

394 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening
 395 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
 396 or have accepted a position related to the provision of transportation services to enrollees in the
 397 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
 398 program administered by the Department of Medical Assistance Services;

399 38. The State Corporation Commission for the purpose of investigating individuals who are current
 400 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
 401 Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an
 402 application is denied based in whole or in part on information obtained from the Central Criminal
 403 Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee
 404 may disclose such information to the applicant or its designee;

405 39. The Department of Professional and Occupational Regulation for the purpose of investigating
 406 individuals for initial licensure pursuant to § 54.1-2106.1;

407 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
 408 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
 409 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
 410 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

411 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

412 42. The State Treasurer for the purpose of determining whether a person receiving compensation for
 413 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12; and

414 43. Other entities as otherwise provided by law.

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

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

427 B. Use of criminal history record information disseminated to noncriminal justice agencies under this

428 section shall be limited to the purposes for which it was given and may not be disseminated further.

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

431 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
432 Exchange prior to dissemination of any criminal history record information on offenses required to be
433 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
434 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
435 where time is of the essence and the normal response time of the Exchange would exceed the necessary
436 time period. A criminal justice agency to whom a request has been made for the dissemination of
437 criminal history record information that is required to be reported to the Central Criminal Records
438 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
439 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
440 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

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

444 F. Criminal history information provided to licensed assisted living facilities, licensed district homes
445 for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the
446 convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

447 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
448 limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

449 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
450 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
451 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in
452 the request to the employer or prospective employer making the request, provided that the person on
453 whom the data is being obtained has consented in writing to the making of such request and has
454 presented a photo-identification to the employer or prospective employer. In the event no conviction data
455 is maintained on the person named in the request, the requesting employer or prospective employer shall
456 be furnished at his cost a certification to that effect. The criminal history record search shall be
457 conducted on forms provided by the Exchange.

458 I. *For purposes of subdivision A 2, criminal history record information accessible to the Attorney
459 General of the United States or his designee for the purpose of administering the National Instant
460 Criminal Background Check System shall include records sent to the Central Criminal Records
461 Exchange pursuant to §§ 37.2-819 and 64.2-2014.*

462 **§ 19.2-389.1. Dissemination of juvenile record information.**

463 Record information maintained in the Central Criminal Records Exchange pursuant to the provisions
464 of § 16.1-299 shall be disseminated only (i) to ~~make~~ the *State Police or the Attorney General of the
465 United States or his designee for the purposes of making a determination as provided in §§ 18.2-308.2
466 and 18.2-308.2:2, or under federal law, of eligibility to possess or, purchase, or receive a firearm;* (ii)
467 to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency
468 established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a presentence or post-sentence
469 investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary
470 sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local
471 community-based probation services agencies established pursuant to the Comprehensive Community
472 Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult
473 local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for
474 fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information
475 System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to
476 sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary
477 sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or
478 part-time employee of the State Police, a police department or sheriff's office that is a part of or
479 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the
480 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the
481 Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to
482 the Department of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA
483 data bank pursuant to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice
484 activities otherwise permitted and for purposes of performing duties required by the Civil Commitment
485 of Sexually Violent Predators Act (§ 37.2-900 et seq.); (ix) to the Virginia Criminal Sentencing
486 Commission for research purposes; (x) to members of a threat assessment team established by a public
487 institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher
488 education, to aid in the assessment or intervention with individuals whose behavior may present a threat
489 to safety; however, no member of a threat assessment team shall redisclose any juvenile record

490 information obtained pursuant to this section or otherwise use any record of an individual beyond the
491 purpose that such disclosure was made to the threat assessment team; and (xi) to any full-time or
492 part-time employee of the State Police or a police department or sheriff's office that is a part of or
493 administered by the Commonwealth or any political subdivision thereof for the purpose of screening any
494 person for full-time or part-time employment with the State Police or a police department or sheriff's
495 office that is a part of or administered by the Commonwealth or any political subdivision thereof.

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