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## SENATE BILL NO. 1264

Offered January 14, 2015

Prefiled January 14, 2015

*A BILL to amend and reenact §§ 19.2-389, 37.2-819, and 64.2-2014 of the Code of Virginia, relating to law-enforcement access to involuntary admission and incapacity records.*

Patrons—Deeds, Barker, Hanger, Howell and Puller; Delegates: Bell, Robert B., Torian, Watts and Yost

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-389, 37.2-819, and 64.2-2014 of the Code of Virginia are amended and reenacted as follows:**

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. *For purposes of this subdivision, criminal history record information includes records sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to authorized officers or employees of criminal justice agencies for the purposes of the administration of criminal justice;*

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

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

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

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

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

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

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the

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59 adult members of that individual's household, with whom the agency is considering placing a child or  
60 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
61 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
62 the data shall not be further disseminated to any party other than a federal or state authority or court as  
63 may be required to comply with an express requirement of law;

64 9. To the extent permitted by federal law or regulation, public service companies as defined in  
65 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
66 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
67 with the nature of the employment under consideration;

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

70 11. A person requesting a copy of his own criminal history record information as defined in  
71 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
72 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
73 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any  
74 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board  
75 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime  
76 Solvers or Crime Line program as defined in § 15.2-1713.1;

77 12. Administrators and board presidents of and applicants for licensure or registration as a child  
78 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
79 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
80 volunteers at such facilities, caretakers, and other adults living in family day care homes or homes  
81 approved by family day care systems, and foster and adoptive parent applicants of private child-placing  
82 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data  
83 shall not be further disseminated by the facility or agency to any party other than the data subject, the  
84 Commissioner of Social Services' representative or a federal or state authority or court as may be  
85 required to comply with an express requirement of law for such further dissemination;

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

89 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
90 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
91 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

100 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
101 § 4.1-103.1;

102 18. The State Board of Elections and authorized officers and employees thereof and general registrars  
103 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to  
104 voter registration, limited to any record of felony convictions;

105 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
106 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
107 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

118 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious  
119 elementary or secondary schools which are accredited by a statewide accrediting organization  
120 recognized, prior to January 1, 1996, by the State Board of Education or a private organization

121 coordinating such records information on behalf of such governing boards or administrators pursuant to  
122 a written agreement with the Department of State Police;

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

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

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

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

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

139 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
140 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
141 purpose of determining if any applicant who accepts employment in any direct care position has been  
142 convicted of a crime that affects his fitness to have responsibility for the safety and well-being of  
143 individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416,  
144 37.2-506, and 37.2-607;

145 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
146 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
147 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

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

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

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

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

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

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

177 38. The State Corporation Commission for the purpose of investigating individuals who are current  
178 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
179 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any  
180 other provision of law, if an application is denied based in whole or in part on information obtained  
181 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the

Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

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

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

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

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

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided; and

44. Other entities as otherwise provided by law.

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

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

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

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

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

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

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

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

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

**§ 37.2-819. Order of involuntary admission or mandatory outpatient treatment forwarded to CCRE; certain voluntary admissions forwarded to CCRE; firearm background check.**

A. The order from a commitment hearing issued pursuant to this chapter for involuntary admission or

mandatory outpatient treatment and the certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809 and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805 shall be filed by the judge or special justice with the clerk of the district court for the county or city where the hearing took place as soon as practicable but no later than the close of business on the next business day following the completion of the hearing.

B. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for involuntary admission to a facility, the clerk of court shall, as soon as practicable but not later than the close of business on the next following business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for mandatory outpatient treatment, the clerk of court shall, prior to the close of that business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order.

C. The clerk of court shall also, as soon as practicable but no later than the close of business on the next following business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809, and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805.

D. ~~The~~ *Except as provided in subdivision A 1 of § 19.2-389*, the copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to subsection B, and the forms and certifications sent to the Central Criminal Records Exchange regarding voluntary admission pursuant to subsection C, shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification required by subsection B or C. The Department of State Police shall forward only a person's eligibility to possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.

**§ 64.2-2014. Clerk to index findings of incapacity or restoration; notice of findings.**

A. A copy of the court's findings that a person is incapacitated or has been restored to capacity, or a copy of any order appointing a conservator or guardian pursuant to § 64.2-2115, shall be filed by the judge with the clerk of the circuit court for the county or city where the hearing took place as soon as practicable, but no later than the close of business on the next business day following the completion of the hearing. The clerk shall properly index the findings in the index to deed books by reference to the order book and page whereon the order is spread and shall immediately notify the Commissioner of Behavioral Health and Developmental Services in accordance with § 64.2-2028, the commissioner of accounts in order to ensure compliance by a conservator with the duties imposed pursuant to §§ 64.2-2021, 64.2-2022, 64.2-2023, and 64.2-2026, and the Commissioner of Elections with the information required by § 24.2-410. If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction where the person then resides.

B. The clerk shall, as soon as practicable, but no later than the close of business on the following business day, certify and forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article, any order appointing a conservator or guardian pursuant to § 64.2-2115, and any order of restoration of capacity under § 64.2-2012. ~~The~~ *Except as provided in subdivision A 1 of § 19.2-389*, the copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.