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HOUSE BILL NO. 1047

Offered January 8, 2020

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A BILL to amend and reenact §§ 19.2-390 and 19.2-392 of the Code of Virginia, relating to fingerprints and photographs by police authorities; reports to the Central Criminal Records Exchange.

Patron—Krizek

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-390 and 19.2-392 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, for each charge when any person is arrested on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1;

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, or 63.2-1727.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested for each charge. 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. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

2. For persons arrested and released on summonses in accordance with *subsection B of § 19.2-73* or § 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 defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; 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 for each charge 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 Behavioral Health and Developmental Services.

3. For persons arrested on a *capias* for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

4. For any person served with a show cause for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306,

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HB1047

59 or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such
60 person is found to be in violation of the terms or conditions of a suspended sentence or probation for
61 such felony offense. Upon finding such person in violation of the terms or conditions of a suspended
62 sentence or probation for such felony offense, the court shall order that the fingerprints and photograph
63 of such person be taken by a law-enforcement officer for each such offense and submitted to the Central
64 Criminal Records Exchange.

65 5. If the accused is in custody when an indictment or presentment is found or made, or information
66 is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such
67 at the time of first appearance for each indictment, presentment, or information for which a report is
68 required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and
69 photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that
70 has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking
71 the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each
72 offense.

73 B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a
74 charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the
75 law-enforcement agency which received the warrant shall enter the person's name and other appropriate
76 information required by the Department of State Police into the "information systems" known as the
77 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant
78 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC),
79 maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of
80 birth, social security number and such other known information which the State Police or Federal
81 Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the
82 warrant or capias may transfer information electronically into VCIN. When the information is
83 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias
84 to the local police department or sheriff's office. When criminal process has been ordered destroyed
85 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of
86 any information relating to the destroyed criminal process from the VCIN and NCIC.

87 B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant
88 to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his
89 post-release supervision or probation, the law-enforcement agency that received the written statement
90 shall enter, or cause to be entered, the person's name and other appropriate information required by the
91 Department of State Police into the "information systems" known as the Virginia Criminal Information
92 Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.)
93 of Title 52.

94 C. For offenses not charged on a summons in accordance with *subsection B of § 19.2-73 or §*
95 *19.2-74*, the clerk of each circuit court and district court shall make an electronic report to the Central
96 Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251,
97 or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency
98 or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or
99 failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection
100 A, including any action that may have resulted from an indictment, presentment or information, or any
101 finding that the person is in violation of the terms or conditions of a suspended sentence or probation
102 for a felony offense and (ii) any adjudication of delinquency based upon an act that, if committed by an
103 adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A
104 and charged on a summons in accordance with *subsection B of § 19.2-73 or § 19.2-74*, such electronic
105 report by the clerk of each circuit court and district court to the Central Criminal Records Exchange
106 may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if
107 an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal;
108 (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c)
109 an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court
110 shall make an electronic report to the Central Criminal Records Exchange of any finding that a person
111 charged on a summons is in violation of the terms or conditions of a suspended sentence or probation
112 for a felony offense. In the case of offenses not required to be reported to the Exchange by subsection
113 A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making
114 the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any
115 person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether
116 sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902,
117 the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against
118 Minors Registry. The report to the Registry shall include the name of the person convicted and all
119 aliases that he is known to have used, the date and locality of the conviction for which registration is
120 required, his date of birth, social security number, and last known address, and specific reference to the

offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or *capias* into the VCIN.

D. In addition to those offenses enumerated in subsection A, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections may be classified and filed as criminal history record information.

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

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

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

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

I. As used in this section:

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

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

§ 19.2-392. Fingerprints and photographs by police authorities.

A. All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of: (i) any person arrested by them and charged with a felony or a misdemeanor an arrest for which is to be reported by them to the Central Criminal Records Exchange, (ii) any person who pleads guilty or is found guilty after being summoned in accordance with *subsection B of § 19.2-73 or § 19.2-74*, or (iii) any person charged with an offense that has been deferred by the court pursuant to §§ 18.2-57.3, 18.2-251, or 19.2-303.2. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records.

B. Such police authorities may establish and collect a reasonable fee not to exceed \$10 for the first card and \$5 for each successive card for the taking of fingerprints when voluntarily requested by any person for purposes other than criminal violations.