

20102987D

## SENATE BILL NO. 775

Offered January 8, 2020

Prefiled January 8, 2020

A *BILL to amend and reenact § 19.2-389, as it is currently effective and as it shall become effective, of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 15 of Title 19.2 an article numbered 4.2, consisting of sections numbered 19.2-264.6 through 19.2-264.15; and to repeal § 19.2-265.4 of the Code of Virginia, relating to discovery in criminal cases; penalties.*

Patron—Edwards

Referred to Committee on the Judiciary

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

1. That § 19.2-389, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 19.2 an article numbered 4.2, consisting of sections numbered 19.2-264.6 through 19.2-264.15, as follows:

*Article 4.2.**Discovery.***§ 19.2-264.6. General provisions.**

A. This article shall apply to any prosecution for a felony in a circuit court and to any misdemeanor brought on direct indictment.

B. In any criminal prosecution for a felony in a circuit court or for a misdemeanor brought on direct indictment, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under this section and Rule 3A:11 of the Rules of Supreme Court of Virginia. Rule 3A:11 shall be construed to apply to such felony and misdemeanor prosecutions. This duty to disclose shall be continuing and shall apply to any additional evidence or material discovered by the attorney for the Commonwealth prior to or during trial which is subject to discovery or inspection and has been previously requested by the accused. In any criminal prosecution for a misdemeanor by trial de novo in circuit court, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 7C:5 of the Rules of Supreme Court of Virginia. The constitutional and statutory duties of the attorney for the Commonwealth to provide exculpatory, mitigating, and impeachment evidence to an accused supersedes any limitation or restriction on discovery provided pursuant to this article.

C. A party may satisfy the requirement to permit the opposing party to inspect and copy or photograph a document, recorded statement, or recorded confession by providing an actual duplicate, facsimile, or copy of the document, recorded statement, or recorded confession to the opposing party in compliance with the applicable time limits and redaction standards set forth in this article.

D. Any material or evidence disclosed or discovered pursuant to this article and filed with the clerk of court shall be placed under seal until it is either admitted as an exhibit at a trial or hearing or the court enters an order unsealing the specified material or evidence.

E. This section does not prohibit the parties from agreeing to discovery and documentation requirements equal to or greater than those required under this article.

**§ 19.2-264.7. Initiation and timing of discovery.**

A. A party requesting discovery pursuant to this article shall, before filing any motion before a judge, request in writing that the other party voluntarily comply with such request. Such request shall be made at least 30 days prior to the day fixed for trial. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this article concerning any matter as to which voluntary discovery was not made pursuant to the request.

B. Discovery under this section shall be provided in a reasonable time before trial to give the party receiving discovery the opportunity to make meaningful use of the provided information in preparation for trial. If discovery is not provided within such time, even if the disclosure complies with timing requirements pursuant to subsection E or an alternative agreement or order, the aggrieved party shall be entitled to a continuance of an appropriate length to make meaningful use of the discovery.

C. To the extent that discovery authorized in this article is voluntarily made in response to a request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this section.

D. If the parties proceed under the voluntary compliance provisions of this section, each party shall

INTRODUCED

SB775

59 certify, prior to plea or trial, that he has complied with the provisions of this section. No adverse  
60 consequence to the party or counsel for the party shall result from the filing of a certificate of  
61 compliance in good faith, but the court may grant a remedy or sanction for a discovery violation as  
62 provided in § 19.2-264.15.

63 E. Discovery pursuant to this article shall be provided at a reasonable time before trial, but in no  
64 case shall it be provided later than (i) 30 days before trial on a misdemeanor in circuit court; (ii) 60  
65 days before trial on a felony or multiple felony counts punishable by confinement in a state correctional  
66 facility for an aggregate of 30 years or less; (iii) 90 days before trial on a felony or multiple felony  
67 counts punishable by confinement in a state correctional facility for an aggregate of more than 30  
68 years; or (iv) 180 days before trial in a capital case.

69 F. Upon an indictment or information, where the attorney for the Commonwealth has made a guilty  
70 plea offer requiring a plea to a crime, the attorney for the Commonwealth shall disclose to the defense,  
71 and shall permit the defense to discover, inspect, copy, photograph, and test, all items and information  
72 that would be discoverable prior to trial under § 19.2-264.8 and that are within the possession,  
73 custody, or control of the prosecution. The attorney for the Commonwealth shall disclose the  
74 discoverable items and information not less than seven calendar days prior to the expiration date of any  
75 guilty plea offer by the attorney for the Commonwealth or any deadline imposed by the court for  
76 acceptance of the guilty plea offer. The attorney for the Commonwealth may comply with this subsection  
77 by certifying, in writing, that this article was complied with prior to the date set for the preliminary  
78 hearing in the district court, provided that such certification includes a list that states, with specificity,  
79 what items were provided to the defense under this section. If the attorney for the Commonwealth does  
80 not comply with the requirements of this subsection, then, on motion by the accused alleging a violation  
81 of this subsection, the court shall consider the impact of any violation on the accused's decision to  
82 accept or reject a guilty plea offer. If the court finds that such violation materially affected the  
83 accused's decision, and if the attorney for the Commonwealth declines to reinstate the lapsed or  
84 withdrawn guilty plea offer, the court shall preclude the admission at trial of any evidence not disclosed  
85 as required under this subsection. The court may take other appropriate action as necessary to address  
86 such violation. The rights under this subsection do not apply to items or information that is the subject  
87 of a protection order issued pursuant to § 19.2-264.13, but if such information tends to be exculpatory,  
88 the court shall reconsider the protection order. An accused may waive his rights under this subsection,  
89 but a guilty plea offer may not be conditioned on such waiver.

90 **§ 19.2-264.8. Discovery by the accused; penalties.**

91 A. The attorney for the Commonwealth shall disclose to the accused, and permit him to discover,  
92 inspect, copy, photograph, and test, all items and information that relate to the subject matter of the  
93 case and are in the possession, custody, or control of the Commonwealth or persons under the  
94 Commonwealth's direction or control, including but not limited to:

95 1. All written or recorded statements, and the substance of all oral statements, made by the accused  
96 or a co-accused to a public servant engaged in law-enforcement activity or to a person then acting  
97 under his direction or in cooperation with him.

98 2. All transcripts of the testimony of a person who has testified regarding the case before a grand  
99 jury.

100 3. The names of and adequate contact information for all persons other than law-enforcement  
101 personnel whom the attorney for the Commonwealth knows to have evidence or information relevant to  
102 any offense charged or to any potential defense thereto, including a designation by the prosecutor as to  
103 which of those persons may be called as witnesses. Nothing in this paragraph shall require the  
104 disclosure of physical addresses; however, upon a motion and good cause shown, the court may direct  
105 the disclosure of a physical address. Notwithstanding the requirements of § 19.2-264.9, information  
106 under this subdivision relating to a confidential informant may be withheld and redacted from discovery  
107 materials, but the attorney for the Commonwealth shall notify the accused in writing that such  
108 information has not been disclosed, unless the court rules otherwise for good cause shown.

109 4. The name and work affiliation of all law-enforcement personnel whom the attorney for the  
110 Commonwealth knows to have evidence or information relevant to any offense charged or to any  
111 potential defense thereto, including a designation by the attorney for the Commonwealth as to which of  
112 those persons may be called as witnesses. Notwithstanding the provisions of § 19.2-264.9, information  
113 under this subdivision relating to undercover personnel may be withheld, and redacted from discovery  
114 materials, but the attorney for the Commonwealth shall notify the accused in writing that such  
115 information has not been disclosed, unless the court rules otherwise for good cause shown.

116 5. All statements, written or recorded, or summarized in any writing or recording, made by persons  
117 who have evidence or information relevant to any offense charged or to any potential defense thereto,  
118 including all police reports, notes of law-enforcement officers and other investigators, and  
119 law-enforcement agency reports. Such information shall include statements, written or recorded, or  
120 summarized in any writing or recording, by persons to be called as witnesses at any pretrial hearing.

6. Written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine, and breath tests, other scientific reports, and written reports of a physical or mental examination of the accused or the alleged victim made in connection with the particular case that are within the possession, custody, or control of the attorney for the Commonwealth. Additionally, the attorney for the Commonwealth shall notify the accused in writing of the attorney for the Commonwealth's intent to introduce expert opinion testimony at trial or sentencing and to provide the accused with (i) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions and (ii) the witness's qualifications and contact information.

Nothing in this subsection shall render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases, and reasons disclosed pursuant to this article, or the expert witness's qualifications, solely because the further explanatory language was not included in the notice and disclosure provided under this article. Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of this subsection.

7. All tapes or other electronic recordings, including all electronic recordings of 911 telephone calls made or received in connection with the alleged criminal incident, and a designation by the attorney for the Commonwealth as to which of the recordings under this paragraph he intends to introduce at trial or any pretrial hearing.

8. All photographs and drawings (i) made or completed by a public servant engaged in law-enforcement activity, (ii) made by a person whom the attorney for the Commonwealth intends to call as a witness at trial or any pretrial hearing, or (iii) that relate to the subject matter of the case.

9. All evidence and information, including that which is known to police or other law-enforcement agencies acting on the state or local government's behalf in the case, that tends to (i) negate the accused's guilt as to a charged offense, (ii) reduce the degree of or mitigate the accused's culpability as to a charged offense, (iii) support a potential defense to a charged offense, (iv) impeach the credibility of a testifying witness for the Commonwealth, (v) undermine evidence of the accused's identity as a perpetrator of a charged offense, (vi) provide a basis for a motion to suppress evidence, or (vii) mitigate punishment. Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the attorney for the Commonwealth credits the information. The attorney for the Commonwealth shall disclose the information expeditiously upon its receipt and shall not delay disclosure consistent with the ethical responsibilities of the attorney for the Commonwealth under Rule 3.8 of the Virginia Rules of Professional Conduct.

10. Notwithstanding any other provision of this article, if the attorney for the Commonwealth intends to use, at a trial, testimony of a person to whom the accused made a statement against the accused's interest while the person was imprisoned or confined in the same correctional facility as the accused, or to any person seeking advantage for such testimony, the attorney for the Commonwealth shall disclose to the accused any information in the possession, custody, or control of the attorney for the Commonwealth that is relevant to such person's credibility, including:

a. The person's complete criminal history, including any charges that were dismissed or reduced as part of a plea bargain;

b. Any grant, promise, or offer of immunity from prosecution, reduction of sentence, or other leniency or special treatment given by the Commonwealth in exchange for the person's testimony; and

c. Information concerning other criminal cases in which the person has testified, or offered to testify, against an accused with whom the person was imprisoned or confined, including any grant, promise, or offer of immunity from prosecution, reduction of sentence, or other leniency or special treatment given by the Commonwealth in exchange for the person's testimony.

11. A summary of all promises, rewards, and inducements made to, or in favor of, persons who may be called as witnesses, as well as requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward, or inducement.

12. A list of all tangible objects obtained from, or allegedly possessed by, the accused or a co-accused. The list shall include a designation by the attorney for the Commonwealth as to (i) which tangible objects were physically or constructively possessed by the accused and were recovered during a search or seizure by a law-enforcement officer or an agent thereof and (ii) which tangible objects were recovered by a law-enforcement officer or an agent thereof after allegedly being abandoned by the accused. If the attorney for the Commonwealth intends to prove the accused's possession of any tangible objects by means of a statutory presumption of possession, he shall designate such intention as to each such object. If reasonably practicable, the attorney for the Commonwealth shall also designate the location from which each tangible object was recovered. The accused shall have a right to inspect,

182 copy, photograph, and test the listed tangible objects.

183 13. Whether a search warrant has been executed and all documents relating thereto, including the  
184 warrant, the warrant application, supporting affidavits, a law-enforcement inventory of all property  
185 seized under the warrant, and a transcript of all testimony or other oral communications offered in  
186 support of the warrant application.

187 14. All tangible property that relates to the subject matter of the case, along with a designation of  
188 which items the attorney for the Commonwealth intends to introduce in his case-in-chief at trial or a  
189 pretrial hearing. If in the exercise of reasonable diligence the attorney for the Commonwealth has not  
190 formed such intention within the time period specified in this section, the attorney for the  
191 Commonwealth shall notify the accused in writing as soon as practicable and subject to the continuing  
192 duty to disclose.

193 15. A complete record of judgments of conviction for all persons accused in the case and all persons  
194 designated as potential witnesses for the Commonwealth.

195 16. When it is known to the attorney for the Commonwealth, the existence of any pending criminal  
196 action against all persons designated as potential witnesses for the Commonwealth.

197 17. The approximate date, time, and place of the offense or offenses charged and of the accused's  
198 seizure and arrest.

199 18. A copy of all electronically created or stored information seized or obtained by or on behalf of a  
200 law-enforcement agency from (i) the accused or (ii) a source other than the accused that relates to the  
201 subject matter of the case. If the electronically created or stored information originates from a device,  
202 account, or other electronically stored source that the attorney for the Commonwealth believes the  
203 accused owned, maintained, or had lawful access to and is within the possession, custody, or control of  
204 the attorney for the Commonwealth or persons under the direction or control of the attorney for the  
205 Commonwealth, the attorney for the Commonwealth shall provide a complete copy of the electronically  
206 created or stored information from the device or account or other source. If possession of such  
207 electronically created or stored information would be a crime under the laws of the Commonwealth or  
208 federal law, the attorney for the Commonwealth shall make those portions of the electronically created  
209 or stored information that are not criminal to possess available as specified under this subdivision and  
210 shall afford counsel for the accused access to inspect contraband portions at a supervised location that  
211 provides regular and reasonable hours for such access, including the attorney for the Commonwealth's  
212 office, a police station, or a court. This subdivision shall not be construed to alter or in any way affect  
213 the right to be free from unreasonable searches and seizures or such other rights a suspect or accused  
214 may derive from the Constitution of Virginia or the Constitution of the United States.

215 19. A list of all misconduct and criminal acts of the accused not charged in the indictment or  
216 information that the attorney for the Commonwealth intends to use at trial (i) for purposes of  
217 impeaching the credibility of the accused or (ii) as substantive proof of any material issue in the case.  
218 In addition, the attorney for the Commonwealth shall designate whether he intends to use each listed act  
219 for impeachment or as substantive proof.

220 B. The attorney for the Commonwealth shall make a diligent, good faith effort to ascertain the  
221 existence of material or information discoverable under § 19.2-264.8 and to cause such material or  
222 information to be made available for discovery where it exists but is not within the possession, custody,  
223 or control of the attorney for the Commonwealth, provided that the attorney for the Commonwealth  
224 shall not be required to obtain by subpoena duces tecum any material or information that the accused  
225 may thereby obtain. For purposes of § 19.2-264.8, all items and information related to the prosecution  
226 of a charge in the possession of any state or local law-enforcement agency located in the  
227 Commonwealth are deemed to be in the possession of the attorney for the Commonwealth. The attorney  
228 for the Commonwealth shall identify any laboratory having contact with evidence related to the  
229 prosecution of a charge. On a timely basis, law-enforcement and investigatory agencies shall make  
230 available to the attorney for the Commonwealth a copy of the complete files related to the investigation  
231 of the crimes committed by the accused.

232 C. The attorney for the Commonwealth shall endeavor to ensure that a flow of information is  
233 maintained between law-enforcement agencies, other investigative personnel, and his office sufficient to  
234 place within his possession or control all material and information pertinent to the accused and the  
235 offense or offenses charged.

236 D. Whenever an electronic recording of a 911 telephone call or a police radio transmission or video  
237 or audio footage from a police body-worn camera or other police recording was made or received in  
238 connection with the investigation of an apparent criminal incident, the arresting officer or lead detective  
239 shall expeditiously notify the attorney for the Commonwealth in writing upon the filing of an accusatory  
240 instrument of the existence of all such known recordings. The attorney for the Commonwealth shall take  
241 whatever reasonable steps are necessary to ensure that all known electronic recordings of 911 telephone  
242 calls, police radio transmissions, video and audio footage, and other police recordings made or  
243 available in connection with the case are preserved. Upon the accused's timely request and designation

of a specific electronic recording of a 911 telephone call, the attorney for the Commonwealth shall also expeditiously take whatever reasonable steps are necessary to ensure that it is preserved. If the attorney for the Commonwealth fails to disclose such an electronic recording to the accused, the court upon motion of the accused shall impose an appropriate remedy or sanction under this section.

E. This article does not authorize the discovery of the names or personal identifying information of confidential informants whom the attorney for the Commonwealth does not intend to call at trial and with regard to whose identity the attorney for the Commonwealth asserts he holds a privilege. However, disclosure of such information shall comply with subdivision A 10 and any other obligations required by law.

F. The attorney for the Commonwealth shall provide to the accused a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the Commonwealth at trial or sentencing. This provision is subject to subdivision A 10 and to any protection order entered by the court pursuant to § 19.2-264.13. In addition, this subdivision shall not be subject to the timing requirements of subsection E of § 19.2-264.7, but shall be provided at least seven days before a misdemeanor trial, at least 14 days before a noncapital felony trial, and at least 28 days before a capital trial.

G. This article does not authorize the discovery or inspection of the work product of the attorney for the Commonwealth, including internal reports, memoranda, correspondence, legal research, or other internal documents prepared by the office of the attorney for the Commonwealth or its agents in anticipation of trial.

H. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to this section is guilty of a Class 6 felony. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of this article is guilty of a Class 1 misdemeanor.

**§ 19.2-264.9. Redaction and Restricted Dissemination Material.**

A. With regard to any material or evidence provided pursuant to this article, the attorney for the Commonwealth may redact the residential address, telephone number, email address, and place of employment of any witness or victim, or any family member of a witness or victim. The attorney for the Commonwealth may redact the date of birth and social security number of any person whose information is contained in material or evidence provided pursuant to this article. If the attorney for the Commonwealth redacts information pursuant to this section, he shall provide the accused with a list of the location of the redacted item in the discovery and a brief statement of why it was redacted, if such reason is not immediately apparent from the remaining portion of the document. If the attorney for the Commonwealth redacts personal identifying information pursuant to this section, the accused may file a motion seeking disclosure of the redacted information. Should the court find good cause for disclosure, it may order the attorney for the Commonwealth to provide the redacted information. In its discretion, the court ordering the provision of redacted personal identifying information may order that the information be identified as Restricted Dissemination Material pursuant to subsection B.

B. The attorney for the Commonwealth may designate any evidence or material subject to disclosure pursuant to this article as Restricted Dissemination Material, without supporting certification, if the accused's attorney agrees to such designation. The attorney for the Commonwealth shall prominently stamp or otherwise mark such items as Restricted Dissemination Material. In the absence of an agreement by the attorney for the accused, the attorney for the Commonwealth may designate any evidence or material as Restricted Dissemination Material by stamping or otherwise marking it as such and providing a certification in writing, upon information and belief, that (i) the designated material relates to the statement of a child victim or witness or (ii) disclosure of the designated material may result in clear and present danger to the safety or security of a witness or victim, danger of a witness being intimidated or tampered with, or a risk of compromising an ongoing criminal investigation or confidential law-enforcement technique.

Except as otherwise provided by order of the court or this article, Restricted Dissemination Material may be disclosed only to the accused's attorney, the agents or employees of the accused's attorney, or an expert witness. The accused's attorney may orally communicate the content of Restricted Dissemination Material to the accused or allow the accused to view the content of such material, but shall not provide the accused with copies of material so designated. Restricted Dissemination Material may not otherwise be reproduced, copied, or disseminated in any way.

The accused may at any time file a motion seeking to remove a designation made under this subsection from such evidence or material. Should the court find good cause to remove the designation, it may order that the evidence or material no longer be designated as Restricted Dissemination Material.

Within 21 days of the entry of a final order by the trial court, or upon the termination of the representation of the accused, the accused's attorney shall return to the court all originals and copies of

any Restricted Dissemination Material disclosed pursuant to this subsection. The court shall maintain such returned Restricted Dissemination Material under seal. Any material sealed pursuant to this subsection shall remain available for inspection by counsel of record. For good cause shown, the court may enter an order allowing additional access to the sealed material as the court deems appropriate.

C. In any case in which an accused is not represented by an attorney, the attorney for the Commonwealth may file a motion seeking to limit the scope of discovery under this article. For good cause shown, the court may order any limitation or restriction on the provision of discovery to an accused who is unrepresented by an attorney as the court in its discretion deems appropriate.

**§ 19.2-264.10. Discovery by the Commonwealth.**

A. If the court grants disclosure to the accused under § 19.2-264.8, it shall also order the accused to:

1. Permit the attorney for the Commonwealth to inspect and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine, and breath analyses, and other scientific testing within the accused's possession, custody, or control that the defense intends to proffer or introduce into evidence at trial or sentencing.

2. Disclose whether the accused intends to introduce evidence to establish an alibi and, if so, disclose the place at which the accused claims to have been at the time the alleged offense was committed.

3. Permit the attorney for the Commonwealth to inspect, copy, or photograph any written reports of physical or mental examination of the accused made in connection with the particular case if the accused intends to rely upon the defense of insanity pursuant to Chapter 11 (§ 19.2-167 et seq.), provided that no statement made by the accused in the course of such an examination disclosed under this article shall be used by the attorney for the Commonwealth in its case-in-chief, whether the examination was conducted with or without the consent of the accused.

4. Notify the attorney for the Commonwealth in writing of the accused's intent to introduce expert opinion testimony at trial or sentencing and to provide the attorney for the Commonwealth with (i) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions and (ii) the witness's qualifications and contact information. Nothing in this subdivision shall render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases, and reasons disclosed, or the expert witness's qualifications, solely because the further explanatory language was not included in the notice and disclosure provided. Providing a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in § 19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of this subdivision.

5. Provide to the attorney for the Commonwealth a list of the names and, if known, the addresses of all persons who are expected to testify on behalf of the accused at trial or sentencing. The accused's attorney may redact the personal identifying information of any witness if so authorized by a protection order entered by the court pursuant to § 19.2-264.13. Failure to provide such information shall entitle the attorney for the Commonwealth to a continuance. Such failure shall not constitute a bar on such witness's testimony unless good cause or intentional withholding is shown.

**§ 19.2-264.11. Discovery depositions.**

A. At any time after the filing of the charging document, any party may take the deposition upon oral examination of any person authorized by this section. A party taking a deposition shall give reasonable written notice to each other party and shall make a good faith effort to coordinate the date, time, and location of the deposition to accommodate the schedules of other parties and the witness to be deposed. The notice shall state the time and the location where the deposition is to be taken, the name of each person to be examined, and a certificate of counsel that a good faith effort was made to coordinate the deposition schedule. After notice to the parties, the court may, for good cause shown, extend or shorten the time and may change the location of the deposition. Except as provided herein, the procedure for taking the deposition, including the scope of the examination and the issuance of a subpoena for deposition by an attorney of record in the action, shall be the same as that provided for in civil cases in the Commonwealth. Any deposition taken pursuant to this article may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. The trial court or the clerk of the court may, upon application by a pro se litigant or the attorney for any party, issue subpoenas for the persons whose depositions are to be taken. In any case, including when multiple persons are accused or in consolidated cases, no person shall be deposed more than once except by consent of the parties or by order of the court issued on good cause shown. A witness who refuses to obey a duly served subpoena may be adjudged in contempt of the court from which the subpoena issued.

B. The parties may, without leave of court, take the deposition of any witness expected to be called

at a trial or hearing or who may have information relevant to the offense charged.

C. No deposition shall be taken in a case in which the accused is charged only with a misdemeanor or a criminal traffic offense when all other discovery provided by this article has been complied with unless good cause can be shown to the trial court. In determining whether to allow a deposition, the court should consider the consequences to the accused, the complexity of the issues involved, the complexity of the witness's testimony, and the other opportunities available to the accused to discover the information sought by deposition.

D. Depositions of witnesses residing in the city or county in which the trial is to take place shall be taken in the building in which the trial shall be held, such other location as is agreed on by the parties, or a location designated by the court. Depositions of witnesses residing outside the city or county in which the trial is to take place shall be taken in a court reporter's office in the city or county in which the witness resides, such other location as is agreed on by the parties, or a location designated by the court.

E. Depositions of children under the age of 18 shall be videotaped unless otherwise ordered by the court. The court may order the videotaping of a deposition or the taking of a deposition of a witness with fragile emotional strength or an intellectual disability to be in the presence of the trial judge or a special magistrate.

F. A law-enforcement officer shall appear for deposition, without subpoena, upon delivery of written notice of such deposition to the address of such officer's law-enforcement agency or department, or an address designated by the law-enforcement agency or department, five days prior to the date of the deposition. A law-enforcement officer who fails to appear for deposition after being served such notice may be adjudged in contempt of court.

G. An accused shall not be physically present at a deposition except on stipulation of the parties or as provided by this article. The court may order the physical presence of the accused on a showing of good cause. The court may consider (i) the need for the physical presence of the accused to obtain effective discovery, (ii) the intimidating effect of the accused's presence on the witness, (iii) any cost or inconvenience that may result from the accused's presence, and (iv) any alternative electronic or audio/visual means available.

H. On stipulation of the parties and the consent of the witness, the statement of any witness may be taken by telephone or video conference in lieu of the deposition of the witness. In such case, the witness need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement.

#### **§ 19.2-264.12. Admissibility of discovery.**

The fact that a party has indicated during the discovery process an intention to offer specified evidence or to call a specified witness is not admissible in evidence or grounds for adverse comment at a hearing or a trial.

#### **§ 19.2-264.13. Protection order.**

A. Upon the motion of either party and for good cause, the court may enter a protection order with regard to the discovery or inspection required by this article. It shall constitute good cause to protect specific discovery materials where the attorney for the Commonwealth proves by a preponderance of the evidence that the disclosure of the materials will jeopardize the safety or security of a witness or victim, result in witness tampering or intimidation, or significantly compromise an ongoing criminal investigation. The court in its discretion may order any condition limiting, but not preventing, disclosure, so long as the condition is necessary to the orderly adjudication of the case or to the fair administration of justice. These conditions may include:

1. A requirement that the parties not disclose the contents of any material or evidence disclosed or discovered pursuant to this article in any public forum, including any website;

2. A requirement that the parties not disclose the contents of any material or evidence disclosed or discovered pursuant to this article to any third party who is not an agent or employee of the parties or an expert witness;

3. A requirement that (i) copies of specific discovery materials shall be provided only to the accused's attorney, the agents or employees of the accused's attorney, or an expert witness; (ii) the accused shall not be permitted to obtain or keep his own copies of specific discovery materials; and (iii) the accused shall be permitted to view such materials only in the presence of his attorney, or an agent or employee of his attorney, or learn of their contents orally only from his attorney, or an agent or employee of his attorney. A requirement pursuant to this subdivision shall only be included as a condition when the safety of witnesses or integrity of their testimony is at risk, and no other condition or set of conditions can address such risk;

4. Authorization to either party to withhold the residential address, telephone number, email address, or place of employment of any witness not covered by the terms of § 19.2-264.9; or

5. Authorization for either party in appropriate circumstances to withhold from disclosure or place



428 *additional restrictions on dissemination of information otherwise discoverable but not exculpatory.*

429 *B. Should either party believe in good faith that the terms of a protective order entered by the court*  
430 *have been violated, such party may move the court to enforce the order and to impose any necessary*  
431 *and appropriate sanction authorized by law.*

432 **§ 19.2-264.14. Continuing duty to disclose.**

433 *If, after disposition of a motion made pursuant to this article, a party or counsel to a party*  
434 *discovers, whether before, during, or after trial, additional material previously requested or falling*  
435 *within the scope of an order previously entered, that is subject to discovery or inspection under this*  
436 *article but has not previously been disclosed, the party shall promptly notify the other party or the other*  
437 *party's counsel and the court of the existence of the additional material.*

438 **§ 19.2-264.15. Failure to provide discovery or otherwise comply.**

439 *A. If at any time during the course of the proceedings the court determines that a party has failed to*  
440 *comply with this article or with an order issued pursuant to this article, the court, in addition to*  
441 *exercising its contempt powers, may (i) order the party to permit discovery or inspection; (ii) grant a*  
442 *continuance or recess; (iii) prohibit the party from introducing evidence that was not disclosed; (iv)*  
443 *declare a mistrial; (v) dismiss the charge, with or without prejudice; or (vi) enter such other order as it*  
444 *deems just under the circumstances.*

445 *B. In determining appropriate sanctions, the court shall consider both the materiality of the subject*  
446 *matter and the totality of the circumstances surrounding an alleged failure to comply with this article or*  
447 *an order issued pursuant to this article.*

448 *C. For purposes of determining whether to impose personal sanctions for untimely disclosure of a*  
449 *law-enforcement or investigatory agency file, the courts shall presume that the attorney for the*  
450 *Commonwealth and his staff have acted in good faith if such attorney for the Commonwealth and his*  
451 *staff have made a reasonably diligent inquiry of such agency and disclosed the responsive materials.*

452 *D. Before the court imposes any sanction, it shall make a specific finding justifying the imposed*  
453 *sanction.*

454 **§ 19.2-389. (Effective until January 1, 2021) Dissemination of criminal history record**  
455 **information.**

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

458 *1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for*  
459 *purposes of the administration of criminal justice and the screening of an employment application or*  
460 *review of employment by a criminal justice agency with respect to its own employees or applicants, and*  
461 *dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all*  
462 *state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,*  
463 *3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For*  
464 *purposes of this subdivision, criminal history record information includes information sent to the Central*  
465 *Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time*  
466 *or part-time employee of the State Police, a police department or sheriff's office that is a part of or*  
467 *administered by the Commonwealth or any political subdivision thereof, and who is responsible for the*  
468 *prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the*  
469 *Commonwealth for the purposes of the administration of criminal justice;*

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

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

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

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

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

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

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

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

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

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

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

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

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

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

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

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

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

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

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

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

561 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
562 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
563 records information on behalf of such governing boards or administrators pursuant to a written  
564 agreement with the Department of State Police;

565 24. Public institutions of higher education and nonprofit private institutions of higher education for  
566 the purpose of screening individuals who are offered or accept employment;

567 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,  
568 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of  
569 higher education, for the purpose of assessing or intervening with an individual whose behavior may  
570 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
571 history record information obtained pursuant to this section or otherwise use any record of an individual  
572 beyond the purpose that such disclosure was made to the threat assessment team;

573 26. Executive directors of community services boards or the personnel director serving the  
574 community services board for the purpose of determining an individual's fitness for employment,  
575 approval as a sponsored residential service provider, or permission to enter into a shared living  
576 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to  
577 §§ 37.2-506 and 37.2-607;

578 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
579 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
580 or permission to enter into a shared living arrangement with a person receiving medical assistance  
581 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

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

585 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
586 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
587 purpose of determining if any applicant who accepts employment in any direct care position or requests  
588 approval as a sponsored residential service provider or permission to enter into a shared living  
589 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted  
590 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with  
591 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and  
592 37.2-607;

593 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
594 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
595 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

599 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
600 determining an individual's fitness for employment in positions designated as sensitive under Department  
601 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

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

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

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

611 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
612 providers of adult foster care and home-based services or (ii) any individual with whom the agency is

considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

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

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

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

45. 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

674 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

675 F. Criminal history information provided to licensed assisted living facilities and licensed adult day  
676 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange  
677 for any offense specified in § 63.2-1720.

678 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be  
679 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the  
680 definition of barrier crime in § 19.2-392.02.

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

690 I. Nothing in this section shall preclude the dissemination of a person's criminal history record  
691 information pursuant to the rules of court or *Article 4.2 (§ 19.2-264.6 et seq.) of Chapter 15* for  
692 obtaining discovery or for review by the court.

693 **§ 19.2-389. (Effective January 1, 2021) Dissemination of criminal history record information.**

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

696 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for  
697 purposes of the administration of criminal justice and the screening of an employment application or  
698 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
699 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
700 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
701 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For  
702 purposes of this subdivision, criminal history record information includes information sent to the Central  
703 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time  
704 or part-time employee of the State Police, a police department or sheriff's office that is a part of or  
705 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the  
706 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the  
707 Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

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

734 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of  
735 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 adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

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

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

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

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

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

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

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

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

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

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

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

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

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

22. The Department of Behavioral Health and Developmental Services and facilities operated by the

797 Department for the purpose of determining an individual's fitness for employment pursuant to  
798 departmental instructions;

799 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or  
800 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such  
801 records information on behalf of such governing boards or administrators pursuant to a written  
802 agreement with the Department of State Police;

803 24. Public institutions of higher education and nonprofit private institutions of higher education for  
804 the purpose of screening individuals who are offered or accept employment;

805 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,  
806 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of  
807 higher education, for the purpose of assessing or intervening with an individual whose behavior may  
808 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal  
809 history record information obtained pursuant to this section or otherwise use any record of an individual  
810 beyond the purpose that such disclosure was made to the threat assessment team;

811 26. Executive directors of community services boards or the personnel director serving the  
812 community services board for the purpose of determining an individual's fitness for employment,  
813 approval as a sponsored residential service provider, or permission to enter into a shared living  
814 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to  
815 §§ 37.2-506 and 37.2-607;

816 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
817 determining an individual's fitness for employment, approval as a sponsored residential service provider,  
818 or permission to enter into a shared living arrangement with a person receiving medical assistance  
819 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

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

823 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
824 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
825 purpose of determining if any applicant who accepts employment in any direct care position or requests  
826 approval as a sponsored residential service provider or permission to enter into a shared living  
827 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted  
828 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with  
829 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and  
830 37.2-607;

831 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
832 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
833 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

837 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
838 determining an individual's fitness for employment in positions designated as sensitive under Department  
839 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

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

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

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

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

855 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
856 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
857 or have accepted a position related to the provision of transportation services to enrollees in the  
858 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other

program administered by the Department of Medical Assistance Services;

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

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; and

46. 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 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 § 63.2-1720.

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 set forth in clause (i) of the



920 definition of barrier crime in § 19.2-392.02.

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

930 I. Nothing in this section shall preclude the dissemination of a person's criminal history record  
931 information pursuant to the rules of court *or Article 4.2 (§ 19.2-264.6 et seq.) of Chapter 15* for  
932 obtaining discovery or for review by the court.

933 **2. That § 19.2-265.4 of the Code of Virginia is repealed.**

934 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**  
935 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
936 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
937 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**  
938 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**  
939 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for**  
940 **periods of commitment to the custody of the Department of Juvenile Justice.**