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SENATE BILL NO. 1122

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 18, 2021)

(Patron Prior to Substitute—Senator Stanley)

A *BILL to amend and reenact §§ 8.01-9, 8.01-407, 16.1-77, 16.1-305, 17.1-213, 19.2-389, as it is currently effective and as it shall become effective, 46.2-301, 46.2-301.1, 46.2-411, and 53.1-21 of the Code of Virginia and to repeal Article 9 (§§ 46.2-355.1 through 46.2-363) of Chapter 3 of Title 46.2 of the Code of Virginia, relating to habitual offenders; repeal.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-9, 8.01-407, 16.1-77, 16.1-305, 17.1-213, 19.2-389, as it is currently effective and as it shall become effective, 46.2-301, 46.2-301.1, 46.2-411, and 53.1-21 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-9. Guardian ad litem for persons under disability; when guardian ad litem need not be appointed for person under disability.

A. A suit wherein a person under a disability is a party defendant shall not be stayed because of such disability, but the court in which the suit is pending, or the clerk thereof, shall appoint a discreet and competent attorney-at-law as guardian ad litem to such defendant, whether the defendant has been served with process or not. If no such attorney is found willing to act, the court shall appoint some other discreet and proper person as guardian ad litem. Any guardian ad litem so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the estate or other interest of the person under a disability for whom he is appointed, and it shall be the duty of the court to see that the interest of the defendant is so represented and protected. Whenever the court is of the opinion that the interest of the defendant so requires, it shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court is satisfied that the guardian ad litem has rendered substantial service in representing the interest of the person under a disability, it may allow the guardian reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of the defendant. However, if the defendant's estate is inadequate for the purpose of paying compensation and expenses, all, or any part thereof, may be taxed as costs in the proceeding ~~or, in the case of proceedings to adjudicate a person under a disability as an habitual offender pursuant to former § 46.2-351.2 or former § 46.2-352, shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges.~~ In a civil action against an incarcerated felon for damages arising out of a criminal act, the compensation and expenses of the guardian ad litem shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges. If judgment is against the incarcerated felon, the amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth. By order of the court, in a civil action for divorce from an incarcerated felon, the compensation and expenses of the guardian ad litem shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges if the crime (i) for which the felon is incarcerated occurred after the date of the marriage for which the divorce is sought, (ii) for which the felon is incarcerated was committed against the felon's spouse, child, or stepchild and involved physical injury, sexual assault, or sexual abuse, and (iii) resulted in incarceration subsequent to conviction and the felon was sentenced to confinement for more than one year. The amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth.

B. Notwithstanding the provisions of subsection A or the provisions of any other law to the contrary, in any suit wherein a person under a disability is a party and is represented by an attorney-at-law duly licensed to practice in this Commonwealth, who shall have entered of record an appearance for such person, no guardian ad litem need be appointed for such person unless the court determines that the interests of justice require such appointment; or unless a statute applicable to such suit expressly requires that the person under a disability be represented by a guardian ad litem. The court may, in its discretion, appoint the attorney of record for the person under a disability as his guardian ad litem, in which event the attorney shall perform all the duties and functions of guardian ad litem.

Any judgment or decree rendered by any court against a person under a disability without a guardian ad litem, but in compliance with the provisions of this subsection B, shall be as valid as if the guardian ad litem had been appointed.

§ 8.01-407. How summons for witness issued, and to whom directed; prior permission of court to summon certain officials and judges.

A. A summons may be issued, directed as prescribed in § 8.01-292, commanding the officer to

60 summon any person to attend on the day and at the place that such attendance is desired, to give
61 evidence before a court, grand jury, arbitrators, magistrate, notary, or any commissioner or other person
62 appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity. The
63 summons may be issued by the clerk of the court if the attendance is desired at a court or in a
64 proceeding pending in a court. The clerk shall not impose any time restrictions limiting the right to
65 properly request a summons up to and including the date of the proceeding:

66 If attendance is desired before a commissioner in chancery or other commissioner of a court, the
67 summons may be issued by the clerk of the court in which the matter is pending, or by such
68 commissioner in chancery or other commissioner;

69 If attendance is desired before a notary or other officer taking a deposition, the summons may be
70 issued by such notary or other officer at the instance of the attorney desiring the attendance of the
71 person sought;

72 If attendance is sought before a grand jury, the summons may be issued by the attorney for the
73 Commonwealth, or the clerk of the court, at the instance of the attorney for the Commonwealth.

74 Except as otherwise provided in this subsection, if attendance is desired in a civil proceeding pending
75 in a court or at a deposition in connection with such proceeding, including medical malpractice review
76 panels, and a claim before the Workers' Compensation Commission, a summons may be issued by an
77 attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer
78 of the court. An attorney-issued summons shall be on a form approved by the Supreme Court, signed by
79 the attorney and shall include the attorney's address. The summons and any transmittal sheet shall be
80 deemed to be a pleading to which the provisions of § 8.01-271.1 shall apply. A copy of the summons
81 and, if served by a sheriff, all service of process fees, shall be mailed or delivered to the clerk's office
82 of the court in which the case is pending or the Workers' Compensation Commission, as applicable, on
83 the day of issuance by the attorney. The law governing summonses issued by a clerk shall apply mutatis
84 mutandis. When an attorney-at-law who is an active member of the Virginia State Bar transmits one or
85 more attorney-issued subpoenas to a sheriff to be served in his jurisdiction, such subpoenas shall be
86 accompanied by a transmittal sheet. The transmittal sheet, which may be in the form of a letter, shall
87 contain for each subpoena (i) the person to be served, (ii) the name of the city or county in which the
88 subpoena is to be served, in parentheses, (iii) the style of the case in which the subpoena was issued,
89 (iv) the court in which the case is pending, and (v) the amount of fees tendered or paid to each clerk in
90 whose court the case is pending together with a photocopy of either (a) the payment instrument and a
91 photocopy of the letter sent to the clerk's office that accompanied such payment instrument or (b) the
92 clerk's receipt. If copies of the same transmittal sheet are used to send subpoenas to more than one
93 sheriff for service of process, then subpoenas shall be grouped by the jurisdiction in which they are to
94 be served. For each person to be served, an original subpoena and copy thereof shall be included. If the
95 attorney desires a return copy of the transmittal sheet as proof of receipt, he shall also enclose an
96 additional copy of the transmittal sheet together with an envelope addressed to the attorney with
97 sufficient first class postage affixed. Upon receipt of such transmittal, the transmittal sheet shall be
98 date-stamped and, if the extra copy and above-described envelope are provided, the copy shall also be
99 date-stamped and returned to the attorney-at-law in the above-described envelope.

100 However, when such transmittal does not comply with the provisions of this section, the sheriff may
101 promptly return such transmittal if accompanied by a short description of such noncompliance. An
102 attorney may not issue a summons in any of the following civil proceedings: (a) habeas corpus under
103 Article 3 (§ 8.01-654 et seq.) of Chapter 25 of this title, (b) delinquency or abuse and neglect
104 proceedings under Article 3 (§ 16.1-241 et seq.) of Chapter 11 of Title 16.1, (c) civil forfeiture
105 proceedings, (d) ~~habitual offender proceedings under Article 9 (§ 46.2-351 et seq.) of Chapter 3 of Title~~
106 ~~46.2,~~ (e) administrative license suspension pursuant to § 46.2-391.2, and (f) (e) petition for writs of
107 mandamus or prohibition in connection with criminal proceedings. A sheriff shall not be required to
108 serve an attorney-issued subpoena that is not issued at least five business days prior to the date that
109 attendance is desired.

110 In other cases, if attendance is desired, the summons may be issued by the clerk of the circuit court
111 of the county or city in which the attendance is desired.

112 A summons shall express on whose behalf, and in what case or about what matter, the witness is to
113 attend. Failure to respond to any such summons shall be punishable by the court in which the
114 proceeding is pending as for contempt. When any subpoena is served less than five calendar days before
115 appearance is required, the court may, after considering all of the circumstances, refuse to enforce the
116 subpoena for lack of adequate notice. If any subpoena is served less than five calendar days before
117 appearance is required upon any judicial officer generally incompetent to testify pursuant to § 19.2-271,
118 such subpoena shall be without legal force or effect unless the subpoena has been issued by a judge.

119 B. No subpoena shall, without permission of the court first obtained, issue for the attendance of the
120 Governor, Lieutenant Governor, or Attorney General of this Commonwealth, a judge of any court
121 thereof; the President or Vice President of the United States; any member of the President's Cabinet; any

ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

§ 16.1-77. Civil jurisdiction of general district courts; amending amount of claim.

Except as provided in Article 5 (§ 16.1-122.1 et seq.), each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person that would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$4,500 exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$4,500 but does not exceed \$25,000, exclusive of interest and any attorney fees. However, this \$25,000 limit shall not apply with respect to distress warrants under the provisions of § 8.01-130.4, cases involving liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving forfeiture of a bond pursuant to § 19.2-143. While a matter is pending in a general district court, upon motion of the plaintiff seeking to increase the amount of the claim, the court shall order transfer of the matter to the circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by the transfer. Except for good cause shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed \$25,000 exclusive of interest and any attorney fees.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code.

(5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the disposition of an earnest money deposit pursuant to a real estate purchase contract. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment, by warrant in debt, or by other uniform court form established by the Supreme Court of Virginia. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or § 2.2-3809 of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), for writs of mandamus or for injunctions.

(7) ~~Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate habitual offenders pursuant to the provisions of Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title 46.2.~~

(8) Jurisdiction to try and decide any cases pursuant to § 55.1-1819 of the Property Owners' Association Act (§ 55.1-1800 et seq.) or § 55.1-1959 of the Virginia Condominium Act (§ 55.1-1900 et seq.).

~~(9)~~ (8) Concurrent jurisdiction with the circuit courts to submit matters to arbitration pursuant to Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 where the amount in controversy is within the jurisdictional limits of the general district court. Any party that disagrees with an order by a general district court granting an application to compel arbitration may appeal such decision to the circuit court pursuant to § 8.01-581.016.

For purposes of this section, the territory served by a county general district court expressly authorized by statute to be established in a city includes the general district court courtroom.

§ 16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A 1 through A 4 shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section. However, a licensed bail bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal, or traffic, or habitual offender proceeding and that such papers will be only used for such evidentiary purpose.

D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act

that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

G. Any record in a juvenile case file which is open for inspection by the professional staff of the Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted shall be subject to the provisions of § 16.1-300.

§ 17.1-213. Disposition of papers in ended cases.

A. All case files for cases ended prior to January 1, 1913, shall be permanently maintained in hardcopy form, either in the locality served by the circuit court where such files originated or in The Library of Virginia in accordance with the provisions of § 42.1-86 and subsection C of § 42.1-87.

B. The following records for cases ending on or after January 1, 1913, shall be retained for 10 years after conclusion:

1. Conditional sales contracts;
2. Concealed weapons permit applications;
3. Minister appointments;
4. Petitions for appointment of trustee;
5. Name changes;
6. Nolle prosequi cases;
7. Civil actions that are voluntarily dismissed, including nonsuits, cases that are dismissed as settled and agreed, cases that are dismissed with or without prejudice, cases that are discontinued or dismissed under § 8.01-335, and district court appeals dismissed under § 16.1-113 prior to 1988;
8. Misdemeanor and traffic cases, except as provided in subdivision C 3, including those which were commenced on a felony charge but concluded as a misdemeanor;
9. Suits to enforce a lien;
10. Garnishments;
11. Executions except for those covered in § 8.01-484; *and*
12. Miscellaneous oaths and qualifications, but only if the order or oath or qualification is spread in the appropriate order book; *and*
- ~~13. Civil cases pertaining to declarations of habitual offender status and full restoration of driving privileges.~~

C. All other records or cases ending on or after January 1, 1913, shall be retained subject to the following:

1. All civil case files to which subsection D does not pertain shall be retained 20 years from the court order date.
2. All criminal cases dismissed, including those not a true bill, acquittals, and not guilty verdicts, shall be retained 10 years from the court order date.
3. Except as otherwise provided in this subdivision, criminal case files involving a felony conviction and all criminal case files involving a misdemeanor conviction under § 16.1-253.2, 18.2-57.2, or 18.2-60.4 shall be retained (i) 20 years from the sentencing date or (ii) until the sentence term ends, whichever comes later. Case files involving a conviction for a sexually violent offense as defined in § 37.2-900, a violent felony as defined in § 17.1-805, or an act of violence as defined in § 19.2-297.1 shall be retained (a) 50 years from the sentencing date or (b) until the sentence term ends, whichever comes later.

D. Under the provisions of subsections B and C, the entire file of any case deemed by the local clerk of court to have historical value, as defined in § 42.1-77, or genealogical or sensational significance shall be retained permanently as shall all cases in which the title to real estate is established, conveyed or condemned by an order or decree of the court. The final order for all cases in which the title to real estate is so affected shall include an appropriate notification thereof to the clerk.

E. Except as provided in subsection A, the clerk of a circuit court may cause (i) any or all papers or documents pertaining to civil and criminal cases; (ii) any unexecuted search warrants and affidavits for unexecuted search warrants, provided at least three years have passed since issued; (iii) any abstracts of judgments; and (iv) original wills, to be destroyed if such records, papers, documents, or wills no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such microfilm and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to § 42.1-82, or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using same. The clerk shall further provide security negative copies of any such microfilmed materials for storage in The Library of Virginia.

§ 19.2-389. (Effective until July 1, 2021) Dissemination of criminal history record information.

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

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

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

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the 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 casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, 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)~~ (ii) 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 Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

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

24. Public institutions of higher education and nonprofit private institutions of higher education for

429 the purpose of screening individuals who are offered or accept employment;

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

436 26. Executive directors of community services boards or the personnel director serving the
437 community services board for the purpose of determining an individual's fitness for employment,
438 approval as a sponsored residential service provider, or permission to enter into a shared living
439 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to
440 §§ 37.2-506 and 37.2-607;

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

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

448 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
449 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
450 purpose of determining if any applicant who accepts employment in any direct care position or requests
451 approval as a sponsored residential service provider or permission to enter into a shared living
452 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted
453 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with
454 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and
455 37.2-607;

456 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
457 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
458 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

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

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

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

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

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

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

485 38. The State Corporation Commission for the purpose of investigating individuals who are current
486 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
487 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any
488 other provision of law, if an application is denied based in whole or in part on information obtained
489 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the
490 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 definition of barrier crime in § 19.2-392.02.

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

is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

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

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

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

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

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

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

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

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the 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 foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, 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 casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, 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) (ii) 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 Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

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

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

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

675 26. Executive directors of community services boards or the personnel director serving the
676 community services board for the purpose of determining an individual's fitness for employment,
677 approval as a sponsored residential service provider, or permission to enter into a shared living
678 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to
679 §§ 37.2-506 and 37.2-607;

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

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

687 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
688 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
689 purpose of determining if any applicant who accepts employment in any direct care position or requests
690 approval as a sponsored residential service provider or permission to enter into a shared living
691 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted
692 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with
693 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and
694 37.2-607;

695 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
696 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
697 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

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

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

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

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

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

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

724 38. The State Corporation Commission for the purpose of investigating individuals who are current
725 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
726 Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of
727 Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in
728 part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19,
729 or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such
730 information to the applicant or its designee;

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

733 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
734 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
735 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
736 (§ 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 Education or its agents or designees for the purpose of screening individuals seeking to enter into a contract with the Department of Education or its agents or designees 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;
46. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, 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 Superintendent of Public Instruction's 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; and
47. 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 definition of barrier crime in § 19.2-392.02.
- H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data

798 is maintained on the person named in the request, the requesting employer or prospective employer shall
799 be furnished at his cost a certification to that effect. The criminal history record search shall be
800 conducted on forms provided by the Exchange.

801 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
802 information pursuant to the rules of court for obtaining discovery or for review by the court.

803 **§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.**

804 A. In addition to any other penalty provided by this section, any motor vehicle administratively
805 impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be
806 impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for
807 driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been (i)
808 suspended or revoked for ~~(4)~~ a violation of § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-272, or 46.2-341.24 or
809 a substantially similar ordinance or law in any other jurisdiction or (ii) ~~driving after adjudication as an~~
810 ~~habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense,~~
811 ~~or where such person's license has been~~ administratively suspended under the provisions of § 46.2-391.2.
812 However, if, at the time of the violation, the offender was driving a motor vehicle owned by another
813 person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or
814 immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of
815 impoundment or immobilization, including removal or storage expenses, shall be paid by the offender
816 prior to the release of his motor vehicle.

817 B. Except as provided in §§ ~~§ 46.2-304 and 46.2-357~~, no resident or nonresident (i) whose driver's
818 license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who
819 has been directed not to drive by any court or by the Commissioner, or (iii) who has been forbidden, as
820 prescribed by operation of any statute of the Commonwealth or a substantially similar ordinance of any
821 county, city or town, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor
822 vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the
823 period of such suspension or revocation has terminated or the privilege has been reinstated or a
824 restricted license is issued pursuant to subsection E. For the purposes of this section, the phrase "motor
825 vehicle or any self-propelled machinery or equipment" shall not include mopeds.

826 C. A violation of subsection B is a Class 1 misdemeanor.

827 D. Upon a violation of subsection B, the court shall suspend the person's license or privilege to drive
828 a motor vehicle for the same period for which it had been previously suspended or revoked. In the event
829 the person violated subsection B by driving during a period of suspension or revocation which was not
830 for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for
831 an additional period not to exceed 90 days, to commence upon the expiration of the previous suspension
832 or revocation or to commence immediately if the previous suspension or revocation has expired.

833 E. Any person who is otherwise eligible for a restricted license may petition each court that
834 suspended his license pursuant to subsection D for authorization for a restricted license, provided that
835 the period of time for which the license was suspended by the court pursuant to subsection D, if
836 measured from the date of conviction, has expired, even though the suspension itself has not expired. A
837 court may, for good cause shown, authorize the Department of Motor Vehicles to issue a restricted
838 license for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license shall be
839 issued unless each court that issued a suspension of the person's license pursuant to subsection D
840 authorizes the Department to issue a restricted license. Any restricted license issued pursuant to this
841 subsection shall be in effect until the expiration of any and all suspensions issued pursuant to subsection
842 D, except that it shall automatically terminate upon the expiration, cancellation, suspension, or
843 revocation of the person's license or privilege to drive for any other cause. No restricted license issued
844 pursuant to this subsection shall permit a person to operate a commercial motor vehicle as defined in the
845 Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall forward to the Commissioner a
846 copy of its authorization entered pursuant to this subsection, which shall specifically enumerate the
847 restrictions imposed and contain such information regarding the person to whom such a license is issued
848 as is reasonably necessary to identify the person. The court shall also provide a copy of its authorization
849 to the person, who may not operate a motor vehicle until receipt from the Commissioner of a restricted
850 license. A copy of the restricted license issued by the Commissioner shall be carried at all times while
851 operating a motor vehicle.

852 F. Any person who operates a motor vehicle or any self-propelled machinery or equipment in
853 violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is not guilty
854 of a violation of this section but is guilty of a violation of § 18.2-272.

855 **§ 46.2-301.1. Administrative impoundment of motor vehicle for certain driving while license**
856 **suspended or revoked offenses; judicial impoundment upon conviction; penalty for permitting**
857 **violation with one's vehicle.**

858 A. The motor vehicle being driven by any person (i) whose driver's license, learner's permit or
859 privilege to drive a motor vehicle has been suspended or revoked for a violation of § 18.2-51.4 or

18.2-272 or driving while under the influence in violation of § 18.2-266, 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction; (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2; (iii) driving after such person's driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for unreasonable refusal of tests in violation of § 18.2-268.3, 46.2-341.26:3 or a substantially similar ordinance or law in any other jurisdiction; or (iv) driving without an operator's license in violation of § 46.2-300 having been previously convicted of such offense or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction shall be impounded or immobilized by the arresting law-enforcement officer at the time the person is arrested for driving after his driver's license, learner's permit or privilege to drive has been so revoked or suspended or for driving without an operator's license in violation of § 46.2-300 having been previously convicted of such offense or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction. The impoundment or immobilization for a violation of ~~clauses~~ clause (i) through, (ii), or (iii) shall be for a period of 30 days. The period of impoundment or immobilization for a violation of clause (iv) shall be until the offender obtains a valid operator's license pursuant to § 46.2-300 or three days, whichever is less. In the event that the offender obtains a valid operator's license at any time during the three-day impoundment period and presents such license to the court, the court shall authorize the release of the vehicle upon payment of all reasonable costs of impoundment or immobilization to the person holding the vehicle.

The provisions of this section as to the offense described in clause (iv) of this subsection shall not apply to a person who drives a motor vehicle with no operator's license ~~(i)~~ (a) whose license has been expired for less than one year prior to the offense or ~~(ii)~~ (b) who is under 18 years of age at the time of the offense. The arresting officer, acting on behalf of the Commonwealth, shall serve notice of the impoundment upon the arrested person. The notice shall include information on the person's right to petition for review of the impoundment pursuant to subsection B. A copy of the notice of impoundment shall be delivered to the magistrate and thereafter promptly forwarded to the clerk of the general district court of the jurisdiction where the arrest was made. Transmission of the notice may be by electronic means.

At least five days prior to the expiration of the period of impoundment imposed pursuant to this section or § 46.2-301, the clerk shall provide the offender with information on the location of the motor vehicle and how and when the vehicle will be released; however, for a violation of clause (iv) above, such information shall be provided at the time of arrest.

All reasonable costs of impoundment or immobilization, including removal and storage expenses, shall be paid by the offender prior to the release of his motor vehicle. Notwithstanding the above, where the arresting law-enforcement officer discovers that the vehicle was being rented or leased from a vehicle renting or leasing company, the officer shall not impound the vehicle or continue the impoundment but shall notify the rental or leasing company that the vehicle is available for pickup and shall notify the clerk if the clerk has previously been notified of the impoundment.

B. Any driver who is the owner of the motor vehicle that is impounded or immobilized under subsection A may, during the period of the impoundment, petition the general district court of the jurisdiction in which the arrest was made to review that impoundment. The court shall review the impoundment within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting law-enforcement officer did not have probable cause for the arrest, or that the magistrate did not have probable cause to issue the warrant, the court shall rescind the impoundment. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs paid or incurred by him. Otherwise, the court shall affirm the impoundment. If the person requesting the review fails to appear without just cause, his right to review shall be waived.

The court's findings are without prejudice to the person contesting the impoundment or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

C. The owner or co-owner of any motor vehicle impounded or immobilized under subsection A who was not the driver at the time of the violation may petition the general district court in the jurisdiction where the violation occurred for the release of his motor vehicle. The motor vehicle shall be released if the owner or co-owner proves by a preponderance of the evidence that he (i) did not know that the offender's driver's license was suspended or revoked when he authorized the offender to drive such motor vehicle; (ii) did not know that the offender had no operator's license and that the operator had been previously convicted of driving a motor vehicle without an operator's license in violation of

§ 46.2-300 or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction when he authorized the offender to drive such motor vehicle; or (iii) did not consent to the operation of the motor vehicle by the offender. If the owner proves by a preponderance of the evidence that his immediate family has only one motor vehicle and will suffer a substantial hardship if that motor vehicle is impounded or immobilized for the period of impoundment that otherwise would be imposed pursuant to this section, the court, in its discretion, may release the vehicle after some period of less than such impoundment period.

D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of driving without an operator's license or of driving on a suspended or revoked license shall result in an immediate rescission of the impoundment or immobilization provided in subsection A. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs, incurred or paid by him.

E. Any person who knowingly authorizes the operation of a motor vehicle by (i) a person he knows has had his driver's license, learner's permit or privilege to drive a motor vehicle suspended or revoked for any of the reasons set forth in subsection A or (ii) a person who he knows has no operator's license and who he knows has been previously convicted of driving a motor vehicle without an operator's license in violation of § 46.2-300 or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction shall be guilty of a Class 1 misdemeanor.

F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede or infringe upon a valid lienholder's rights to cure a default under an existing security agreement. Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization, including removal or storage expenses which may accrue pursuant to the provisions of this section or § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or immobilization, including removal and storage expenses, to any person or entity providing such services to the Commonwealth, except to the extent such costs or expenses have already been paid by the offender to such person or entity. Such payment shall be made within seven calendar days after a request is made by such person or entity to the Commonwealth for payment. Nothing herein, however, shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such reasonable costs and expenses.

§ 46.2-411. Reinstatement of suspended or revoked license or other privilege to operate or register a motor vehicle; proof of financial responsibility; reinstatement fee.

A. The Commissioner may refuse, after a hearing if demanded, to issue to any person whose license has been suspended or revoked any new or renewal license, or to register any motor vehicle in the name of the person, whenever he deems or in case of a hearing finds it necessary for the safety of the public on the highways in the Commonwealth.

B. Before granting or restoring a license or registration to any person whose driver's license or other privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended pursuant to § 46.2-389, 46.2-391, 46.2-391.1, or 46.2-417, the Commissioner shall require proof of financial responsibility in the future as provided in Article 15 (§ 46.2-435 et seq.), but no person shall be licensed who may not be licensed under the provisions of §§ 46.2-389 through 46.2-431.

C. Whenever the driver's license or registration cards, license plates and decals, or other privilege to drive or to register motor vehicles of any resident or nonresident person is suspended or revoked by the Commissioner or by a district court or circuit court pursuant to the provisions of Title 18.2 or this title, or any valid local ordinance, the order of suspension or revocation shall remain in effect and the driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall not be reinstated and no new driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall be issued or granted unless such person, in addition to complying with all other provisions of law, pays to the Commissioner a reinstatement fee of \$30. The reinstatement fee shall be increased by \$30 whenever such suspension or revocation results from conviction of involuntary manslaughter in violation of § 18.2-36.1; conviction of maiming resulting from driving while intoxicated in violation of § 18.2-51.4; conviction of driving while intoxicated in violation of § 18.2-266 or 46.2-341.24; conviction of driving after illegally consuming alcohol in violation of § 18.2-266.1 or failure to comply with court imposed conditions pursuant to subsection D of § 18.2-271.1; unreasonable refusal to submit to drug or alcohol testing in violation of § 18.2-268.2; conviction of driving while a license, permit or privilege to drive was suspended or revoked in violation of § 46.2-301 or 46.2-341.21; disqualification pursuant to § 46.2-341.20; violation of driver's license probation pursuant to § 46.2-499; failure to attend a driver improvement clinic pursuant to § 46.2-503 or habitual offender interventions pursuant to former § 46.2-351.1; conviction of eluding police in violation of § 46.2-817; conviction of hit and run in violation of § 46.2-894; conviction of reckless driving in violation of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 or a conviction, finding or

adjudication under any similar local ordinance, federal law or law of any other state. Five dollars of the additional amount shall be retained by the Department as provided in this section and \$25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund established pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5. When three years have elapsed from the termination date of the order of suspension or revocation and the person has complied with all other provisions of law, the Commissioner may relieve him of paying the reinstatement fee.

D. No reinstatement fee shall be required when the suspension or revocation of license results from the person's suffering from mental or physical infirmities or disabilities from natural causes not related to the use of self-administered intoxicants or drugs. No reinstatement fee shall be collected from any person whose license is suspended by a court of competent jurisdiction for any reason, other than a cause for mandatory suspension as provided in this title, provided the court ordering the suspension is not required by § 46.2-398 to forward the license to the Department during the suspended period.

E. Except as otherwise provided in this section and § 18.2-271.1, reinstatement fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.

F. Before granting or restoring a license or registration to any person whose driver's license or other privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended, the Commissioner shall collect from such person, in addition to all other fees provided for in this section, an additional fee of \$40. The Commissioner shall pay all fees collected pursuant to this subsection into the Trauma Center Fund, created pursuant to § 18.2-270.01, for the purpose of defraying the costs of providing emergency medical care to victims of automobile accidents attributable to alcohol or drug use.

G. Whenever any person is required to pay a reinstatement fee pursuant to subsection C or pursuant to subsection E of § 18.2-271.1 and such person has more than one suspension or revocation on his record for which reinstatement is required, then such person shall be required to pay one reinstatement fee, the amount of which shall equal the full reinstatement fee attributable to the one of his revocations or suspensions that would trigger the highest reinstatement fee, plus an additional \$5 fee for administrative costs associated with compliance for each additional suspension or revocation. Fees collected pursuant to this subsection shall be set aside as a special fund to be used to meet the expenses of the Department.

§ 53.1-21. Transfer of prisoners into and between state and local correctional facilities.

A. Any person who (1) (i) is accused or convicted of an offense (a) in violation of any county, city, or town ordinance within the Commonwealth, (b) against the laws of the Commonwealth, or (c) against the laws of any other state or country; or (2) (ii) is a witness held in any case in which the Commonwealth is a party and who is confined in a state or local correctional facility; may be transferred by the Director, subject to the provisions of § 53.1-20, to any other state or local correctional facility which he may designate.

B. The following limitations shall apply to the transfer of persons into the custody of the Department:

1. No person convicted of violating § 20-61 shall be committed or transferred to the custody of the Department.

2. No person who is convicted of any violation pursuant to Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title 46.2 shall be committed or transferred to the custody of the Department without the consent of the Director.

3. No person who is convicted of a misdemeanor or a felony and receives a jail sentence of twelve 12 months or less shall be committed or transferred to the custody of the Department without the consent of the Director.

4. 3. Beginning July 1, 1991, and subject to the provisions of § 53.1-20, no person, whether convicted of a felony or misdemeanor, shall be transferred to the custody of the Department when the combined length of all sentences to be served totals two years or less, without the consent of the Director.

2. That Article 9 (§§ 46.2-355.1 through 46.2-363) of Chapter 3 of Title 46.2 of the Code of Virginia is repealed.

3. That the Commissioner of the Department of Motor Vehicles shall reinstate a person's privilege to drive a motor vehicle that was suspended or revoked solely on the basis that such person was determined to be or adjudicated a habitual offender pursuant to the provisions of Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title 46.2 of the Code of Virginia prior to the effective date of this act. Nothing in this act shall require the Commissioner to reinstate a person's driving privileges if such privileges have been otherwise lawfully suspended or revoked or if such person is otherwise ineligible for a driver's license.