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HOUSE BILL NO. 2110

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 22, 2021)

(Patrons Prior to Substitute—Delegates Herring and Jenkins [HB 1945])

A *BILL to amend and reenact § 2.2-3802 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 9 of Title 19.2 a section numbered 19.2-134.1, relating to pretrial data collection.*

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3802 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 9 of Title 19.2 a section numbered 19.2-134.1 as follows:

§ 2.2-3802. Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913;

4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;

5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;

6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, the Virginia Criminal Sentencing Commission, and the Virginia Alcoholic Beverage Control Authority;

7. Maintained by any of the following and that deal with investigations and intelligence gathering related to criminal activity:

a. The Department of State Police;
b. The police department of the Chesapeake Bay Bridge and Tunnel Commission;
c. Police departments of cities, counties, and towns;
d. Sheriff's departments of counties and cities;
e. Campus police departments of public institutions of higher education as established by Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; and
f. The Division of Capitol Police.

8. Maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

9. Maintained by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;

10. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

11. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;

12. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ 2.2-307 et seq.);

13. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § 15.2-2511.2;

60 14. Maintained by the Department of Social Services or any local department of social services
61 relating to public assistance fraud investigations;

62 15. Maintained by the Department of Social Services related to child welfare or public assistance
63 programs when requests for personal information are made to the Department of Social Services.
64 Requests for information from these systems shall be made to the appropriate local department of social
65 services that is the custodian of that record. Notwithstanding the language in this section, an individual
66 shall not be prohibited from obtaining information from the central registry in accordance with the
67 provisions of § 63.2-1515; and

68 16. Maintained by the Department for Aging and Rehabilitative Services related to adult services,
69 adult protective services, or auxiliary grants when requests for personal information are made to the
70 Department for Aging and Rehabilitative Services. Requests for information from these systems shall be
71 made to the appropriate local department of social services that is the custodian of that record.

72 **§ 19.2-134.1. Collection and reporting of data related to adults charged with a criminal offense**
73 **punishable by confinement in jail or a term of imprisonment.**

74 A. The Virginia Criminal Sentencing Commission shall, on an annual basis, collect statewide and
75 locality-level data related to all adults charged with any criminal offense punishable by confinement in
76 jail or a term of imprisonment in the Commonwealth. The Virginia Criminal Sentencing Commission
77 may request data and shall be provided such data upon request from (i) every department, division,
78 board, bureau, commission, authority, or other agency created by the Commonwealth, or to which the
79 Commonwealth is a party, or any political subdivision thereof; (ii) any criminal justice agency as
80 defined in § 9.1-101; and (iii) the clerk of each circuit court. If the statewide Circuit Court Case
81 Management System is used by the circuit court clerk, the Executive Secretary of the Supreme Court
82 shall provide for the transfer of such data upon request of the Virginia Criminal Sentencing
83 Commission. The Virginia Criminal Sentencing Commission shall use the data only for research,
84 evaluation, or statistical purposes and shall ensure the confidentiality and security of the data.

85 B. The Virginia Criminal Sentencing Commission shall collect data as necessary to report on the
86 following:

87 1. Information about the individual charged, including sex, race, year of birth, and residential zip
88 code;

89 2. The type of charging document, including summons, warrant, direct indictment, or any other
90 charging document;

91 3. Information related to the offense or offenses with which the individual was charged, including (i)
92 the date on which the individual was charged; (ii) the total number of charges; (iii) the Code section or
93 county, city, or town ordinance under which the charge was issued; (iv) whether the charge was a
94 felony, misdemeanor, or other type of offense; and (v) the classification of each such felony,
95 misdemeanor, or other type of offense;

96 4. Whether, at the time the individual was charged, that individual was a named defendant in any
97 pending criminal proceeding in the Commonwealth;

98 5. Whether, at the time the individual was charged, that individual was under the supervision of the
99 Department of Corrections, any local community-based probation agency, or any pretrial services
100 agency;

101 6. Whether, at the time the individual was charged, that individual's criminal history record included
102 any charges or convictions for failure to appear within the Commonwealth, and if so, the date of such
103 charge or conviction;

104 7. Whether, at the time the individual was charged, that individual's criminal history record included
105 any conviction for any criminal offense committed within the Commonwealth, and if so, the offense for
106 which that individual was convicted and the date of such conviction;

107 8. Whether, at the time the individual was charged, that individual's criminal history record included
108 any convictions for which the individual was ordered to serve an active term of incarceration;

109 9. Information related to the individual's detention status at the time of the charge and any changes
110 to the individual's detention status prior to the final disposition of the charge, including whether that
111 individual was released on a summons, denied bail, or admitted to bail, and if admitted to bail, the date
112 of release from custody;

113 10. For those individuals who were detained at the time of the charge, information related to the
114 conditions of bail and the bond initially ordered on the charge, including (i) whether bail was denied,
115 (ii) whether the bond was secured or unsecured, and (iii) all monetary amounts set on the bond;

116 11. For those individuals admitted to bail prior to the final disposition of the charge, whenever
117 available, information related to the conditions of bail and the bond at the time that individual was
118 admitted to bail, including (i) whether the bond was secured or unsecured, (ii) all monetary amounts set
119 on the bond, (iii) whether that individual was ordered to be supervised by a pretrial services agency,
120 and (iv) whether that individual utilized the services of a bail bondsman;

121 12. Whether the individual was charged with failure to appear in the Commonwealth prior to the

final disposition of the charge, and if so, the date on which the failure to appear was alleged to have occurred and whether the individual was convicted of the charge of failure to appear;

13. Whether the individual was charged with any other criminal offense punishable by confinement in jail or a term of imprisonment in the Commonwealth prior to the final disposition of the charge, and if so, the offense for which the individual was charged, the date of the offense, the date of arrest, and whether the individual was convicted of the offense;

14. Information related to the final disposition of the charge, including (i) the date of final disposition; (ii) whether the charge resulted in a conviction, dismissal, entry of a nolle prosequi, finding of not guilty, or other disposition; (iii) whether the individual was sentenced to a term of incarceration for such charge, and if so, the length of such term of incarceration and the length of time that the individual was incarcerated for such charge; (iv) whether the individual was placed under the supervision of the Department of Corrections; and (v) when available, whether the individual was placed under the supervision of any local community-based probation agency for such charge;

15. Whether the individual was represented by a public defender or court-appointed attorney on the charge at the time of the final disposition of the case; and

16. Any other data deemed relevant and reliable by the Virginia Criminal Sentencing Commission.

C. The Virginia Criminal Sentencing Commission shall submit an annual report on the statewide and locality-level data collected pursuant to this section on or before December 1 to the General Assembly, the Governor, and the Office of the Executive Secretary of the Supreme Court of Virginia. Such report may include recommendations related to the collection of data.

D. The Virginia Criminal Sentencing Commission shall annually make the statewide and locality-level data collected pursuant to this section publicly available on a website established and maintained by the Virginia Criminal Sentencing Commission on or before December 1. The data shall be made available as (i) an electronic dataset, excluding any personal and case identifying information, that may be downloaded by members of the public and (ii) an electronic interactive data dashboard tool that displays aggregated data based on characteristics or indicators selected by the user. The Virginia Criminal Sentencing Commission shall not be required to provide electronic data in a format not regularly used by the agency. Data containing any personal or case identifying information shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be made publicly available.

E. Nothing in this section shall require any (i) department, division, board, bureau, commission, authority, or other agency created by the Commonwealth, or to which the Commonwealth is a party, or any political subdivision thereof; (ii) criminal justice agency as defined in § 9.1-101; or (iii) clerk of circuit court to provide data to the Virginia Criminal Sentencing Commission if the requested data is not regularly maintained by such entity or if such data is prohibited from such disclosure under any other law or under the Virginia Rules of Professional Conduct.

2. That the Virginia Criminal Sentencing Commission shall not be required to submit an annual report or make statewide or locality-level data publicly available as required by subsections C and D of § 19.2-134.1, as created by this act, prior to December 1, 2022.

3. That the Virginia State Crime Commission shall provide the Virginia Criminal Sentencing Commission with the final dataset of all adults charged with a criminal offense punishable by confinement in jail or a term of imprisonment in October 2017 and that the Virginia Criminal Sentencing Commission shall make such statewide and locality-level data publicly available as an electronic dataset, excluding any personal and case identifying information, by October 1, 2021, and on an electronic interactive data dashboard tool that displays aggregated data based on characteristics or indicators selected by the user by December 1, 2022. The Virginia Criminal Sentencing Commission shall not be required to provide electronic data in a format not regularly used by the agency. Data from this dataset containing any personal or case identifying information shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and shall not be made publicly available.