

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 700

*An Act to amend and reenact § 9-173.8 as it is currently effective and as it may become effective, and §§ 19.2-389, 46.2-208 and 63.1-248.8 of the Code of Virginia, relating to cost of access to certain criminal history record information.*

[H 253]

Approved April 10, 1994

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

**1. That § 9-173.8 as it is currently effective and as it may become effective, and §§ 19.2-389, 46.2-208 and 63.1-248.8 of the Code of Virginia are amended and reenacted as follows:**

§ 9-173.8. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

A. Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:

1. Investigation of the case to which he is assigned to provide independent factual information to the court.

2. Submission to the court of a written report of such investigation in compliance with the provisions of § 16.1-274. Such report may, upon request of the court, include recommendations as to the child's welfare.

3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.

4. Assisting a guardian ad litem appointed, if one has been appointed, to represent the child in providing effective representation of the child's needs and best interests.

The advocate is not a party to the case to which he is assigned and shall not call witnesses or examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of the judicial process, or engage in the unauthorized practice of law. The advocate may testify if called as a witness.

B. The program director shall assign an advocate to a child when requested to do so by the judge of the juvenile and domestic relations district court having jurisdiction over the proceedings. The advocate shall continue his association with each case to which he is assigned until relieved of his duties by the court or by the program director.

C. The Department shall promulgate regulations governing the qualifications of advocates. Such regulations shall require that an advocate be at least twenty-one years of age and provide, ~~at his own cost,~~ (i) a copy of his criminal history record or certification that no conviction data is maintained on him, in accordance with § 19.2-389 and (ii) a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. Advocates selected prior to the promulgation of regulations governing qualifications shall meet the minimum requirements as set forth in this article and in regulation.

D. An advocate shall have no associations which create a conflict of interests or the appearance of such a conflict with his duties as an advocate. No advocate shall be assigned to a case of a child whose family has a professional or personal relationship with the advocate. Questions concerning conflicts of interest shall be determined in accordance with regulations promulgated by the Department.

E. No applicant shall be assigned as an advocate until successful completion of a program of training required by regulations. The Department shall set standards for both basic and ongoing training.

§ 9-173.8. (Delayed effective date) Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

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examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of the judicial process, or engage in the unauthorized practice of law. The advocate may testify if called as a witness.

B. The program director shall assign an advocate to a child when requested to do so by the judge of the family court having jurisdiction over the proceedings. The advocate shall continue his association with each case to which he is assigned until relieved of his duties by the court or by the program director.

C. The Department shall promulgate regulations governing the qualifications of advocates. Such regulations shall require that an advocate be at least twenty-one years of age and provide, at his own cost, (i) a copy of his criminal history record or certification that no conviction data is maintained on him, in accordance with § 19.2-389 and (ii) a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. Advocates selected prior to the promulgation of regulations governing qualifications shall meet the minimum requirements as set forth in this article and in regulation.

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

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

2. Such other individuals and agencies which 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 and/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 which 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 which 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 for the conduct of investigations of applicants for public 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;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

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 § 9-169 at his cost, except that criminal history record information shall be supplied to a person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, *volunteer fire company or volunteer rescue squad, or a volunteer court-appointed special advocate pursuant to § 9-173.8* at no charge;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to § 63.1-198.1, 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 divisions of the Commonwealth for the purpose of screening individuals who accept public school employment;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.);

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

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day - care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F; and

17. 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 offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

E. Criminal history information provided to licensed nursing homes 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 and 32.1-162.9:1.

F. Criminal history information provided to licensed homes for adults, licensed district homes for adults, and licensed adult day - care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-173.2, § 63.1-189.1 or § 63.1-194.13.

§ 46.2-208. Records of Department; when open for inspection; driving records privileged; release of privileged information.

A. All registration and title records in the office of the Department shall be public records, but shall be open for inspection only subject to regulations promulgated by the Commissioner.

B. The Commissioner shall consider all driving records in the Department as privileged public records and shall release such information only under the following conditions:

1. On the request of any adult, parent or legal guardian of a minor, or their authorized agents, the Commissioner shall provide that person with a complete explanation of all information pertaining to himself, his minor child or ward, or the person for whom he is the agent, except that medical information, which in the judgment of the Commissioner should only be disclosed by a physician, shall be referred to any physician designated by the person making the request.

2. On the request of any insurance carrier or surety or representative of an insurance carrier or surety, the Commissioner shall furnish an abstract of the operating record of any person subject to the provisions of this title. The abstract shall fully designate any record of any conviction of the person of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.2-372. No such report of any conviction or accident shall be made after sixty months from the date of the conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after sixty months from the date that the driver's license or driving privilege has been reinstated. This abstract shall not be admissible in evidence in any court proceedings. The Commissioner shall charge a reasonable fee for the operating record. Nothing in this subdivision shall authorize the recipient of an abstract under this section to make any further disclosure of any information contained therein except where further disclosure is authorized or required by law.

3. On the written request of any business official who provides the Commissioner with an individual's driver's license number, the Commissioner may furnish that person the name and address of the individual as shown on the Department's records for that driver's license number. Nothing in this subdivision shall authorize the release of any record of convictions of motor vehicle law violations.

4. On the request of any law-enforcement officer, attorney for the Commonwealth or court, the Commissioner shall provide an abstract of the operating record showing all convictions, accidents, driver's license suspensions or revocations, and other appropriate information as the requesting authority may require.

5. On request of the driver licensing authority in any other state or foreign country, the Commissioner shall provide whatever information the requesting authority shall require.

6. On the written request of any employer, prospective employer, or authorized agent of either, and with the written consent of the individual concerned, the Commissioner shall provide an abstract of an individual's operating record showing all convictions, accidents, license suspensions or revocations, and any type of license that the individual currently possesses, provided that the individual's position or the position that the individual is being considered for involves the operation of a motor vehicle.

6a. On the written request of any member of or applicant for membership in a volunteer fire company or volunteer rescue squad, the Commissioner shall provide an abstract of the member's or applicant's operating record showing all convictions, accidents, license suspensions or revocations, and any type of license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person is a member of or applicant for membership in a volunteer fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment owned by the volunteer fire company or volunteer rescue squad.

6b. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America *or with a court-appointed special advocate program pursuant to § 9-173.8*, the Commissioner shall provide an abstract of the applicant's operating record showing all convictions, accidents, license suspensions or revocations, and any type of license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America *or with a court-appointed special advocate program pursuant to § 9-173.8*.

7. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation.

8. Accident reports may be inspected under the provisions of § 46.2-380.

9. Whenever the Commissioner takes any licensing action pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), he may provide information to the Commercial Driver License Information System, or any similar national commercial driver information system, regarding such action.

10. Upon the request of any employer, prospective employer, or representative of either, the Commissioner shall provide an abstract of the driving record of any individual who has been issued a commercial driver's license, provided that the individual's position or the position that the individual is

being considered for involves the operation of a commercial motor vehicle. Such abstract shall show all convictions, accidents, license suspensions, revocations, or disqualifications, and any type of license that the individual currently possesses. The Commissioner shall charge a reasonable fee for the operating record. Nothing in this subdivision shall authorize the recipient of an abstract under this section to make any further disclosure of any information contained therein except where such further disclosure is authorized or required by law.

C. The Department may promulgate regulations to govern the means by which registration, vehicle, and driver information is requested and disseminated.

§ 63.1-248.8. Central registry; disclosure of information.

The central registry shall contain such information as shall be prescribed by State Board regulation. The information contained in the central registry shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with State Board regulations. Any central registry check of a person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, *volunteer fire company or volunteer rescue squad, or with a court-appointed special advocate program pursuant to § 9-173.8* shall be conducted at no charge.