

LD0179813

HOUSE BILL NO. 2565

Offered January 23, 1995

A BILL to amend and reenact §§ 19.2-167, 19.2-175, 19.2-178, and 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-174.1, relating to the provision of information about forensic patients.

Patrons—Ingram, Albo, Barlow, Callahan, Cox, Dudley, Guest, Jackson, Kilgore, McClure, McDonnell, Morgan, Ruff, Stump, Wagner, Way and Wilkins; Senators: Bell, Calhoun, Quayle and Stosch

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-167, 19.2-175, 19.2-178, and 19.2-389 the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-174.1 as follows:

§ 19.2-167. Accused not to be tried while incompetent.

No person shall, while he is ~~insane or feebleminded~~ incompetent to stand trial due to mental illness or mental retardation, be tried for a criminal offense.

§ 19.2-174.1. Information required prior to admission to a mental health facility.

Prior to any person being placed into the custody of the Commissioner for evaluation or treatment pursuant to §§ 19.2-169.1, 19.2-169.2, 19.2-169.5, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, and 19.2-182.3, the court shall provide, or order the parties which have the relevant information available to provide, the Commissioner with the following: (i) a copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the person, and the judge holding jurisdiction over the person; (iii) information pertaining to the alleged crime, including statements made by the person to the police and criminal incident information as defined in § 2.1-341; (iv) any available psychiatric, psychological, medical or social records or evaluations including records from the jail and pretrial evaluations pursuant to §§ 19.2-168.1, 19.2-169.1, and 19.2-169.5, except as may be subject to attorney-client privilege; (v) a copy of the person's criminal history record information, pursuant to § 19.2-389; and (vi) any other information the court deems relevant. Additionally, the Commissioner may request and receive reports from the applicable law enforcement or criminal justice agency pertaining to arrests appearing in the criminal history record information or information provided by other parties.

§ 19.2-175. Compensation of experts.

Each psychiatrist, clinical psychologist or other expert appointed by the court to render professional service pursuant to §§ 19.2-168.1, 19.2-169.1, 19.2-169.5, subsection A of § 19.2-176, §§ 19.2-182.8, 19.2-182.9, 19.2-264.3:1, or 19.2-301, ~~subsections (1) and (2) of § 19.2-181 or § 19.2-264.3:1~~, who is not regularly employed by the Commonwealth of Virginia except by the University of Virginia School of Medicine and the Medical College of Virginia, shall receive a reasonable fee for such service. The fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. Except in capital murder cases the fee shall not exceed \$400, but in addition if any such expert is required to appear as a witness in any hearing held pursuant to such sections, he shall receive mileage and a fee of \$100 for each day during which he is required so to serve. An itemized account of expense, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.

§ 19.2-178. Where prisoner kept when no vacancy in facility or hospital.

When a court shall have entered any of the orders provided for in §§ ~~19.2-169, 19.2-170, 19.2-173, 19.2-168.1, 19.2-169.1, 19.2-169.5, 19.2-169.6, 19.2-177.1, or § 19.2-176 or § 19.2-177~~, the sheriff of the county or city or the proper officer of the penal institution shall immediately proceed to ascertain whether a vacancy exists at the proper facility or hospital and until it is ascertained that there is a vacancy such person shall be kept in the jail of such county or city or in such custody as the court may order, or in the penal institution in which he is confined, until there is room in such facility or hospital. Any person whose care and custody is herein provided for shall be taken to and from the facility or hospital to which he was committed by an officer of the penal institution having custody of him, or by the sheriff of the county or city whose court issued the order of commitment, and the expenses incurred

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60 in such removals shall be paid by such penal institution, county or city.

61 § 19.2-389. Dissemination of criminal history record information.

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

64 1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes
65 of the administration of criminal justice and the screening of an employment application or review of
66 employment by a criminal justice agency with respect to its own employees or applicants, and
67 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
68 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
69 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

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

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

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

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

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

89 7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of
90 applicants for public employment, permit, or license whenever, in the interest of public welfare or
91 safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a
92 person with a conviction record would be compatible with the nature of the employment, permit, or
93 license under consideration;

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

98 9. To the extent permitted by federal law or regulation, public service companies as defined in
99 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
100 personal contact with the public or when past criminal conduct of an applicant would be incompatible
101 with the nature of the employment under consideration;

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

104 11. A person requesting a copy of his own criminal history record information as defined in § 9-169
105 at his cost, except that criminal history record information shall be supplied at no charge to a person
106 who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America,
107 (ii) volunteer fire company or volunteer rescue squad, or (iii) as a court-appointed special advocate;

108 12. Administrators and board presidents of and applicants for licensure or registration as a child
109 welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services'
110 representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and
111 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
112 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
113 agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further
114 disseminated by the facility or agency to any party other than the data subject, the Commissioner of
115 Social Services' representative or a federal or state authority or court as may be required to comply with
116 an express requirement of law for such further dissemination;

117 13. The school divisions of the Commonwealth for the purpose of screening individuals who accept
118 public school employment;

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

121 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;

17. The Alcoholic Beverage Control Board 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 in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions; ~~and~~

19. *The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are placed in the custody of the Commissioner pursuant to §§ 19.2-169.1, 19.2-169.2, 19.2-169.5, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, and 19.2-182.3 for the purpose of placement, evaluation, and treatment planning; and*

20. 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.