

LD3471298

## HOUSE BILL NO. 2565

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 4, 1995)

(Patron Prior to Substitute—Delegate Ingram)

A BILL to amend and reenact §§ 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 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:

§ 19.2-174.1. 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 attorney for the Commonwealth to provide the Commissioner with the following, if currently available and appropriate: (i) the names and addresses for the attorney for the Commonwealth, the attorney for the person and the judge holding jurisdiction over the person (ii) a copy of the warrant or indictment, (iii) a copy of the criminal incident information as defined in § 2.1-341 or a copy of the arrest report or a summary of the facts relating to the crime, (iv) a copy of the pre-trial evaluations pursuant to §§ 19.2-168.1 and 19.2-169.1, and (v) a copy of the person's criminal history record information pursuant to § 19.2-389. 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.

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

§ 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;

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

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

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

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

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

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

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

88 9. To the extent permitted by federal law or regulation, public service companies as defined in  
89 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
90 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
91 with the nature of the employment under consideration;

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

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

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

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

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

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

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

118 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
119 § 4.1-103.1;

120 18. The State Board of Elections and authorized officers and employees thereof in the course of  
121 conducting necessary investigations with respect to registered voters, limited to any record of felony

122 convictions; ~~and~~

123 19. *The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse*  
124 *Services for those individuals who are in the custody of the Commissioner pursuant to §§ 19.2-169.1,*  
125 *19.2-169.2, 19.2-169.5, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and*  
126 *19.2-182.9 for the purpose of placement, evaluation, and treatment planning; and*

127 20. Other entities as otherwise provided by law.

128 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records  
129 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal  
130 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons  
131 designated in the order on whom a report has been made under the provisions of this chapter.

132 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to  
133 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange or the  
134 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a  
135 copy of conviction data covering the person named in the request to the person making the request;  
136 however, such person on whom the data is being obtained shall consent in writing, under oath, to the  
137 making of such request. A person receiving a copy of his own conviction data may utilize or further  
138 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data  
139 subject, the person making the request shall be furnished at his cost a certification to that effect.

140 B. Use of criminal history record information disseminated to noncriminal justice agencies under this  
141 section shall be limited to the purposes for which it was given and may not be disseminated further.

142 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal  
143 history record information for employment or licensing inquiries except as provided by law.

144 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
145 Exchange prior to dissemination of any criminal history record information on offenses required to be  
146 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
147 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases  
148 where time is of the essence and the normal response time of the Exchange would exceed the necessary  
149 time period. A criminal justice agency to whom a request has been made for the dissemination of  
150 criminal history record information that is required to be reported to the Central Criminal Records  
151 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.  
152 Dissemination of offenses not required to be reported to the Exchange shall be made by the criminal  
153 justice agency maintaining the record as required by § 15.1-135.1.

154 E. Criminal history information provided to licensed nursing homes and to home care organizations  
155 pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any  
156 offense specified in §§ 32.1-126.01 and 32.1-162.9:1.

157 F. Criminal history information provided to licensed homes for adults, licensed district homes for  
158 adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the  
159 convictions on file with the Exchange for any offense specified in § 63.1-173.2, § 63.1-189.1 or  
160 § 63.1-194.13.