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SENATE BILL NO. 489

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-526.8:1, 19.2-389, 53.1-182, 53.1-183, and 53.1-185.2 of the Code of Virginia, relating to community criminal justice boards; community corrections programs; grants from the Department of Criminal Justice Services; members of local boards; private not-for-profit programs; criminal history records checks by such programs; risk management programs for private not-for profit programs established by community criminal justice boards.

Patrons—Houck and Couric; Delegates: Abbitt, Davies, Tate, Van Yahres and Way

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-526.8:1, 19.2-389, 53.1-182, 53.1-183, and 53.1-185.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-526.8:1. Insurance plans administered by the Department of General Services, Division of Risk Management, for political subdivisions and constitutional officers.

A. The Department of General Services, through its Division of Risk Management, shall establish an insurance plan or plans subject to the approval of the Governor, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; affiliate or foundation of a state department, agency or institution; *private not-for-profit programs operating a community corrections programs under the auspices of a community criminal justice board*; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

B. Participation in such insurance plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, and by the Department of General Services, Division of Risk Management. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal.

C. The Division of Risk Management shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division of Risk Management.

D. An insurance plan established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the manner provided in § 2.1-185 and interest shall be added to the fund as earned.

The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plan.

E. The Division of Risk Management shall, in its sole discretion, set the premium and administrative cost to be paid to it for providing an insurance plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums and administrative costs need not be uniform among participants, but shall be set so as to best insure the financial stability of the plan.

§ 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

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60 upon such conduct, except that information concerning the arrest of an individual may not be
61 disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from
62 the date of the arrest and no disposition of the charge has been recorded and no active prosecution of
63 the charge is pending;

64 3. Individuals and agencies, *including those private not-for-profit programs operating community*
65 *corrections programs under the auspices of a community criminal justice board*, pursuant to a specific
66 agreement with a criminal justice agency to provide services required for the administration of criminal
67 justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data
68 to purposes for which given, and ensure the security and confidentiality of the data;

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

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

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

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

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

86 9. To the extent permitted by federal law or regulation, public service companies as defined in
87 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
88 personal contact with the public or when past criminal conduct of an applicant would be incompatible
89 with the nature of the employment under consideration;

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

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

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

106 13. The school boards of the Commonwealth for the purpose of screening individuals who are
107 offered or who accept public school employment;

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

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

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

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

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

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 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; 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 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 § 15.1-135.1.

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 adult care residences, 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.

§ 53.1-182. Board to prescribe standards; biennial plan.

The Board shall approve standards as prescribed by the Department of Criminal Justice Services for the development, implementation, operation and evaluation of programs, services and facilities authorized by this article. Any city, county or combination thereof which establishes programs and provides services pursuant to this article shall submit a biennial plan to the Department of Criminal Justice Services for review and approval. *The refusal of the Department to approve any program for the receipt of funding under the provisions of this article shall be appealable to the Criminal Justice Services Board in the same manner as appeals governing other grant funding administered by the Department.*

§ 53.1-183. Community criminal justice boards.

Each county or city or combination thereof developing and establishing a community corrections program pursuant to the provisions of this article shall establish a community criminal justice board. Each county and city participating in a community corrections program shall be represented on the community criminal justice board. In the event that one county or city appropriates funds to the program as part of a multijurisdictional effort, any other participating county or city shall be considered to be participating in a program if such locality appropriates funds to the program. Appointments to the board shall be made by each local governing body. In cases of multijurisdictional participation, ~~the local governing body of each participating city or county shall agree upon those appointments, and, unless~~ otherwise agreed upon, each participating city or county shall have an equal number of appointments. Boards shall be limited to fifteen members, except in cases of multijurisdictional boards which shall be limited to twenty members. Each board shall include representatives of the following *and have an interest in the criminal justice system*: a judge of the general district court; a circuit court judge; a juvenile and domestic relations district court judge; a chief magistrate; one chief of police or the sheriff

183 in a jurisdiction not served by a police department to represent law enforcement; an attorney for the
184 Commonwealth a public defender or an attorney who is experienced in the defense of criminal matters;
185 a sheriff or the regional jail administrator responsible for jails serving those jurisdictions involved in the
186 community-based corrections program; a representative of local education; and a representative of the
187 community services boards.

188 § 53.1-185.2. Funding; failure to comply; prohibited use of funds.

189 A. Counties and cities shall be required to establish a community corrections program under this
190 article only to the extent funded by the Commonwealth through the general appropriation act.

191 B. The Department of Criminal Justice Services shall periodically review each program established
192 under this article to determine compliance with the submitted plan and operating standards. If the
193 Department of Criminal Justice Services determines that a program is not in substantial compliance with
194 the submitted plan or standards, the Department of Criminal Justice Services may suspend all or any
195 portion of financial aid made available to the locality for purposes of this article until there is
196 compliance. *The decision of the Department to suspend any program from the receipt of funding under*
197 *the provisions of this article shall be appealable to the Criminal Justice Services Board in the same*
198 *manner as appeals governing other grant funding administered by the Department.*

199 C. Funding shall be used for the provision of services and operation of programs and facilities but
200 shall not be used for capital expenditures. *Each local board is authorized to use up to ten percent of*
201 *grant funding for administrative support.*

202 D. The Department of Criminal Justice Services, in conjunction with local boards, shall establish a
203 statewide system of supervision and intervention fees to be paid by offenders participating in programs
204 established under this article for reimbursement towards the costs of their supervision.

205 E. Any supervision or intervention fees collected by local programs established under this article
206 shall be retained by the locality serving as fiscal agent and shall be utilized for program expansion and
207 program development, or to supplant local costs of the program operation. Any program collecting such
208 fees shall keep records of the collected fees, report the amounts to the locality serving as fiscal agent
209 and make all records available to the community criminal justice board. Such fees shall be in addition to
210 those imposed pursuant to § 53.1-150.