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HOUSE BILL NO. 2167

Offered January 16, 1997

A BILL to amend and reenact §§ 19.2-83.1, 19.2-389, and 22.1-296.2 of the Code of Virginia, relating to criminal records checks of school board employees.

Patrons—Puller, Albo, Almand, Brickley, Callahan, Connally, Dillard, Keating, May, McClure, Mims, O'Brien, Plum, Rust, Scott, Van Landingham and Watts; Senators: Barry, Gartlan, Howell, Saslaw, Ticer and Waddell

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-83.1, 19.2-389, and 22.1-296.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-83.1. Report of arrest of school employees for certain offenses.

Every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, upon arresting a person who is known or discovered by the arresting official to be a full-time, part-time, permanent, or temporary teacher or other employee in any public school division in this Commonwealth for a felony, a crime involving moral turpitude, or any offense involving the sexual molestation, physical or sexual abuse, or rape of a child, shall file a report of such arrest with the division superintendent of the employing division as soon as reasonably practical. The contents of the report required pursuant to this section shall be utilized by the local school division solely to implement the provisions of §§ 22.1-296.2 *B* and 22.1-315.

§ 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

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60 be further disseminated by the agency to any party other than a federal or state authority or court as
61 may be required to comply with an express requirement of law for such further dissemination;

62 9. To the extent permitted by federal law or regulation, public service companies as defined in
63 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
64 personal contact with the public or when past criminal conduct of an applicant would be incompatible
65 with the nature of the employment under consideration;

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

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

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

82 13. The school boards of the Commonwealth for the purpose of screening individuals who are
83 offered or who accept public school employment *and those current school board employees who have*
84 *been arrested for a felony, a crime involving moral turpitude, or any offense involving the sexual*
85 *molestation, physical or sexual abuse, or rape of a child pursuant to § 22.1-296.2;*

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

88 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
89 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
90 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to
91 the limitations set out in subsection E;

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

96 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
97 § 4.1-103.1;

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

101 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse
102 Services for those individuals who are committed to the custody of the Commissioner pursuant to
103 §§ 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
104 the purpose of placement, evaluation, and treatment planning;

105 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
106 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
107 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-266 or § 18.2-266.1;

108 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
109 Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse
110 Services for the purpose of determining applicants' fitness for employment or for providing volunteer or
111 contractual services;

112 22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and
113 facilities operated by the Department for the purpose of determining an individual's fitness for
114 employment pursuant to departmental instructions;

115 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or parochial
116 elementary or secondary schools which are accredited by a statewide accrediting organization
117 recognized, prior to January 1, 1996, by the State Board of Education; and

118 24. Other entities as otherwise provided by law.

119 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
120 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
121 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, hospitals 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, 32.1-126.02 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.

§ 22.1-296.2. Fingerprinting required.

As a condition of employment, the school boards of the Counties of Albemarle, Campbell, Chesterfield, Cumberland, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Greene, Hanover, Henrico, Henry, Isle of Wight, Loudoun, Louisa, Nelson, Orange, Pittsylvania, Prince William, Rockbridge, Spotsylvania, and Stafford and the Cities of Alexandria, Bristol, Charlottesville, Chesapeake, Danville, Falls Church, Fredericksburg, Hampton, Hopewell, Manassas, Newport News, Norfolk, Petersburg, Portsmouth, Radford, Richmond, Roanoke, Virginia Beach, and Winchester shall require any applicant who is offered or accepts employment after July 1, 1989, whether full-time or part-time, permanent, or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant; however, such applicant may be required to pay the cost of such fingerprinting or criminal records check at the discretion of the school board. From such funds as may be available for this purpose, the school board may pay for the fingerprinting or criminal records check.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the school board whether or not the applicant has ever been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, failing to secure medical attention for an injured child, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, neglect of children as set out in § 18.2-371.1, or obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, use of a firearm in the commission of a felony as set out in § 18.2-53.1, or an equivalent offense in another state any felony or a Class 1 misdemeanor.

B. The division superintendent of any school division designated in subsection A of this section shall inform the relevant school board of any notification of arrest of a school board employee received pursuant to § 19.2-83.1. The school board shall require such employee, whether full-time or part-time, permanent, or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the employee's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information

183 regarding such employee; however, such employee may be required to pay the cost of such
184 fingerprinting or criminal records check at the discretion of the school board. From such funds as may
185 be available for this purpose, the school board may pay for the fingerprinting or criminal records
186 check.

187 The Central Criminal Records Exchange, upon receipt of an employee's record or notification that
188 no record exists, shall report to the school board whether or not the employee has been convicted of
189 any felony or a Class 1 misdemeanor. The contents of the employee's record shall be utilized by the
190 school board solely to implement the provisions of §§ 22.1-307 and 22.1-315.

191 C. The Central Criminal Records Exchange shall not disclose information to the school board
192 regarding charges or convictions of any crimes not specified in this section. If an applicant is denied
193 employment or a current employee is suspended or dismissed because of information appearing on his
194 criminal history record, the school board shall provide a copy of the information obtained from the
195 Central Criminal Records Exchange to the applicant or employee. The information provided to the
196 school board shall not be disseminated except as provided in this section.