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HOUSE BILL NO. 461

Offered January 13, 2010

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A BILL to amend and reenact §§ 15.2-968.1 and 46.2-208 of the Code of Virginia, relating to the use of photo-monitoring systems to enforce traffic light signals.

Patron—Herring

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 15.2-968.1 and 46.2-208 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-968.1. Use of photo-monitoring systems to enforce traffic light signals.

A. The governing body of any county, city, or town may provide by ordinance for the establishment of a traffic signal enforcement program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than one intersection for every 10,000 residents within each county, city, or town at any one time, provided, however, that within planning District 8, each such locality may install and operate traffic light signal photo-monitoring systems at no more than 10 intersections, or at no more than one intersection for every 10,000 residents within each county, city, or town, whichever is greater, at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a law-enforcement officer employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution for a violation of any local ordinance adopted as provided in this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of such ordinance, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section, "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, video, or other recorded images of each vehicle at the time it is used or operated in violation of § 46.2-833, 46.2-835, or 46.2-836. For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed \$50, nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed

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59 by mailing by first class mail a copy thereof to the owner, lessee, or renter of the vehicle. In the case of
60 a vehicle owner, the copy shall be mailed to the address contained in the records of the Department of
61 Motor Vehicles; in the case of a vehicle lessee or renter, the copy shall be mailed to the address
62 contained in the records of the lessor or renter. Every such mailing shall include, in addition to the
63 summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the
64 operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided
65 in subsection D and (ii) instructions for filing such affidavit, including the address to which the affidavit
66 is to be sent. If the summoned person fails to appear on the date of return set out in the summons
67 mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No
68 proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to
69 appear on the return date of the summons. Any summons executed for a violation of this section shall
70 provide to the person summoned at least 60 business days from the mailing of the summons to inspect
71 information collected by a traffic light signal violation monitoring system in connection with the
72 violation.

73 H. Information collected by a traffic light signal violation monitoring system installed and operated
74 pursuant to subsection A shall be limited exclusively to that information that is necessary for the
75 enforcement of traffic light violations. ~~On behalf of a locality, a private entity may not obtain records~~
76 ~~regarding the registered owners of vehicles that fail to comply with traffic light signals~~ *The operator of*
77 *a traffic light signal violation monitoring system may enter into an agreement with the Department of*
78 *Motor Vehicles, in accordance with the provisions of subdivision B 21 of § 46.2-208, to obtain vehicle*
79 *owner information regarding the registered owners of vehicles that fail to comply with a traffic light.*
80 *Information provided to the operator of a traffic light signal violation monitoring system shall only be*
81 *used for enforcement against individuals who violate the provisions of this section.* Notwithstanding any
82 other provision of law, all photographs, microphotographs, electronic images, or other personal
83 information collected by a traffic light signal violation monitoring system shall be used exclusively for
84 enforcing traffic light violations and shall not (i) be open to the public; (ii) be sold or used for sales,
85 solicitation, or marketing purposes; (iii) be disclosed to any other entity except as may be necessary for
86 the enforcement of a traffic light violation or to a vehicle owner or operator as part of a challenge to the
87 violation; or (iv) be used in a court in a pending action or proceeding unless the action or proceeding
88 relates to a violation of § 46.2-833, 46.2-835, or 46.2-836 or requested upon order from a court of
89 competent jurisdiction. Information collected under this section pertaining to a specific violation shall be
90 purged and not retained later than 60 days after the collection of any civil penalties. If a locality does
91 not execute a summons for a violation of this section within 10 business days, all information collected
92 pertaining to that suspected violation shall be purged within two business days. Any locality operating a
93 traffic light signal violation monitoring system shall annually certify compliance with this section and
94 make all records pertaining to such system available for inspection and audit by the Commonwealth
95 Transportation Commissioner or the Commissioner of the Department of Motor Vehicles or his designee.
96 Any person who discloses personal information in violation of the provisions of this subsection shall be
97 subject to a civil penalty of \$1,000.

98 I. A private entity may enter into an agreement with a locality to be compensated for providing the
99 traffic light signal violation monitoring system or equipment, and all related support services, to include
100 consulting, operations and administration. However, only a law-enforcement officer employed by a
101 locality may swear to or affirm the certificate required by subsection C. No locality shall enter into an
102 agreement for compensation based on the number of violations or monetary penalties imposed.

103 J. When selecting potential intersections for a traffic light signal violation monitoring system, a
104 locality shall consider factors such as (i) the accident rate for the intersection, (ii) the rate of red light
105 violations occurring at the intersection (number of violations per number of vehicles), (iii) the difficulty
106 experienced by law-enforcement officers in patrol cars or on foot in apprehending violators, and (iv) the
107 ability of law-enforcement officers to apprehend violators safely within a reasonable distance from the
108 violation. Localities may consider the risk to pedestrians as a factor, if applicable. ~~A locality shall~~
109 ~~submit a list of intersections to the Virginia Department of Transportation for final approval.~~

110 K. Before the implementation of a traffic light signal violation monitoring system at an intersection,
111 the locality shall complete an engineering safety analysis that addresses signal timing and other
112 location-specific safety features. The length of the yellow phase shall be established based on the
113 recommended methodology of the Institute of Transportation Engineers. All traffic light signal violation
114 monitoring systems shall provide a minimum 0.5-second grace period between the time the signal turns
115 red and the time the first violation is recorded. If recommended by the engineering safety analysis, the
116 locality shall make reasonable location-specific safety improvements, including signs and pavement
117 markings.

118 L. Any locality that uses a traffic light signal violation monitoring system shall evaluate the system
119 on a monthly basis to ensure all cameras and traffic signals are functioning properly. Evaluation results
120 shall be made available to the public.

M. Any locality that uses a traffic light signal violation monitoring system to enforce traffic light signals shall place conspicuous signs within 500 feet of the intersection approach at which a traffic light signal violation monitoring system is used. There shall be a rebuttable presumption that such signs were in place at the time of the commission of the traffic light signal violation.

N. Prior to or coincident with the implementation or expansion of a traffic light signal violation monitoring system, a locality shall conduct a public awareness program, advising the public that the locality is implementing or expanding a traffic light signal violation monitoring system.

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

A. All records in the office of the Department containing the specific classes of information outlined below shall be considered privileged records:

1. Personal information, including all data defined as "personal information" in § 2.2-3801;
2. Driver information, including all data that relates to driver's license status and driver activity; and
3. Vehicle information, including all descriptive vehicle data and title, registration, and vehicle activity data.

B. The Commissioner shall release such information only under the following conditions:

1. Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician, physician assistant, or nurse practitioner as provided in § 46.2-322.

2. Insurance data may be released as specified in §§ 46.2-372, 46.2-380, and 46.2-706.

3. Notwithstanding other provisions of this section, information disclosed or furnished shall be assessed a fee as specified in § 46.2-214.

4. When the person requesting the information is (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall provide him with the requested information and a complete explanation of it. Requests for such information need not be made in writing or in person and may be made orally or by telephone, provided that the Department is satisfied that there is adequate verification of the requester's identity. When so requested in writing by (a) the subject of the information, (b) the parent or guardian of the subject of the information, (c) the authorized representative of the subject of the information, or (d) the owner of the vehicle that is the subject of the information, the Commissioner shall verify and, if necessary, correct the personal information provided and furnish driver and vehicle information in the form of an abstract of the record.

5. On the written request of any insurance carrier, surety, or representative of an insurance carrier or surety, the Commissioner shall furnish such insurance carrier, surety, or representative an abstract of the record of any person subject to the provisions of this title. The abstract shall include any record of any conviction 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 60 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 60 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.

6. On the written request of any business organization or its agent, in the conduct of its business, the Commissioner shall compare personal information supplied by the business organization or agent with that contained in the Department's records and, when the information supplied by the business organization or agent is different from that contained in the Department's records, provide the business organization or agent with correct information as contained in the Department's records. Personal information provided under this subdivision shall be used solely for the purpose of pursuing remedies that require locating an individual.

7. The Commissioner shall provide vehicle information to any business organization or agent on such business' or agent's written request. Disclosures made under this subdivision shall not include any personal information and shall not be subject to the limitations contained in subdivision 6 of this subsection.

8. On the written request of any motor vehicle rental or leasing company or its designated agent, the Commissioner shall (i) compare personal information supplied by the company or agent with that contained in the Department's records and, when the information supplied by the company or agent is different from that contained in the Department's records, provide the company or agent with correct information as contained in the Department's records and (ii) provide the company or agent with driver information in the form of an abstract of any person subject to the provisions of this title. Such abstract shall include any record of any conviction 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 the

182 subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract
183 shall include any record of any conviction or accident more than 60 months after the date of such
184 conviction or accident unless the Commissioner or court used the conviction or accident as a reason for
185 the suspension or revocation of a driver's license or driving privilege, in which case the revocation or
186 suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract
187 after 60 months from the date on which the driver's license or driving privilege was reinstated. No
188 abstract released under this subdivision shall be admissible in evidence in any court proceedings.

189 9. On the request of any federal, state, or local governmental entity, local government group
190 self-insurance pool, law-enforcement officer, attorney for the Commonwealth, court, or the authorized
191 agent of any of the foregoing, the Commissioner shall (i) compare personal information supplied by the
192 governmental entity, local government group self-insurance pool, law-enforcement officer, attorney for
193 the Commonwealth, court, or the authorized agent of any of the foregoing, with that contained in the
194 Department's records and, when the information supplied by the governmental entity, local government
195 group self-insurance pool, law-enforcement officer, attorney for the Commonwealth, court, or the
196 authorized agent of any of the foregoing, is different from that contained in the Department's records,
197 provide the governmental entity, local government group self-insurance pool, law-enforcement officer,
198 attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, with correct
199 information as contained in the Department's records and (ii) provide driver and vehicle information in
200 the form of an abstract of the record showing all convictions, accidents, driver's license suspensions or
201 revocations, and other appropriate information as the governmental entity, local government group
202 self-insurance pool, law-enforcement officer, attorney for the Commonwealth, court, or the authorized
203 agent of any of the foregoing, may require in order to carry out its official functions. The abstract shall
204 be provided free of charge.

205 10. On request of the driver licensing authority in any other state or foreign country, the
206 Commissioner shall provide whatever classes of information the requesting authority shall require in
207 order to carry out its official functions. The information shall be provided free of charge.

208 11. On the written request of any employer, prospective employer, or authorized agent of either, and
209 with the written consent of the individual concerned, the Commissioner shall (i) compare personal
210 information supplied by the employer, prospective employer, or agent with that contained in the
211 Department's records and, when the information supplied by the employer, prospective employer, or
212 agent is different from that contained in the Department's records, provide the employer, prospective
213 employer, or agent with correct information as contained in the Department's records and (ii) provide the
214 employer, prospective employer, or agent with driver information in the form of an abstract of an
215 individual's record showing all convictions, accidents, driver's license suspensions or revocations, and
216 any type of driver's license that the individual currently possesses, provided that the individual's position
217 or the position that the individual is being considered for involves the operation of a motor vehicle.

218 12. On the written request of any member of or applicant for membership in a volunteer fire
219 company or volunteer rescue squad, the Commissioner shall (i) compare personal information supplied
220 by the volunteer fire company or volunteer rescue squad with that contained in the Department's records
221 and, when the information supplied by the volunteer fire company or volunteer rescue squad is different
222 from that contained in the Department's records, provide the volunteer fire company or volunteer rescue
223 squad with correct information as contained in the Department's records and (ii) provide driver
224 information in the form of an abstract of the member's or applicant's record showing all convictions,
225 accidents, license suspensions or revocations, and any type of driver's license that the individual
226 currently possesses. Such abstract shall be provided free of charge if the request is accompanied by
227 appropriate written evidence that the person is a member of or applicant for membership in a volunteer
228 fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or
229 volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment
230 owned by the volunteer fire company or volunteer rescue squad.

231 13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate
232 of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information
233 supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the
234 Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big
235 Sisters of America is different from that contained in the Department's records, provide the Virginia
236 affiliate of Big Brothers/Big Sisters of America with correct information as contained in the
237 Department's records and (ii) provide driver information in the form of an abstract of the applicant's
238 record showing all convictions, accidents, license suspensions or revocations, and any type of driver's
239 license that the individual currently possesses. Such abstract shall be provided at a fee that is one-half
240 the normal charge if the request is accompanied by appropriate written evidence that the person has
241 applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America.

242 14. On the written request of any person who has applied to be a volunteer with a court-appointed
243 special advocate program pursuant to § 9.1-153, the Commissioner shall provide an abstract of the

applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's 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 court-appointed special advocate program pursuant to § 9.1-153.

15. Upon the request of any employer, prospective employer, or authorized representative of either, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide driver information in the form of 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 driver's license that the individual currently possesses.

16. Upon the receipt of a completed application and payment of applicable processing fees, the Commissioner may enter into an agreement with any governmental authority or business to exchange information specified in this section by electronic or other means.

17. Upon the request of an attorney representing a person in a motor vehicle accident, the Commissioner shall provide vehicle information, including the owner's name and address, to the attorney.

18. Upon the request, in the course of business, of any authorized representative of an insurance company or of any not-for-profit entity organized to prevent and detect insurance fraud, or perform rating and underwriting activities, the Commissioner shall provide to such person (i) all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data as requested or (ii) all driver information including name, license number and classification, date of birth, and address information for each driver under the age of 22 licensed in the Commonwealth of Virginia meeting the request criteria designated by such person, with such request criteria consisting of driver's license number or address information. No such information shall be used for solicitation of sales, marketing, or other commercial purposes.

19. Upon the request of an officer authorized to issue criminal warrants, for the purpose of issuing a warrant for arrest for unlawful disposal of trash or refuse in violation of § 33.1-346, the Commissioner shall provide vehicle information, including the owner's name and address.

20. Upon written request of the compliance agent of a private security services business, as defined in § 9.1-138, which is licensed by the Department of Criminal Justice Services, the Commissioner shall provide the name and address of the owner of the vehicle under procedures determined by the Commissioner.

21. Upon the request of the operator of a toll facility *or traffic light photo-monitoring system*, or an authorized agent or employee of a toll facility operator *or traffic light photo-monitoring system*, for the purpose of obtaining vehicle owner data under subsection L of § 46.2-819.1 *or subsection H of § 15.2-968.1*. Information released pursuant to this subdivision shall be limited to the name and address of the registered owner of the vehicle having failed to pay a toll *or having failed to comply with a traffic light signal* and the vehicle information, including all descriptive vehicle data and title and registration data of the same vehicle.

22. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Compeer, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Compeer with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Compeer is different from that contained in the Department's records, provide the Virginia affiliate of Compeer with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided at a fee that is one-half the normal charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Compeer.

23. Upon the request of the Department of Environmental Quality for the purpose of obtaining vehicle owner data in connection with enforcement actions involving on-road testing of motor vehicles, pursuant to § 46.2-1178.1.

24. On the written request of any person who has applied to be a volunteer vehicle operator with a Virginia chapter of the American Red Cross, the Commissioner shall (i) compare personal information supplied by a Virginia chapter of the American Red Cross with that contained in the Department's records and, when the information supplied by a Virginia chapter of the American Red Cross is different from that contained in the Department's records, provide the Virginia chapter of the American Red Cross

305 with correct information as contained in the Department's records and (ii) provide driver information in
306 the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions
307 or revocations, and any type of driver's license that the individual currently possesses. Such abstract
308 shall be provided at a fee that is one-half the normal charge if the request is accompanied by
309 appropriate written evidence that the person has applied to be a volunteer vehicle operator with a
310 Virginia chapter of the American Red Cross.

311 25. On the written request of any person who has applied to be a volunteer vehicle operator with a
312 Virginia chapter of the Civil Air Patrol, the Commissioner shall (i) compare personal information
313 supplied by a Virginia chapter of the Civil Air Patrol with that contained in the Department's records
314 and, when the information supplied by a Virginia chapter of the Civil Air Patrol is different from that
315 contained in the Department's records, provide the Virginia chapter of the Civil Air Patrol with correct
316 information as contained in the Department's records and (ii) provide driver information in the form of
317 an abstract of the applicant's record showing all convictions, accidents, license suspensions or
318 revocations, and any type of driver's license that the individual currently possesses. Such abstract shall
319 be provided at a fee that is one-half the normal charge if the request is accompanied by appropriate
320 written evidence that the person has applied to be a volunteer vehicle operator with a Virginia chapter of
321 the Civil Air Patrol.

322 26. On the written request of any person who has applied to be a volunteer vehicle operator with
323 Faith in Action, the Commissioner shall (i) compare personal information supplied by Faith in Action
324 with that contained in the Department's records and, when the information supplied by Faith in Action is
325 different from that contained in the Department's records, provide Faith in Action with correct
326 information as contained in the Department's records and (ii) provide driver information in the form of
327 an abstract of the applicant's record showing all convictions, accidents, license suspensions or
328 revocations, and any type of driver's license that the individual currently possesses. Such abstract shall
329 be provided at a fee that is one-half the normal charge if the request is accompanied by appropriate
330 written evidence that the person has applied to be a volunteer vehicle operator with Faith in Action.

331 C. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving
332 privilege of any individual, he may notify the National Driver Register Service operated by the United
333 States Department of Transportation and any similar national driver information system and provide
334 whatever classes of information the authority may require.

335 D. Accident reports may be inspected under the provisions of §§ 46.2-379 and 46.2-380.

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

340 F. In addition to the foregoing provisions of this section, vehicle information may also be inspected
341 under the provisions of §§ 46.2-633, 46.2-644.02, 46.2-644.03, and §§ 46.2-1200.1 through 46.2-1237.

342 G. The Department may promulgate regulations to govern the means by which personal, vehicle, and
343 driver information is requested and disseminated.

344 H. Driving records of any person accused of an offense involving the operation of a motor vehicle
345 shall be provided by the Commissioner upon request to any person acting as counsel for the accused. If
346 such counsel is from the public defender's office or has been appointed by the court, such records shall
347 be provided free of charge.

348 I. The Department shall maintain the records of persons convicted of violations of § 18.2-36.2,
349 subsection B of § 29.1-738, and §§ 29.1-738.02, 29.1-738.2, and 29.1-738.4 which shall be forwarded by
350 every general district court or circuit court or the clerk thereof, pursuant to § 46.2-383. Such records
351 shall be electronically available to any law-enforcement officer as provided for under clause (ii) of
352 subdivision B 9.