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HOUSE BILL NO. 4024

Offered July 9, 2019

Prefiled July 9, 2019

A BILL to amend and reenact §§ 18.2-308.09, 18.2-308.013, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.2:3, 19.2-386.28, and 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-308.1:3.1, by adding in Article 4 of Chapter 4 of Title 37.2 a section numbered 37.2-431.2, by adding in Chapter 5 of Title 37.2 a section numbered 37.2-513, and by adding in Chapter 6 of Title 37.2 a section numbered 37.2-616, relating to purchase, possession, or transportation of firearm prohibited; person voluntarily admitted to inpatient treatment; penalties.

Patron—Yancey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.09, 18.2-308.013, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.2:3, 19.2-386.28, and 19.2-389 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-308.1:3.1, by adding in Article 4 of Chapter 4 of Title 37.2 a section numbered 37.2-431.2, by adding in Chapter 5 of Title 37.2 a section numbered 37.2-513, and by adding in Chapter 6 of Title 37.2 a section numbered 37.2-616 as follows:

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, or 18.2-308.1:3.1 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

6. (Effective until January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

6. (Effective January 1, 2021) An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a restoration order may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by

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59 the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief
60 of police, or attorney for the Commonwealth may submit to the court a sworn, written statement
61 indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based
62 upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is
63 likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief
64 of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such
65 individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the
66 specific acts, or upon a written statement made under oath before a notary public of a competent person
67 having personal knowledge of the specific acts.

68 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
69 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in
70 violation of § 18.2-282 within the three-year period immediately preceding the application.

71 15. An individual who has been convicted of stalking.

72 16. An individual whose previous convictions or adjudications of delinquency were based on an
73 offense that would have been at the time of conviction a felony if committed by an adult under the laws
74 of any state, the District of Columbia, the United States or its territories. For purposes of this
75 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the
76 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
77 adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall
78 not apply to an individual with previous adjudications of delinquency who has completed a term of
79 service of no less than two years in the Armed Forces of the United States and, if such person has been
80 discharged from the Armed Forces of the United States, received an honorable discharge.

81 17. An individual who has a felony charge pending or a charge pending for an offense listed in
82 subdivision 14 or 15.

83 18. An individual who has received mental health treatment or substance abuse treatment in a
84 residential setting within five years prior to the date of his application for a concealed handgun permit.

85 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period
86 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
87 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession
88 or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any
89 state, the District of Columbia, or the United States or its territories.

90 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the
91 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
92 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or
93 distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any
94 state, the District of Columbia, or the United States or its territories, the trial court found that the facts
95 of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the
96 substantially similar law of any other state, the District of Columbia, or the United States or its
97 territories.

98 **§ 18.2-308.013. Suspension or revocation of permit.**

99 A. Any person convicted of an offense that would disqualify that person from obtaining a permit
100 under § 18.2-308.09 or who violates subsection C of § 18.2-308.02 shall forfeit his permit for a
101 concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records
102 Exchange of a record of the arrest, conviction, or occurrence of any other event that would disqualify a
103 person from obtaining a concealed handgun permit under § 18.2-308.09, the Central Criminal Records
104 Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction, or
105 other event. Upon receipt of such notice of a conviction, the court shall revoke the permit of a person
106 disqualified pursuant to this subsection, and shall promptly notify the State Police and the person whose
107 permit was revoked of the revocation.

108 B. An individual who has a felony charge pending or a charge pending for an offense listed in
109 subdivision 14 or 15 of § 18.2-308.09, holding a permit for a concealed handgun, may have the permit
110 suspended by the court before which such charge is pending or by the court that issued the permit.

111 C. The court shall revoke the permit of any individual for whom it would be unlawful to purchase,
112 possess, or transport a firearm under § 18.2-308.1:2 or 18.2-308.1:3, or 18.2-308.1:3.1 and shall
113 promptly notify the State Police and the person whose permit was revoked of the revocation.

114 **§ 18.2-308.1:3.1. Purchase, possession, or transportation of firearm by person voluntarily admitted**
115 **to inpatient treatment for qualifying mental health disorder; penalty.**

116 A. As used in this section:

117 "Qualifying mental health disorder" means schizophrenia or bipolar 1 disorder.

118 "Treatment record" includes copies of health records detailing the petitioner's psychiatric history,
119 which shall include the records pertaining to the voluntary admission to an inpatient treatment facility
120 that is the subject of the request for relief pursuant to this section.

B. It is unlawful for any person who has been diagnosed with a qualifying mental health disorder and who is voluntarily admitted to an inpatient treatment facility for treatment of such qualifying mental health disorder to purchase, possess, or transport a firearm. A violation of this subsection is punishable as a Class 1 misdemeanor.

C. Any person prohibited from purchasing, possessing, or transporting a firearm under this section may, at any time following his release from voluntary admission to an inpatient mental health treatment facility for treatment of a qualifying mental health disorder, petition the general district court in the county or city in which he resides or, if the person is not a resident of the Commonwealth, the general district court of the county or city in which the inpatient treatment facility where he received treatment for a qualifying mental health disorder is located to restore his right to purchase, possess, or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disability referred to in subsection B and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection B do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons; penalty.

Any person who sells, barter, gives or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving or furnishing, any firearm to any person he knows is prohibited from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:3.1, or 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 ~~shall be~~ *is* guilty of a Class 4 felony. However, this prohibition shall not be applicable when the person convicted of the felony, adjudicated delinquent or acquitted by reason of insanity has (i) been issued a permit pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1, ~~or~~ § 18.2-308.1:2 or 18.2-308.1:3, *or subsection C of § 18.2-308.1:3.1;* (ii) been pardoned or had his political disabilities removed in accordance with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport, possess or receive firearms pursuant to the laws of the United States.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms.

A. Any person purchasing from a dealer a firearm as herein defined shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that would be a felony if committed by an adult; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; and (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, *or* mentally incapacitated or adjudicated an incapacitated person and prohibited from purchasing, *possessing, or transporting* a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, ~~or~~ been involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing, *possessing, or transporting* a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction, *or been diagnosed with a qualifying mental health disorder and voluntarily admitted to an inpatient treatment facility for treatment of such qualifying mental health disorder and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:3.1 or any substantially similar law of any other jurisdiction.*

B. 1. No dealer shall sell, rent, trade or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded or transferred and (ii) requested

182 criminal history record information by a telephone call to or other communication authorized by the
183 State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish
184 personal identification and residence in Virginia for purposes of this section, a dealer must require any
185 prospective purchaser to present one photo-identification form issued by a governmental agency of the
186 Commonwealth or by the United States Department of Defense that demonstrates that the prospective
187 purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm
188 purchase, residency of a member of the armed forces shall include both the state in which the member's
189 permanent duty post is located and any nearby state in which the member resides and from which he
190 commutes to the permanent duty post. A member of the armed forces whose photo identification issued
191 by the Department of Defense does not have a Virginia address may establish his Virginia residency
192 with such photo identification and either permanent orders assigning the purchaser to a duty post,
193 including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the photo
194 identification presented to a dealer by the prospective purchaser is a driver's license or other photo
195 identification issued by the Department of Motor Vehicles, and such identification form contains a date
196 of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by
197 the Department of Motor Vehicles, sell or otherwise transfer a firearm to the prospective purchaser until
198 30 days after the date of issue of an original or duplicate driver's license unless the prospective
199 purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing
200 that the original date of issue of the driver's license was more than 30 days prior to the attempted
201 purchase.

202 In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any
203 person who is not a citizen of the United States or who is not a person lawfully admitted for permanent
204 residence.

205 Upon receipt of the request for a criminal history record information check, the State Police shall (a)
206 review its criminal history record information to determine if the buyer or transferee is prohibited from
207 possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates
208 that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number
209 for that inquiry.

210 2. The State Police shall provide its response to the requesting dealer during the dealer's request, or
211 by return call without delay. If the criminal history record information check indicates the prospective
212 purchaser or transferee has a disqualifying criminal record or has been acquitted by reason of insanity
213 and committed to the custody of the Commissioner of Behavioral Health and Developmental Services,
214 the State Police shall have until the end of the dealer's next business day to advise the dealer if its
215 records indicate the buyer or transferee is prohibited from possessing or transporting a firearm by state
216 or federal law. If not so advised by the end of the dealer's next business day, a dealer who has fulfilled
217 the requirements of subdivision 1 may immediately complete the sale or transfer and shall not be
218 deemed in violation of this section with respect to such sale or transfer. In case of electronic failure or
219 other circumstances beyond the control of the State Police, the dealer shall be advised immediately of
220 the reason for such delay and be given an estimate of the length of such delay. After such notification,
221 the State Police shall, as soon as possible but in no event later than the end of the dealer's next business
222 day, inform the requesting dealer if its records indicate the buyer or transferee is prohibited from
223 possessing or transporting a firearm by state or federal law. A dealer who fulfills the requirements of
224 subdivision 1 and is told by the State Police that a response will not be available by the end of the
225 dealer's next business day may immediately complete the sale or transfer and shall not be deemed in
226 violation of this section with respect to such sale or transfer.

227 3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer
228 than 30 days, except for multiple handgun transactions for which records shall be maintained for 12
229 months, from any dealer's request for a criminal history record information check pertaining to a buyer
230 or transferee who is not found to be prohibited from possessing and transporting a firearm under state or
231 federal law. However, the log on requests made may be maintained for a period of 12 months, and such
232 log shall consist of the name of the purchaser, the dealer identification number, the unique approval
233 number and the transaction date.

234 4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or
235 deliver the written consent form required by subsection A to the Department of State Police. The State
236 Police shall immediately initiate a search of all available criminal history record information to
237 determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal
238 law. If the search discloses information indicating that the buyer or transferee is so prohibited from
239 possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in
240 the jurisdiction where the sale or transfer occurred and the dealer without delay.

241 5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by
242 persons who are citizens of the United States or persons lawfully admitted for permanent residence but
243 residents of other states under the terms of subsections A and B upon furnishing the dealer with one

photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's next business day" shall not include December 25.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5 to any person who is not a resident of Virginia unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law. The dealer shall obtain the required report by mailing or delivering the written consent form required under subsection A to the State Police within 24 hours of its execution. If the dealer has complied with the provisions of this subsection and has not received the required report from the State Police within 10 days from the date the written consent form was mailed to the Department of State Police, he shall not be deemed in violation of this section for thereafter completing the sale or transfer.

D. Nothing herein shall prevent a resident of the Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer in Virginia by obtaining a criminal history record information check through the dealer as provided in subsection C.

E. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

F. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section shall be guilty of a Class 2 misdemeanor.

G. For purposes of this section:

"Actual buyer" means a person who executes the consent form required in subsection B or C, or other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

305 "Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be
306 converted to expel single or multiple projectiles by action of an explosion of a combustible material.

307 "Handgun" means any pistol or revolver or other firearm originally designed, made and intended to
308 fire single or multiple projectiles by means of an explosion of a combustible material from one or more
309 barrels when held in one hand.

310 "Lawfully admitted for permanent residence" means the status of having been lawfully accorded the
311 privilege of residing permanently in the United States as an immigrant in accordance with the
312 immigration laws, such status not having changed.

313 *"Qualifying mental health disorder" has the same meaning as set forth in § 18.2-308.1:3.1.*

314 H. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity,
315 confidentiality and security of all records and data provided by the Department of State Police pursuant
316 to this section.

317 I. The provisions of this section shall not apply to (i) transactions between persons who are licensed
318 as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii)
319 purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth
320 or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of
321 Chapter 8 of Title 23.1; or (iii) antique firearms, curios or relics.

322 J. The provisions of this section shall not apply to restrict purchase, trade or transfer of firearms by a
323 resident of Virginia when the resident of Virginia makes such purchase, trade or transfer in another
324 state, in which case the laws and regulations of that state and the United States governing the purchase,
325 trade or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS)
326 check shall be performed prior to such purchase, trade or transfer of firearms.

327 J1. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal
328 history record information check is required pursuant to this section, except that a fee of \$5 shall be
329 collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the
330 Department of State Police by the last day of the month following the sale for deposit in a special fund
331 for use by the State Police to offset the cost of conducting criminal history record information checks
332 under the provisions of this section.

333 K. Any person willfully and intentionally making a materially false statement on the consent form
334 required in subsection B or C or on such firearm transaction records as may be required by federal law,
335 shall be guilty of a Class 5 felony.

336 L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades
337 or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

338 L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or
339 otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and
340 intentionally aids or abets such person, shall be guilty of a Class 6 felony. This subsection shall not
341 apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the
342 performance of his official duties, or other person under his direct supervision.

343 M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such
344 firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise
345 receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the
346 Commonwealth to be resold or otherwise provided to another person who the transferor knows is
347 ineligible to purchase or otherwise receive a firearm, shall be guilty of a Class 4 felony and sentenced to
348 a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection
349 involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory
350 minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the
351 purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to §
352 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child,
353 grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

354 N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the
355 Commonwealth who solicits, employs or assists any person in violating subsection M shall be guilty of
356 a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

357 O. Any mandatory minimum sentence imposed under this section shall be served consecutively with
358 any other sentence.

359 P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating
360 whether the driver's license is an original, duplicate or renewed driver's license.

361 Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his
362 inventory to any other person, a dealer may require such other person to consent to have the dealer
363 obtain criminal history record information to determine if such other person is prohibited from
364 possessing or transporting a firearm by state or federal law. The Department of State Police shall
365 establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to
366 be made by the Department of State Police, and the processes established for making such

determinations shall conform to the provisions of this section.

§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer firearms; exemptions; penalties.

A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, ~~or~~ 18.2-308.1:3, *or* 18.2-308.1:3.1, subsection B of § 18.2-308.1:4, or § 18.2-308.2 or 18.2-308.2:01 ~~or~~, is an illegal alien, or is prohibited from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or § 18.2-308.1:5.

B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000, the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2, shall be guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal

descriptive information required in this section shall be guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section shall be guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section shall be guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 shall be guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

"Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent of a dealer, who may lawfully transfer firearms and who actually performs the criminal background check in accordance with the provisions of § 18.2-308.2:2.

"Transfer" means any act performed with intent to sell, rent, barter, trade or otherwise transfer ownership or permanent possession of a firearm at the place of business of a dealer.

§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in violation of law.

Any firearm, stun weapon as defined by § 18.2-308.1, or any weapon concealed, possessed, transported, or carried in violation of § 18.2-283.1, 18.2-287.01, 18.2-287.4, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:3.1, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, or 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

§ 19.2-389. (Effective until January 1, 2021) 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 § 9.1-101, 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 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-431.2, 37.2-513, 37.2-616, 37.2-819, and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that 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 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 that 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 that 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, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for 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;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

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

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

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority 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 and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

551 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
552 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
553 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;
554 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
555 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
556 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;
557 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
558 Department of Education, or the Department of Behavioral Health and Developmental Services for the
559 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
560 services;
561 22. The Department of Behavioral Health and Developmental Services and facilities operated by the
562 Department for the purpose of determining an individual's fitness for employment pursuant to
563 departmental instructions;
564 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
565 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
566 records information on behalf of such governing boards or administrators pursuant to a written
567 agreement with the Department of State Police;
568 24. Public institutions of higher education and nonprofit private institutions of higher education for
569 the purpose of screening individuals who are offered or accept employment;
570 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,
571 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
572 higher education, for the purpose of assessing or intervening with an individual whose behavior may
573 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
574 history record information obtained pursuant to this section or otherwise use any record of an individual
575 beyond the purpose that such disclosure was made to the threat assessment team;
576 26. Executive directors of community services boards or the personnel director serving the
577 community services board for the purpose of determining an individual's fitness for employment,
578 approval as a sponsored residential service provider, or permission to enter into a shared living
579 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to
580 §§ 37.2-506 and 37.2-607;
581 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
582 determining an individual's fitness for employment, approval as a sponsored residential service provider,
583 or permission to enter into a shared living arrangement with a person receiving medical assistance
584 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;
585 28. The Commissioner of Social Services for the purpose of locating persons who owe child support
586 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the
587 name, address, demographics and social security number of the data subject shall be released;
588 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
589 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
590 purpose of determining if any applicant who accepts employment in any direct care position or requests
591 approval as a sponsored residential service provider or permission to enter into a shared living
592 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted
593 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with
594 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and
595 37.2-607;
596 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
597 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
598 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;
599 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
600 for the purpose of determining if any person being considered for election to any judgeship has been
601 convicted of a crime;
602 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
603 determining an individual's fitness for employment in positions designated as sensitive under Department
604 of Human Resource Management policies developed pursuant to § 2.2-1201.1;
605 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
606 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
607 Violent Predators Act (§ 37.2-900 et seq.);
608 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
609 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
610 companies, for the conduct of investigations of applications for employment or for access to facilities,
611 by contractors, leased laborers, and other visitors;
612 35. Any employer of individuals whose employment requires that they enter the homes of others, for

the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

45. 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

674 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

675 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
676 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
677 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

678 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
679 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange
680 for any offense specified in § 63.2-1720.

681 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
682 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the
683 definition of barrier crime in § 19.2-392.02.

684 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
685 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
686 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in
687 the request to the employer or prospective employer making the request, provided that the person on
688 whom the data is being obtained has consented in writing to the making of such request and has
689 presented a photo-identification to the employer or prospective employer. In the event no conviction data
690 is maintained on the person named in the request, the requesting employer or prospective employer shall
691 be furnished at his cost a certification to that effect. The criminal history record search shall be
692 conducted on forms provided by the Exchange.

693 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
694 information pursuant to the rules of court for obtaining discovery or for review by the court.

695 **§ 19.2-389. (Effective January 1, 2021) Dissemination of criminal history record information.**

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

698 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
699 purposes of the administration of criminal justice and the screening of an employment application or
700 review of employment by a criminal justice agency with respect to its own employees or applicants, and
701 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
702 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
703 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For
704 purposes of this subdivision, criminal history record information includes information sent to the Central
705 Criminal Records Exchange pursuant to §§ 37.2-431.2, 37.2-513, 37.2-616, 37.2-819, and 64.2-2014
706 when disseminated to any full-time or part-time employee of the State Police, a police department or
707 sheriff's office that is a part of or administered by the Commonwealth or any political subdivision
708 thereof, and who is responsible for the prevention and detection of crime and the enforcement of the
709 penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal
710 justice;

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

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

722 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
723 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
724 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
725 security of the data;

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

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

730 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
731 owned, operated or controlled by any political subdivision, and any public service corporation that
732 operates a public transit system owned by a local government for the conduct of investigations of
733 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
734 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
735 conviction record would be compatible with the nature of the employment, permit, or license under

consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

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

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

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved by family day systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority 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 and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the

797 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
798 services;

799 22. The Department of Behavioral Health and Developmental Services and facilities operated by the
800 Department for the purpose of determining an individual's fitness for employment pursuant to
801 departmental instructions;

802 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or
803 secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such
804 records information on behalf of such governing boards or administrators pursuant to a written
805 agreement with the Department of State Police;

806 24. Public institutions of higher education and nonprofit private institutions of higher education for
807 the purpose of screening individuals who are offered or accept employment;

808 25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4,
809 by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
810 higher education, for the purpose of assessing or intervening with an individual whose behavior may
811 present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal
812 history record information obtained pursuant to this section or otherwise use any record of an individual
813 beyond the purpose that such disclosure was made to the threat assessment team;

814 26. Executive directors of community services boards or the personnel director serving the
815 community services board for the purpose of determining an individual's fitness for employment,
816 approval as a sponsored residential service provider, or permission to enter into a shared living
817 arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to
818 §§ 37.2-506 and 37.2-607;

819 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of
820 determining an individual's fitness for employment, approval as a sponsored residential service provider,
821 or permission to enter into a shared living arrangement with a person receiving medical assistance
822 services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

823 28. The Commissioner of Social Services for the purpose of locating persons who owe child support
824 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the
825 name, address, demographics and social security number of the data subject shall be released;

826 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
827 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
828 purpose of determining if any applicant who accepts employment in any direct care position or requests
829 approval as a sponsored residential service provider or permission to enter into a shared living
830 arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted
831 of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with
832 mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and
833 37.2-607;

834 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
835 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
836 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

837 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
838 for the purpose of determining if any person being considered for election to any judgeship has been
839 convicted of a crime;

840 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of
841 determining an individual's fitness for employment in positions designated as sensitive under Department
842 of Human Resource Management policies developed pursuant to § 2.2-1201.1;

843 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under
844 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually
845 Violent Predators Act (§ 37.2-900 et seq.);

846 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,
847 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary
848 companies, for the conduct of investigations of applications for employment or for access to facilities,
849 by contractors, leased laborers, and other visitors;

850 35. Any employer of individuals whose employment requires that they enter the homes of others, for
851 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

852 36. Public agencies when and as required by federal or state law to investigate (i) applicants as
853 providers of adult foster care and home-based services or (ii) any individual with whom the agency is
854 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,
855 subject to the restriction that the data shall not be further disseminated by the agency to any party other
856 than a federal or state authority or court as may be required to comply with an express requirement of
857 law for such further dissemination, subject to limitations set out in subsection G;

858 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening

individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2; and

46. 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 § 15.2-1722.

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 assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange

920 for any offense specified in § 63.2-1720.

921 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be
922 limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the
923 definition of barrier crime in § 19.2-392.02.

924 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal
925 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the
926 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in
927 the request to the employer or prospective employer making the request, provided that the person on
928 whom the data is being obtained has consented in writing to the making of such request and has
929 presented a photo-identification to the employer or prospective employer. In the event no conviction data
930 is maintained on the person named in the request, the requesting employer or prospective employer shall
931 be furnished at his cost a certification to that effect. The criminal history record search shall be
932 conducted on forms provided by the Exchange.

933 I. Nothing in this section shall preclude the dissemination of a person's criminal history record
934 information pursuant to the rules of court for obtaining discovery or for review by the court.

935 **§ 37.2-431.2. Report of certain admissions for inpatient treatment forwarded to the CCRE; firearm**
936 **background check.**

937 A. Every private provider licensed by the Department that admits a patient diagnosed with
938 schizophrenia or bipolar 1 disorder for voluntary inpatient treatment shall, as soon as practicable but
939 not later than the close of business on the next following business day, report such admission to the
940 Central Criminal Records Exchange on a form provided by the Exchange.

941 B. A copy of a form sent to the Central Criminal Records Exchange pursuant to subsection A
942 regarding voluntary admissions for treatment of schizophrenia or bipolar 1 disorder shall be kept
943 confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or
944 transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange
945 with any form required by subsection A. The Department of State Police shall forward only a person's
946 eligibility to possess, purchase, or transport a firearm to the National Instant Criminal Background
947 Check System.

948 C. Prior to admitting any patient diagnosed with schizophrenia or bipolar 1 disorder for voluntary
949 inpatient treatment, a private provider shall advise the patient that he will be prohibited from
950 possessing, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3.1 upon admission to the
951 inpatient treatment facility.

952 **§ 37.2-513. Report of certain admissions for inpatient treatment forwarded to the CCRE; firearm**
953 **background check.**

954 A. Every community services board that admits a patient diagnosed with schizophrenia or bipolar 1
955 disorder for voluntary inpatient treatment shall, as soon as practicable but not later than the close of
956 business on the next following business day, report such admission to the Central Criminal Records
957 Exchange on a form provided by the Exchange.

958 B. A copy of a form sent to the Central Criminal Records Exchange pursuant to subsection A
959 regarding voluntary admissions for treatment of schizophrenia or bipolar 1 disorder shall be kept
960 confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or
961 transport a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange
962 with any form required by subsection A. The Department of State Police shall forward only a person's
963 eligibility to possess, purchase, or transport a firearm to the National Instant Criminal Background
964 Check System.

965 C. Prior to admitting any patient diagnosed with schizophrenia or bipolar 1 disorder for voluntary
966 inpatient treatment, a community services board shall advise the patient that he will be prohibited from
967 possessing, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3.1 upon admission to the
968 inpatient treatment facility.

969 **§ 37.2-616. Report of certain admissions for inpatient treatment forwarded to the CCRE; firearm**
970 **background check.**

971 A. Every behavioral health authority that admits a patient diagnosed with schizophrenia or bipolar 1
972 disorder for voluntary inpatient treatment shall, as soon as practicable but not later than the close of
973 business on the next following business day, report such admission to the Central Criminal Records
974 Exchange on a form provided by the Exchange.

975 B. A copy of a form sent to the Central Criminal Records Exchange pursuant to subsection A
976 regarding voluntary admissions for treatment of schizophrenia or bipolar 1 disorder shall be kept
977 confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or
978 transport a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange
979 with any form required by subsection A. The Department of State Police shall forward only a person's
980 eligibility to possess, purchase, or transport a firearm to the National Instant Criminal Background
981 Check System.

C. Prior to admitting any patient diagnosed with schizophrenia or bipolar 1 disorder for voluntary inpatient treatment, a behavioral health authority shall advise the patient that he will be prohibited from possessing, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3.1 upon admission to the inpatient treatment facility.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.