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CHAPTER 23.

CENTRAL CRIMINAL RECORDS EXCHANGE.

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§ 19.2-387. Exchange to operate as a division of Department of State Police; authority of Superintendent of State Police. — A. The Central Criminal Records Exchange shall operate as a separate division within the Department of State Police and shall be the sole criminal record-keeping agency of the Commonwealth, except for (i) the Department of Corrections pursuant to Chapter 10 (§ 16.1-222 et seq.) of Title 16.1, (ii) the Department of Motor Vehicles, (iii) for purposes of the DNA data bank, the Bureau of Forensic Science and (iv) for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3 and 5 of § 53.1-136, the Virginia Parole Board.

B. The Superintendent of State Police is hereby authorized to employ such personnel, establish such offices, and acquire such equipment as shall be necessary to carry out the purposes of this chapter and is also authorized to enter into agreements with other state agencies for services to be performed for it by employees of such other agencies. (Code 1950, § 19.1-19.1:1; 1970, c. 101; 1975, c. 495; 1988, c. 541; 1990, c. 669; 1993, c. 313.)

Cross references. — As to civil remedies for violation of this chapter, see § 9-194. As to criminal penalty for disseminating information in violation of this chapter, see § 9-195.

§ 19.2-388. Duties and authority of Exchange. — A. It shall be the duty of the Central Criminal Records Exchange to receive, classify and file criminal history record information as defined in § 9-169 and other records required to be reported to it by §§ 16.2-299 and 19.2-390. The Exchange is authorized to prepare and furnish to all state and local law-enforcement officials and agencies: to clerks of circuit courts, general district courts, and juvenile and domestic relations district courts; and to corrections and penal officials, forms which shall be used for the making of such reports.

B. Juvenile records received pursuant to § 16.1-299 shall be maintained separately from adult records. (Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1982, c. 33; 1993, cc. 468, 926; 1996, cc. 755, 914.)

§ 19.2-389. Dissemination of criminal history record information. —

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

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;
2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;
3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;
4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;
5. Agencies of state or federal government which are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;
6. Individuals and agencies where authorized by court order or court rule;
7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;
8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not 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;
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 § 9-169 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 (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) as a court-appointed special advocate, or (iv) with the Volunteer Emergency Families Children;

12. Administrators and board presidents of and applicants for licensure registration as a child welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of a volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to § 63.1-198.1, 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 to 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;

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

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 § 32.1-162.1, subject to the limitations set out in subsection E;

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

17. The Alcoholic Beverage Control Board 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 in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.3, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for purpose of placement, evaluation, and treatment planning;

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

Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

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

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

24. 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 maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

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

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

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

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

F. Criminal history information provided to licensed adult care residences, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the

report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

- a. Treason;
- b. Any felony;
- c. Any offense punishable as a misdemeanor under Title 54.1; or
- d. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, for violation of Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or § 18.2-119 or any similar ordinance of any county, city or town.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) after a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) after a verdict of acquittal by reason of insanity pursuant to § 19.2-182.2. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following his conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within seventy-two hours following the receipt of a warrant or *capias* for the arrest of any person on a charge of a felony, the law-enforcement agency which received the charge shall enter the accused's name and other appropriate information required by the Department of State Police into the "information system", known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The report shall include the person's name, date of birth, social security number and such other known information which the State

§ 19.2-389.1. Dissemination of juvenile record information. — Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm, (ii) to aid in the preparation of a pre-sentence or post-sentence investigation report pursuant to § 19.2-264.5 or § 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01, (iii) to aid all court service units serving juvenile delinquent offenders, (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer, and (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01. (1993, cc. 468, 926; 1996, cc. 755, 870, 914.)

Editor's note. — Acts 1996, cc. 755 and 914, cls. 7 provide: "(t)hat the provisions of this act shall apply to offenses committed and to records created and proceedings held with respect to those offenses on or after July 1, 1996."

The 1996 amendments. — The 1996 amendments by cc. 755 and 914 are identical, and deleted "and" at the end of clause (iii), inserted "and" at the end of clause (iv), and added clause (v).

The 1996 amendment by c. 870 inserted "or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01" at the end of clause (ii).

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies. — A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a

Police may require. Any unexecuted criminal process which has been entered into the VCIN system shall be removed forthwith by the entering law-enforcement agency when the criminal process has been ordered destroyed pursuant to § 19.2-76.1.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A of this section, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A of this section, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.1-135.1. Upon conviction of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, the clerk shall also submit a report to the Sex Offender Registry. The report to the Sex Offender Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the rules and regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Sex Offender Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling. (Code 1950, § 19.1-19.3; 1966, c. 669; 1968, c. 724; 1970, c. 191; 1971, Ex. Sess., c. 107; 1974, c. 575; 1975, cc. 495, 584; 1976, cc. 336, 572, 771; 1978, cc. 467, 825; 1979, c. 378; 1981, c. 529; 1982, cc. 33, 535; 1990, cc. 100, 692; 1992, c. 391; 1993, cc. 448, 468, 926; 1994, cc. 362, 428, 432; 1996, cc. 429, 755, 806, 914.)

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§ 19.2-391. Records to be made available to Exchange by state officials and agencies; duplication of records. — Each state official and agency shall make available to the Central Criminal Records Exchange such of their records as are pertinent to its functions and shall cooperate with the Exchange in the development and use of equipment and facilities on a joint basis, where feasible. No state official or agency shall maintain records which are a duplication of the records on deposit in the Central Criminal Records Exchange, except to the extent necessary for efficient internal administration of such agency. (Code 1950, § 19.1-19.4; 1966, c. 669; 1975, c. 495.)

§ 19.2-392. Fingerprints and photographs by police authorities. — All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of any person arrested by them and charged with a felony or with any misdemeanor or arrest for which is to be reported by them to the Central Criminal Records Exchange, or when a person pleads guilty or is found guilty after being summoned in accordance with § 19.2-74. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records. (Code 1950, § 19.1-19.6; 1968, c. 722; 1975, c. 495; 1978, c. 825.)

CHAPTER 23.1.

EXPUNGEMENT OF CRIMINAL RECORDS.

Sec.

- 19.2-392.1. Statement of policy.
- 19.2-392.2. Expungement of police and court records.
- 19.2-392.3. Disclosure of expunged records.

Sec.

- 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments.

§ 19.2-392.1. Statement of policy. — The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, an education and to obtain credit. This chapter is intended to protect the innocent persons who are arrested from unwarranted damage which may occur as a result of being arrested. (1977, c. 675.)

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§ 19.2-392.2. Expungement of police and court records. — A. If a person is charged with the commission of a crime and

1. Is acquitted, or

2. A nolle prosequi is taken or the charge is otherwise dismissed, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

B. The petition with a copy of the warrant or indictment if reasonably available shall be filed in the circuit court of the county or city in which the case was disposed of by acquittal or being otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the name of the arresting agency. Where this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the specific criminal charge to be expunged, the date of final disposition of the charge as set forth in the petition, the petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

C. A copy of the petition shall be served on the Commonwealth's attorney of the city or county in which the petition is filed. The Commonwealth's attorney may file an objection or answer to the petition within twenty-one days after it is served on him.

D. *Hearing by court; granting or denial of expungement.* — The court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition.

E. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

F. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of Criminal Justice Services, which Department shall, pursuant to rules and regulations adopted pursuant to § 9-190 of this Code, direct the manner by which the appropriate expungement or removal of such records shall be effected.

G. Costs shall be as provided by § 14.1-113, but shall not be recoverable against the Commonwealth. (1977, c. 675; 1983, c. 394.)

§ 19.2-392.3. Disclosure of expunged records. — A. It shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged.

B. Upon a verified petition filed by the Commonwealth's attorney alleging that the record is needed by a law-enforcement agency for purposes of employment application as an employee of a law-enforcement agency or for a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made of it.

C. Any person who willfully violates this section is guilty of a Class 1 misdemeanor. (1977, c. 675; 1978, c. 713.)

§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments. — A. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.

B. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest or criminal charge against him that has been expunged.

C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation. (1977, c. 675.)

§ 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.

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 as specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, and social security and/or any other identification number and (ii) requested and received criminal history record information by a telephone call to the State Police. Upon receipt of the request for a criminal history record information check, the State Police shall (i) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (ii) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (iii) provide the dealer with a unique reference number for that inquiry.

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

3. Except as required by subsection D of § 9-192, the State Police shall not maintain records longer than thirty days from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of twelve months.

4. Within twenty-four hours following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or

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transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

C. No dealer shall sell, rent, trade or transfer from his inventory any firearm 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 twenty-four 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 ten 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 this Commonwealth, at his option, from buying, renting or receiving a firearm from a dealer 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 § 9-192 or institute a civil action as provided in § 9-194, provided any such action is initiated within thirty 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:

"*Antique handgun or pistol*" means any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (i) is not designed or redesigned for using rimfire or conventional center-fire fixed ammunition or (ii) uses rimfire or conventional center-fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

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

"*Firearm*" means any (i) handgun or pistol having a barrel length of less than five inches which expels a projectile by action of an explosion or (ii) semi-automatic center-fire rifle or pistol which expels a projectile by action of an explosion and is provided by the manufacturer with a magazine which will hold more than twenty rounds of ammunition or designed by the manufacturer to accommodate a silencer or bayonet or equipped with a bipod, flash suppresser or folding stock.

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

I. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq., (ii) purchases by or sales to any law-enforcement officer or agent of the United States, Commonwealth or any local government, (iii) antique hand guns or pistols or (iv) transactions in any

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county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than this section.

J. All licensed firearms dealers shall collect a fee of two dollars for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of five dollars shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police on the twentieth day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades or transfers a firearm in violation of this section shall be guilty of a Class 1 misdemeanor. (1989, c. 745; 1990, cc. 594, 692.)

§ 22.1-296.2. Fingerprinting required. — As a condition of employment, the school boards of the Counties of Albemarle, Campbell, Chesterfield, Cumberland, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Greene, Hanover, Henrico, Henry, Isle of Wight, Loudoun, Louisa, Nelson, Orange, Pittsylvania, Prince William, Rockbridge, Spotsylvania, and Stafford and the Cities of Alexandria, Bristol, Charlottesville, Chesapeake, Danville, Falls Church, Fredericksburg, Hampton, Hopewell, Manassas, Newport News, Norfolk, Petersburg, Portsmouth, Radford, Richmond, Roanoke, Virginia Beach, and Winchester shall require any applicant who is offered or accepts employment after July 1, 1989, whether full-time or part-time, permanent, or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant; however, such applicant may be required to pay the cost of such fingerprinting or criminal records check at the discretion of the school board. From such funds as may be available for this purpose, the school board may pay for the fingerprinting or criminal records check.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the school board whether or not the applicant has ever been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, failing to secure medical attention for an injured child, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, neglect of children as set out in § 18.2-371.1, or obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, use of a firearm in the commission of a felony as set out in § 18.2-53.1, or an equivalent offense in another state. The Central Criminal Records Exchange shall not disclose information to the school board regarding charges or convictions of any crimes not specified in this section. If an applicant is denied employment because of information appearing on his criminal history record, the school board shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant. The information provided to the school board shall not be disseminated except as provided in this section. (1988, c. 851; 1989, c. 544; 1990, c. 766; 1991, c. 342; 1992, cc. 641, 791; 1993, cc. 210, 458; 1994, cc. 232, 782; 1995, cc. 731, 781, 809; 1996, cc. 396, 467.)

§ 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records checks. — As a condition of employment, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education shall require any applicant who accepts employment after July 1, 1997, whether full-time or part-time, permanent or temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall report to the governing board or administrator that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of the following crimes or their equivalent if from another jurisdiction: murder, abduction for immoral purposes as set out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, failing to secure medical attention for an injured child, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, neglect of children as set out in § 18.2-371.1, or obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, possession or distribution of drugs as set out in

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Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, use of a firearm in the commission of a felony as set out in § 18.2-53.1, or an equivalent offense in another state.

The Central Criminal Records Exchange shall not disclose information to the governing board or administrator regarding charges or convictions of any crimes. 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 request furnish the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the governing board or administrator shall not be disseminated except as provided in this section.

In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State Police may assess a fee for responding to requests

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CHAPTER 27.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES; BOARD.

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ARTICLE 1.

General Provisions.

§ 9-167. Department created. — On and after July one, nineteen hundred eighty-two, the Criminal Justice Services Commission, the Division of Justice and Crime Prevention and the Council on Criminal Justice are abolished and there is hereby created a Department of Criminal Justice Services in the executive department. (1981, c. 632.)

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§ 9-168. Board established; Committee on Training established; appointment; terms; vacancies; members not disqualified from holding other offices; designation of chairman; expenses; meetings; reports. —
A. There is hereby created the Criminal Justice Services Board. The Board shall be composed of twenty-one members as set out below. Five members of the Board shall be as follows: the Chief Justice of the Supreme Court of Virginia, or his designee; the Attorney General of Virginia, or his designee; the Superintendent of the Department of State Police; the Director of the Department of Corrections; and the Executive Secretary of the Supreme Court of Virginia. In those instances in which the Executive Secretary of the Supreme Court of Virginia, the Superintendent of the Department of State Police, or the Director of the Department of Corrections will be unavoidably absent from a board meeting, he may appoint a member of his staff to represent him at the meeting. Twelve members shall be appointed by the Governor from among residents of this Commonwealth who are representative of the broad categories of State and local governments, criminal justice systems, and law-enforcement agencies, including but not limited to, police officials, sheriffs, Commonwealth's attorneys, defense counsel, the judiciary, correctional and rehabilitative activities, and other locally elected and appointed administrative and legislative officials, provided that among these twelve members there shall be two sheriffs representing the Virginia State Sheriffs Association selected from among names submitted by the Association; two representatives of the Chiefs of Police Association selected from among names submitted by the Association; one Commonwealth's Attorney selected from among names submitted by the Association for Commonwealth's Attorneys; one person who is a mayor, city or town manager, or member of a city or town council representing the Virginia Municipal League selected from among names submitted by the League; and one person who is a county executive, manager, or member of a county board of supervisors representing the Virginia Association of Counties selected from among names submitted by the Association. The additional four members of the Board shall be members of the General Assembly appointed by

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the chairmen of legislative committees as follows: one member of the Appropriations Committee of the House of Delegates; one member of the Committee on Finance of the Senate; one member of the Committee for Courts of Justice of the House of Delegates, and one member of the Committee for Courts of Justice of the Senate. The legislative members shall serve for the terms for which they were elected and shall serve as ex officio members without a vote.

B. There is further created a permanent Committee on Training under the Board which shall be the policy-making body responsible to the Board for effecting the provisions of subsections 2 through 11 of § 9-170 herein. The Committee on Training shall be composed of eleven members of the Board as follows: the Superintendent of the Department of State Police; the Director of the Department of Corrections; the Executive Secretary of the Supreme Court of Virginia; the two sheriffs representing the Virginia State Sheriffs Association; the two representatives of the Chiefs of Police Association; the Commonwealth's Attorney representing the Association for Commonwealth's Attorneys; the representative of the Virginia Municipal League; the representative of the Virginia Association of Counties; and one member designated by the Chairman of the Board from among the other appointments made by the Governor. The Committee on Training shall annually elect its chairman from among its members.

C. The members of the Board appointed by the Governor shall serve for terms of four years, provided that no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. Notwithstanding anything in this chapter to the contrary, the terms of members initially appointed to the Board by the Governor upon its establishment shall be: six for three years and six for four years. The Governor, at the time of appointment, shall designate which of the terms are respectively for three and four years. Any vacancy on the Board shall be filled in the same manner as the original appointment, but for the unexpired term.

D. The Governor shall appoint a chairman of the Board, and the Board shall designate one or more vice-chairmen from among its members, who shall serve at the pleasure of the Board.

E. Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Board shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

F. Members of the Board shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service and to receive such compensation as is provided in § 2.1-20.3.

G. The Board shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Board.

H. The Board shall report annually to the Governor and General Assembly on its activities, and may make such other reports as it deems advisable.

I. The Board may adopt bylaws for its operation. (1981, c. 632.)

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§ 9-169. **Definitions.** — The following words, whenever used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 of this Code, shall have the following meanings, unless the context otherwise requires:

1. "*Administration of criminal justice*" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

2. "*Board*" means the Criminal Justice Services Board.

3. "*Criminal justice agency*" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so.

4. "*Criminal history record information*" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of this Code, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

5. "*Correctional status information*" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

6. "*Criminal justice information system*" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

7. "*Department*" means the Department of Criminal Justice Services.

8. "*Dissemination*" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

9. "*Law-enforcement officer*" means any full-time employee of a police department or sheriff's office which 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 this Commonwealth, and shall include any member of the Enforcement or Inspection Division of the Department of Alcoholic Beverage Control vested with police authority, any police agent appointed under the provisions of § 56-353 or any game warden who is a full-time sworn member of the enforcement division of the Commission of Game and Inland Fisheries.

10. "*Conviction data*" means information in the custody of any criminal justice agency relating to a judgment of conviction and the consequences arising therefrom, in any court. (1981, c. 632; 1982, c. 419; 1983, c. 357.)

§ 9-170. (Effective July 1, 1997) Powers and duties of the Board and the Department. — The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power to:

1. Promulgate regulations, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within this Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;
2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer (i) in permanent positions, and (ii) in temporary or probationary status, and establish the time required for completion of such training;
3. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;
- 3a. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;
4. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2 above, prior to assignment of any such officers to undercover investigation work. Failure to complete such training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;
5. Establish compulsory minimum entry level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120, and to establish the time required for completion of such training;
6. Establish compulsory minimum entry level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time required for the completion of such training;
7. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons employed as jailers or custodial officers by local criminal justice agencies and for correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the time required for completion of such training;
8. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;

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9. Consult and cooperate with counties, municipalities, agencies of this Commonwealth, other state and federal governmental agencies, and with universities, colleges, junior colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;
10. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;
11. Establish and maintain police training programs through such agencies and institutions as the Board may deem appropriate;
12. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;
13. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;
14. Make recommendations concerning any matter within its purview pursuant to this chapter;
15. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;
16. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations shall have the authority to require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;
17. Conduct audits as required by § 9-186;
18. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;
19. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;
20. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;
21. Issue regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;
22. The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the regulations of the National Crime Information Center. Notwithstanding any other provision to the contrary in this chapter, the Central Criminal Records Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth, and the Department shall continue to be responsible for the management and operation of such exchange;

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23. Operate a statewide criminal justice statistical analysis center, which shall maintain a unified criminal justice data system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

24. Develop a comprehensive statewide long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

25. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

26. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

27. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

28. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

29. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

30. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

31. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

32. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

33. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure

and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

34. Certify and decertify law-enforcement officers in accordance with §§ 15.1-131.8:1 and 15.1-131.8:2;

35. Provide forensic laboratory services as detailed in Article 4 (§ 9-196.1 et seq.) of this chapter.

36. Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse cases; and

37. Perform such other acts as may be necessary or convenient for the effective performance of its duties. (1981, c. 632; 1982, c. 473; 1984, cc. 515; 779; 1986, c. 128; 1988, cc. 46, 560; 1990, c. 632; 1991, c. 345; 1994, cc. 850, 905; 1996, cc. 154, 866, 952.)

§ 9-171. Administration of federal programs. — The Criminal Justice Services Board is hereby designated as the supervisory board and the Department is designated as the planning and coordinating agency responsible for the implementation and administration of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, as well as any other

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federal programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control throughout the Commonwealth. The Board shall continue the activities of and succeed the Council on Criminal Justice and the Department shall continue the activities of and succeed the Division of Justice and Crime Prevention. (1981, c. 632.)

§ 9-172. Plans and data from planning districts. — Each planning district commission shall prepare and submit to the Department plans and data for strengthening and improving law enforcement and the administration of criminal justice within the planning district which shall be subject to the approval of the Department for purposes of determining the eligibility of such planning district commission and local units of government therein to participate in funds and grants available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat 197) as amended, or such State or other federal funds as may be made available for like purposes. Such plans and data shall be prepared in accordance with rules and regulations adopted and administered by the Department and shall be updated periodically, as the Department may require. (1981, c. 632.)

§ 9-173. Exemptions of certain persons from certain training requirements. — The Director of the Department, with the approval of the Board, may exempt a chief of police or any law-enforcement officer or any courthouse and courtroom security officer, jailer, or custodial officer or corrections officer of the Commonwealth or any political subdivision who has had previous experience and training as a law-enforcement officer, courthouse and courtroom security officer, jailer or custodial officer or corrections officer with any law-enforcement or custodial agency, from the mandatory attendance of any or all courses which are required for the successful completion of the compulsory minimum training standards established by the Board. The exemption authorized by this section shall be available to all law-enforcement officers, courthouse and courtroom security officers, jailers and custodial officers, and corrections officers, regardless of any officer's date of initial employment, and shall entitle such officer exempted from compliance with compulsory minimum training standards pursuant to subsections 2, 5, and 6 of § 9-170 to be deemed in compliance with such sections and eligible for the minimum salary established by § 14.1-73.2, provided that such officer is otherwise qualified under § 14.1-73.2. (1981, c. 632.)

ARTICLE 1.1.

Detoxification Center Program.

§ 9-173.1. Establishment of programs; purpose; rules and regulations. — A. The Department of Criminal Justice Services shall promulgate rules and regulations, no later than October 1, 1982, the purpose of which shall be to make funds available to local units of government for establishing, operating and maintaining or contracting for local or regional detoxification center programs to provide an alternative to arresting and jailing public inebriates.

B. The Department of Criminal Justice Services shall promulgate rules and regulations for the implementation of such programs.

C. Detoxification center programs established or operated pursuant to this section shall be governed solely by the rules and regulations promulgated by the Department of Criminal Justice Services therefor. The Department of Criminal Justice Services shall establish a grant procedure to govern the award of funds as may be appropriated for such purposes to local units of government. (1982, c. 666.)

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§ 9-173.2. **Definitions.** — The following terms, whenever used in this article, shall have the following meanings:

"*Detoxification center program*" means any program or procedure whereby a local governing body, or any combination of local governing bodies, establishes, operates or maintains or otherwise arranges or contracts for the establishment, operation or maintenance of a facility, whether operated by the locality or by a private agency, for the placement of public inebriates as an alternative to jailing such persons. A judge of the district court in the jurisdiction in which the facility will be located shall approve specific methods and means of transportation available to law-enforcement officers for transporting public inebriates to such programs.

"*Public inebriate*" means any person who is drunk in a public place and would be subject to arrest for drunkenness under § 18.2-388. (1982, c. 666.)

ARTICLE 2.

Department of Criminal Justice Services.

§ 9-174. **Department of Criminal Justice Services.** — There shall be a Department of Criminal Justice Services in the executive department responsible to the Secretary of Public Safety. The Department shall be under the supervision and management of a Director. (1981, c. 632.)

§ 9-175. **Appointment of Director.** — The Governor shall appoint the Director of the Department, subject to confirmation by the General Assembly, and he shall hold his office at the pleasure of the Governor. (1981, c. 632.)

§ 9-176. **Powers of Director.** — The Director of the Department shall have the following powers:

A. To accept grants from the United States government and agencies and instrumentalities thereof, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

B. To do all acts necessary or convenient to carry out the purpose of this chapter and to assist the Board in carrying out its responsibilities under § 9-170.

C. The Director shall be charged with executive and administrative responsibility to (i) carry out the specific duties imposed on the Department under § 9-170 and (ii) maintain appropriate liaison with federal, State and local agencies and units of government, or combinations thereof, in order that all programs, projects and activities for strengthening and improving law enforcement and the administration of criminal justice may function effectively from national to local levels.

D. The Director shall employ and fix the salaries of such personnel and enter into contracts for services as may be necessary in the performance of the Department's functions. The salaries of such personnel shall be fixed in accordance with the standards of classification of chapter 10 (§ 2.1-110 et seq.) of Title 2.1 of this Code.

E. The Director under the direction and control of the Governor shall exercise such powers and perform such duties as are conferred by law upon him, and he shall perform such other duties as may be required of him by the Governor, the Secretary of Public Safety, and the Board. (1981, c. 632.)

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§ 9-177. Executive Director of the Board. — The Director shall be the Executive Director of the Board, but shall not be a member thereof. (1981, c. 632.)

§ 9-178. Vested with authority of Board. — The Director shall be vested with all the authority of the Board when it is not in session, subject to such rules and regulations as may be prescribed by the Board. (1981, c. 632.)

§ 9-179. Law-enforcement officers serving on July 1, 1971; officers appointed under § 56-353 prior to July 1, 1982. — The provisions of this chapter shall not be construed to require law-enforcement officers serving under permanent appointment on July 1, 1971, nor require officers serving under permanent appointment under the provisions of § 56-353 appointed prior to July 1, 1982, to meet the compulsory minimum training standards provided for in subsection 2 of § 9-170. Nor shall failure of any such officer to meet such standards make him ineligible for any promotional examination for which he is otherwise eligible, except that any law-enforcement officer designated under the provisions of § 53-168.1 to provide courthouse and courtroom security shall be required to meet the standards provided under subsection 5 of § 9-170. Any full-time deputy sheriff who is a law-enforcement officer and who is exempted from the compulsory minimum training standards under this section shall be eligible for the minimum salary established by § 14.1-73.2 of this Code. (1981, c. 632; 1982, c. 419.)

§ 9-180. Compliance with minimum training standards by officers employed after July 1, 1971 and by officers appointed under § 56-353 after July 1, 1982. — Every law-enforcement officer employed after July 1, 1971, and officers appointed under the provisions of § 56-353 after July 1, 1982, shall comply with the compulsory minimum training standards established by the Board within a period of time fixed by the Board pursuant to Chapter 1.1:1 of Title 9 of this Code (§ 9-6.14:1 et seq.). The Board shall have the power to require law-enforcement agencies of the Commonwealth and its political subdivisions to submit rosters of their personnel and pertinent data with regard to the training status of such personnel. (1981, c. 632; 1982, c. 419.)

§ 9-181. Forfeiture of office for failing to meet training standards; termination of salary and benefits; extension of term. — A. Every person required to comply with the training standards promulgated by the Board excluding private security services business personnel, who fails to comply with the standards within the time limits established by the rules and regulations promulgated by the Board shall forthwith forfeit his office, upon receipt of notice, as provided in subsection B hereof. Such forfeiture shall create a vacancy in the office and all pay and allowances shall cease.

B. Notice shall be by certified mail, in a form approved by the Board, to the officer failing to comply and the chief administrative officer of the agency

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employing such officer. Notice shall be mailed to the State Compensation Board, if approval of that Board of the necessity of his office or compensation is required by law.

C. If the necessity for the officer or compensation of such officer is required by law to be approved by the State Compensation Board, that Board, upon receipt of notice as provided in subsection B hereof, shall notify the Comptroller, who shall cause payment of his compensation to cease forthwith as of the date of receipt by the State Compensation Board of the notice.

D. It shall be the duty of the chief administrative officer of any agency employing a person who fails to meet such training standards to enforce the provisions of §§ 9-180 and 9-181. Willful failure to do so shall constitute misfeasance of office, and, in addition, upon conviction, shall constitute a Class 3 misdemeanor. (1981, c. 632.)

§ 9-182. Compulsory minimum training standards for private security services business personnel. — A. The Board shall have the power to issue regulations pursuant to chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of this Code, establishing compulsory minimum training standards for persons employed by private security services businesses as armored car personnel, or as couriers, guards, guard dog handlers, private investigators or private detectives as the foregoing classifications are defined in § 54-729.27 and may include provisions in such regulations delegating to its staff the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and its regulations. In establishing by regulation compulsory minimum training standards for each of the foregoing classifications, the Board shall be guided by the policy of this section which is to secure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section and chapter 17.3 (§ 54-729.27 et seq.) of Title 54 of this Code. Such regulations may provide for exemption from such training for persons having previous employment as law-enforcement officers for a state or the federal government; provided no such exemption shall be granted to such persons having less than five continuous years of such employment, nor shall such exemption be provided for any person whose employment as a law-enforcement officer was terminated because of his misconduct or incompetence.

B. In promulgating its regulations establishing compulsory minimum training standards for persons employed by private security services businesses, the Board shall seek the advice of the Private Security Services Advisory Committee established pursuant to § 54-729.30. (1981, c. 632.)

§ 9-183. Direct operational responsibilities in law enforcement not authorized. — Nothing in this chapter shall be construed as authorizing the Department of Criminal Justice Services to undertake direct operational responsibilities in law enforcement or the administration of criminal justice. (1981, c. 632.)

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ARTICLE 3.

Criminal Justice Information System.

§ 9-184. **Application and construction of article.** — A. This applies to original or copied criminal history record information maintained by a criminal justice agency of (i) the Commonwealth of Virginia or its political subdivisions, and (ii) the United States or another state or its political subdivisions which exchange such information with an agency covered in (i), but only to the extent of that exchange.

B. The provisions of this article do not apply to original or copied (i) records of entry, such as police blotters, maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name, (ii) court records of public criminal proceedings, including opinions and published compilations thereof, (iii) records of traffic offenses disseminated to or maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses, (iv) statistical or analytical records or reports in which individuals are not identified and from which their identities cannot be ascertained, (v) announcements of executive clemency, pardons, or removals of political disabilities, (vi) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons, (vii) criminal justice intelligence information, or (viii) criminal justice investigative information.

C. Nothing contained in this article shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system. (1981, c. 632.)

§ 9-185. **Establishment of Statewide criminal justice information system; duties of Board generally; assistance of other agencies.** — The Board shall provide for the coordination of the operation of a Statewide comprehensive criminal justice information system for the exchange of criminal history record information among the criminal justice agencies of the State and its political subdivisions. The Board shall develop standards and goals for such system, define the requirements of such system, define system objectives, recommend development priorities and plans, review development efforts, coordinate the needs and interests of the criminal justice community, outline agency responsibilities, appoint ad hoc advisory committees, and provide for the participation of the Statewide comprehensive criminal justice information system in interstate criminal justice systems. The Board may request technical assistance of any State agency, board, or other body and such State entities shall render such assistance as is reasonably required. (1981, c. 632.)

§ 9-186. **Annual audits.** — A. The Board shall ensure that annual audits are conducted of a representative sample of State and local criminal justice agencies to ensure compliance with this article and the regulations of the Board. The Board shall issue such regulations as may be necessary for the conduct of audits, the retention of records to facilitate such audits, the determination of necessary corrective actions, and the reporting of corrective actions taken.

B. The results of such audits together with a summary of any necessary corrective actions shall be included in the Board annual report to the Governor and General Assembly. (1981, c. 632.)

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§ 9-187. Information to be disseminated only in accordance with § 19.2-389. — Criminal history record information shall be disseminated, whether directly or through an intermediary, only in accordance with § 19.2-389. (1981, c. 632.)

§ 9-188. Regulations and procedures. — A. The Board shall issue regulations and procedures for the interstate dissemination of criminal history record information by which criminal justice agencies of the Commonwealth shall insure that the limitations on dissemination of criminal history record information set forth in § 19.2-389 are accepted by recipients and will remain operative in the event of further dissemination.

B. The Board shall issue regulations and procedures for the validation of an interstate recipient's right to obtain criminal history record information from criminal justice agencies of the Commonwealth. (1981, c. 632.)

§ 9-189. Participation of State and local agencies in interstate system; access to such system limited. — A. The Board shall regulate participation of State and local agencies in any interstate system for the exchange of criminal history record information and shall be responsible for assuring the consistency of such participation with the terms and purposes of this article. The Board shall have no authority to compel any agency to participate in any such interstate system.

B. Direct access to any such system shall be limited to such criminal justice agencies as are expressly designated for that purpose by the Board. (1981, c. 632.)

§ 9-190. Sealing of criminal history record information. — A. The Board shall adopt procedures reasonably designed (i) to insure prompt sealing or purging of criminal history record information when required by State or federal statute, regulation or court order, and (ii) to permit opening of sealed information under conditions authorized by law. (1981, c. 632.)

§ 9-191. Procedures to be adopted by agencies maintaining criminal justice information systems. — Each criminal justice agency maintaining and operating a criminal justice information system shall adopt procedures reasonably designed to insure:

A. The physical security of the system and the prevention of unauthorized disclosure of the information in the system;

B. The timeliness and accuracy of information in the system collected after November 1, 1976;

C. That all criminal justice agencies to which criminal offender record information is disseminated or from which it is collected are currently and accurately informed of any correction, deletion, or revision of such information;

D. Prompt purging or sealing of criminal offender record information when required by state or federal statute, regulation, or court order;

E. Use or dissemination of criminal offender record information by criminal justice agency personnel only after it has been determined to be the most accurate and complete information available to the criminal justice agency. (1981, c. 632.)

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§ 9-192. Individual's right of access to and review and correction of information. — A. Any individual who believes that criminal history record information is being maintained about him by Central Criminal Records Exchange, or by the arresting law-enforcement agency in the case of offenses not required to be reported to such Exchange, shall have the right to inspect a copy of such criminal history record information at the Exchange or the arresting law-enforcement agency, respectively, for the purpose of ascertaining the completeness and accuracy of such information. The individual's right to access and review shall not extend to any information or data other than that defined in subsection 4 of § 9-169.

B. The Board shall issue regulations with respect to an individual's right to access and review criminal history record information about himself reported to Central Criminal Records Exchange or, if not reported to the Exchange, maintained by the arresting law-enforcement agency. Such regulations shall provide for public notice of the right of access; access to criminal history record information by an individual or an attorney-at-law acting for an individual; identification required; places and times for review; review of Virginia records by individuals located in other states; assistance in understanding the record; obtaining a copy for purposes of initiating a challenge to the record; procedures for investigation of alleged incompleteness or inaccuracy; completion or correction of records if indicated; and notification of the individuals and agencies to whom an inaccurate or incomplete record has been disseminated.

C. If an individual believes information maintained about him to be inaccurate or incomplete, he may request the agency having custody or control of the records to purge, modify, or supplement them. Should the agency decline to so act, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual may request, in writing, review by the Board. The Board or its designee shall, in each case in which it finds prima facie basis for a complaint, conduct a hearing at which the individual may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings and conclusions shall be issued. Should the record in question be found to be inaccurate or incomplete, the criminal justice agency or agencies maintaining such information shall purge, modify, or supplement it in accordance with the findings and conclusions of the Board. Notification of purging, modification, or supplementation of criminal history record information shall be promptly made by the criminal justice agency maintaining such previously inaccurate information to any individuals or agencies to which the information in question was communicated, as well as to the individual whose records have been ordered so altered.

D. Criminal justice agencies shall maintain records of all agencies to whom criminal history record information was disseminated and the date upon which such information was disseminated and such other record matter for the number of years required by rules and regulations of the Board.

E. Any individual or agency aggrieved by any order or decision of the Board may appeal such order or decision to the circuit court of the jurisdiction in which the Board has its administrative headquarters. (1981, c. 632.)

§ 9-193. Information not subject to review and correction of information. — A. Investigative information not connected with a criminal prosecution or litigation including investigations of rule infractions in correctional institutions, and background checks for security clearances shall not be subject to review and correction of information by data subjects.

B. Correctional information about an offender including counselor reports, diagnostic summaries and other sensitive information not explicitly classified as criminal history record information shall not be subject to review and correction of information by data subjects. (1981, c. 632.)

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§ 9-194. Civil remedies for violation of this chapter or chapter 23 of Title 19.2. — A. Any person may institute a civil action in the circuit court of the jurisdiction in which the Board has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, for actual damages resulting from violation of this article or to restrain any violation thereof, or both.

B. Any person may bring an action in the circuit court of the jurisdiction in which the Board has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, against any person who has engaged, is engaged, or is about to engage in any acts or practices in violation of chapter 23 (§ 19.2-387 et seq.) of Title 19.2, chapter 27 (§ 9-167 et seq.) of Title 9 or rules or regulations of the Board to obtain appropriate, equitable relief.

C. This section shall not be construed as constituting a waiver of the defense of sovereign immunity. (1961, c. 632.)

§ 9-195. Criminal penalty for violation. — 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 to any agency or person in violation of this article or chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall be guilty of a Class 2 misdemeanor. (1961, c. 632.)

§ 9-196. Article to control over other laws; exceptions; application of chapter 1.1:1 of this title. — A. In the event any provisions of this article shall conflict with other provisions of law, the provision of this article shall control, except as provided in paragraph B hereof.

B. Notwithstanding the provisions of paragraph A hereof, this article shall not alter, amend, or supersede any provisions of the Code of Virginia relating to the collection, storage, dissemination, or use of records of juveniles.

C. Insofar as it is consistent with this article, chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of this Code shall control. (1981, c. 632.)

* * *

§ 52-8.3. Disclosure of criminal investigative records and reports; penalty. — Any person employed by a law-enforcement agency or other governmental agency within the Commonwealth who has or has had access in an official capacity to an official written record or report submitted in confidence to the Department of State Police relating to an ongoing criminal investigation, and who uses or knowingly permits another to use such record or report for any purpose not consistent with the exemptions permitted in § 2.1-342, or other provision of state law, shall be guilty of a Class 2 misdemeanor.

The provisions of this section shall not be construed to impede or prohibit full access to information concerning the existence of any criminal investigation or to other verbal disclosures permitted by state police operating procedures. (1981, c. 238.)

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CHAPTER 7.

VIRGINIA PUBLIC RECORDS ACT.

- | Sec. | Sec. |
|--|---|
| 42.1-76. Legislative intent; title of chapter. | 42.1-85. Duties of State Librarian; agencies to cooperate. |
| 42.1-77. Definitions. | 42.1-86. Program to select and preserve important records; availability to public; security copies. |
| 42.1-78. Confidentiality safeguarded. | 42.1-87. Where records kept; duties of agencies; repair, etc., of record books; agency heads not divested of certain authority. |
| 42.1-79. Records management function vested in Board; State Library to be official custodian; State Archivist. | 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance. |
| 42.1-80. State Public Records Advisory Committee created; members; chairman and vice-chairman; compensation. | 42.1-89. Petition and court order for return of public records not in authorized possession. |
| 42.1-81. Powers and responsibilities of Committee. | 42.1-90. Seizure of public records not in authorized possession. |
| 42.1-82. Duties and powers of Library Board. | 42.1-91. Development of disaster plan. |
| 42.1-83. Program for inventorying, scheduling, microfilming records; records of counties and cities; storage of records. | |
| 42.1-84. Same; records of agencies and subdivisions not covered under § 42.1-83. | |

§ 42.1-76. Legislative intent; title of chapter. — The General Assembly intends by this act to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the State.

This chapter may be cited as the Virginia Public Records Act. (1976, c. 746.)

§ 42.1-77. Definitions. — As used in this chapter:

A. "Agency" shall mean all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and shall include the offices of constitutional officers.

B. "Archival quality" shall mean a quality of reproduction consistent with reproduction standards specified by the National Micrographics Association, American Standards Association or National Bureau of Standards.

C. "Board" shall mean the State Library Board.

D. "Committee" shall mean the State Public Records Advisory Committee.

E. "Custodian" shall mean the public official in charge of an office having public records.

F. "State Librarian" shall mean the State Librarian or his designated representative.

G. "Public official" shall mean all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the State government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the State government or its political subdivisions.

H. "Public records" shall mean all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps,

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other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by any agency of the State government or its political subdivisions.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of public records as used in this chapter.

I. "*Archival records*" shall mean records of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of those services and activities mandated by law. In appraisal of public records deemed archival, the terms "administrative," "legal," "fiscal," and "historical" shall be defined as:

1. "*Administrative value*": Records shall be deemed of administrative value if they have utility in the operation of an agency.

2. "*Legal value*": Records shall be deemed of legal value when they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

3. "*Fiscal value*": Records shall be deemed of fiscal value so long as they are needed to document and verify financial authorizations, obligations and transactions.

4. "*Historical value*": Records shall be deemed of historical value when they contain unique information, regardless of age, which provides understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry. (1976, c. 746; 1977, c. 501; 1981, c. 637.)

§ 42.1-78. **Confidentiality safeguarded.** — Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter and no provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. (1976, c. 746; 1979, c. 110.)

§ 42.1-79. **Records management function vested in Board; State Library to be official custodian; State Archivist.** — The archival and records management function shall be vested in the State Library Board. The State Library shall be the official custodian and trustee for the State of all public records of whatever kind which are transferred to it from any public office of the State or any political subdivision thereof.

The State Library Board shall name a State Archivist who shall perform such functions as the State Library Board assigns. (1976, c. 746.)

§ 42.1-80. **State Public Records Advisory Committee created; members; chairman and vice-chairman; compensation.** — There is hereby created a State Public Records Advisory Committee. The Committee shall consist of ten members. The Committee membership shall include the Secretary of Administration and Finance, the State Librarian, the State Health Commissioner, the State Highway and Transportation Commissioner, the Director of the Division of Automated Data Processing, the Auditor of Public Accounts, the Executive Secretary of the Supreme Court, or their designated representatives and three members to be appointed by the Governor from the State at large. The gubernatorial appointments shall include two clerks of

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courts of record and a member of a local governing body. Those members appointed by the Governor shall remain members of the Committee for a term coincident with that of the Governor making the appointment, or until their successors shall be appointed and qualified. The Committee shall elect annually from its membership a chairman and vice-chairman. Members of the Committee shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. (1976, c. 746; 1977, c. 501.)

§ 42.1-81. Powers and responsibilities of Committee. — The Committee shall have responsibility for proposing to the State Library Board rules, regulations and standards, not inconsistent with law, for the purpose of establishing uniform guidelines for the management and preservation of public records throughout the State. The Committee shall have the power to appoint such subcommittees and advisory bodies as it deems advisable. The Committee shall be assisted in the execution of its responsibilities by the State Librarian. (1976, c. 746.)

§ 42.1-82. Duties and powers of Library Board. — The State Library Board shall with the advice of the Committee:

A. Issue regulations designed to facilitate the creation, preservation, storage, filing, microfilming, management and destruction of public records by all agencies. Such regulations shall establish procedures for records management containing recommendations for the retention, disposal or other disposition of public records; procedures for the physical destruction or other reproduction of records proposed for disposal; and standards for the view to the disposal of the original records. Such standards shall relate to the quality of film used, preparation of the records for filming, proper identification of the records so that any individual document or series of documents can be located on the film with reasonable facility and that the copies contain all significant record detail, to the end that the photographic or microphotographic copies shall be of archival quality.

B. Issue regulations specifying permissible qualities of paper, ink and other materials to be used by agencies for public record purposes. The Board shall determine the specifications for and shall select and make available to all agencies lists of approved papers, photographic materials, ink, typewriter ribbons, carbon papers, stamping pads or other writing devices for different classes of public records, and only those approved may be purchased for use in the making of such records, except that these regulations and specifications shall not apply to clerks of courts of record.

C. Provide assistance to agencies in determining what records no longer have administrative, legal, fiscal or historical value and should be destroyed or disposed of in another manner. Each public official having in his custody official records shall assist the Board in the preparation of an inventory of all public records in his custody and in preparing a suggested schedule for retention and disposition of such records. No land or personal property book shall be destroyed without having first offered it to the State Library for preservation.

All records created prior to the Constitution of nineteen hundred two that are declared archival may be transferred to the archives. (1976, c. 746; 1977, c. 501; 1981, c. 637.)

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§ 42.1-83. Program for inventorying, scheduling, microfilming records; records of counties and cities; storage of records. — The State Library Board shall formulate and execute a program to inventory, schedule, and microfilm official records of counties and cities which it determines have permanent value and to provide safe storage for microfilm copies of such records, and to give advice and assistance to local officials in their programs for creating, preserving, filing and making available public records in their custody.

Any original records shall be either stored in the State Library or in the locality at the decision of the local officials responsible for maintaining public records. Any original records shall be returned to the locality upon the written demand of the local officials responsible for maintaining local public records. Microfilm shall be stored in the State Library but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records. (1972, c. 555; 1976, c. 746.)

§ 42.1-84. Same; records of agencies and subdivisions not covered under § 42.1-83. — The State Library Board may formulate and execute a program of inventorying, repairing, and microfilming for security purposes the public records of the agencies and subdivisions not covered under the program established under § 42.1-83 which it determines have permanent value, and of providing safe storage of microfilm copies of such records. (1976, c. 746.)

§ 42.1-85. Duties of State Librarian; agencies to cooperate. — The State Librarian shall administer a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of public records consistent with rules, regulations or standards promulgated by the State Library Board, including operations of a records center or centers. It shall be the duty of the State Librarian to establish procedures and techniques for the effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices, including the use of space, equipment, and supplies employed in creating, maintaining and servicing records.

It shall be the duty of any agency with public records to cooperate with the State Librarian in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. (1976, c. 746.)

§ 42.1-86. Program to select and preserve important records; availability to public; security copies. — In cooperation with the head of each agency, the State Librarian shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and for the protection of the rights and interests of persons. He shall provide for preserving, classifying, arranging and indexing so that such records are made available to the public and shall make or cause to be made security copies or designate as security copies existing copies of such essential public records. Security copies shall be of archival quality and such copies made by photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium and shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Such security copies shall be preserved in such place and manner of safekeeping as prescribed by the State Library Board and provided by the Governor. Those public records deemed unnecessary for the transaction of the business of any agency, yet deemed to be of administrative, legal, fiscal or historical value, may be transferred with

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the consent of the State Librarian to the custody of the State Library. No agency shall destroy, discard, sell or give away public records without first offering them to the State Library for preservation. (1976, c. 746; 1980, c. 365.)

§ 42.1-87. Where records kept; duties of agencies; repair, etc., of record books; agency heads not divested of certain authority. — Custodians of public records shall keep them in fireproof safes, vaults or in rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to cooperate with the State Library in complying with rules and regulations promulgated by the Board. Each agency shall establish and maintain an active and continuing program for the economic and efficient management of records.

Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the State may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty. (1976, c. 746.)

§ 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance. — Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to the State Library, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or State Librarian to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor. (1976, c. 746.)

§ 42.1-89. Petition and court order for return of public records not in authorized possession. — The State Librarian or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public

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records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures. (1975, c. 180; 1976, c. 746.)

§ 42.1-90. **Seizure of public records not in authorized possession.** — A. At any time after the filing of the petition set out in § 42.1-89 or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 180; 1976, c. 746.)

§ 42.1-91. **Development of disaster plan.** — The State Library shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § 44-146.16. This plan shall be coordinated with the Office of Emergency Services and copies shall be distributed to all agency heads. The personnel of the Library shall be responsible for coordinating emergency recovery operations when public records are affected. (1981, c. 637.)

§ 2.1-340 ADMINISTRATION OF THE GOVERNMENT GENERALLY § 2.1-341

CHAPTER 21.

VIRGINIA FREEDOM OF INFORMATION ACT.

Sec.	Sec.
2.1-340. Short title.	2.1-343. Meetings to be public except as otherwise provided; minutes; information as to time and place.
2.1-340.1. Policy of chapter.	2.1-344. Executive or closed meetings.
2.1-341. Definitions.	2.1-345. Agencies to which chapter inapplicable.
2.1-341.1. Notice of chapter.	2.1-346. Proceedings for enforcement of chapter.
2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.	2.1-346.1. Violations and penalties.

§ 2.1-340. **Short title.** — This chapter may be cited as "The Virginia Freedom of Information Act." (1968, c. 479.)

§ 2.1-340.1. Policy of chapter. — By enacting this chapter the General Assembly ensures the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. Committees or subcommittees of public bodies created to perform delegated functions of a public body or to advise a public body shall also conduct their meetings and business pursuant to this chapter. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless the public body specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all reports, documents and other material shall be available for disclosure upon request.

This chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person.

Any ordinance adopted by a local governing body which conflicts with the provisions of this chapter shall be void. (1976, c. 467; 1989, c. 358.)

§ 2.1-341. Definitions. — The following terms, whenever used or referred to in this chapter, shall have the following meanings, unless a different meaning clearly appears from the context:

"Executive meeting" or *"closed meeting"* means a meeting from which the public is excluded.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, as a body or entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, of less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the body or entity. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.1-343.1 or as may specifically be provided in Title 54.1 for the summary suspension of professional licenses.

"Official records" means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any of the groups, agencies or organizations enumerated in the definition of "meeting" as provided in this section, including any committees or subcommittees of the public body created to perform delegated functions of the public body or to advise the public body.

"Scholastic records" means those records, files, documents, and other materials containing information about a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution, but, for the purpose of access by a student, does not include (i) financial records of a parent or guardian nor (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute. (1968, c. 479; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358.)

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter. — A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of this Commonwealth, representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting in or into this Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.
2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.
3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.
4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate circuit court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with this petition, however, the public body shall make reasonable efforts to reach an agreement with the requestor concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records; however, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The public body may

require the advance payment of charges which are subject to advance determination.

In any case where a public body determines in advance that search and copying charges for producing the requested documents are likely to exceed \$200, the public body may, before continuing to process the request, require the citizen requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. The period within which the public body must respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the citizen requesting the information.

Official records maintained by a public body on a computer or other electronic data processing system which are available to the public under the provisions of this chapter shall be made reasonably accessible to the public at reasonable cost.

Public bodies shall not be required to create or prepare a particular requested record if it does not already exist. Public bodies may, but shall not be required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen.

Failure to make any response to a request for records shall be a violation of this chapter and deemed a denial of the request.

B. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of such photograph will no longer jeopardize the investigation; reports submitted to the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23 in confidence; portions of records of local government crime commissions that would identify individuals providing information about crimes or

criminal activities under a promise of anonymity; records of local police departments relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such departments under a promise of confidentiality; and all records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment. Information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions of this chapter.

Criminal incident information relating to felony offenses shall not be excluded from the provisions of this chapter; however, where the release of criminal incident information is likely to jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information.

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2. Confidential records of all investigations of applications for licenses and all licenses made by or submitted to the Alcoholic Beverage Control Board or the State Lottery Department.

3. State income, business, and estate tax returns, personal property tax returns, scholastic records and personnel records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical

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records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in subsection A of this section. No such summaries or data shall include any patient identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institutions of higher education.

5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

7. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

9. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public

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contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requestor's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

11. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

14. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.

15. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services and records, documents and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

16. Vendor proprietary information software which may be in the official records of a public body. For the purpose of this section, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of this Commonwealth.

17. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information have not been publicly released, published, copyrighted or patented.

18. Financial statements not publicly available filed with applications for industrial development financings.

19. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

20. Confidential proprietary records, voluntarily provided by private business to the Division of Tourism of the Department of Economic Development, used by that Division periodically to indicate to the public statistical information on tourism visitation to Virginia attractions and accommodations.

21. Information which meets the criteria for being filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), regardless of how or when it is used by authorized persons in regulatory processes.

22. Documents as specified in § 58.1-3.

23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

24. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

25. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual

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employment discrimination complaints made to the Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

26. Fisheries data which would permit identification of any person or vessel, except when required by court order as specified in § 28.1-23.2.

27. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

28. Documents and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or of formulating advisory opinions to members on standards of conduct, or both.

29. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

30. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

31. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional facility or institution, as follows:

(i) Security manuals, including emergency plans that are a part thereof;

(ii) Engineering and architectural drawings of correctional facilities, and operational specifications of security systems utilized by the Department, provided the general descriptions of such security systems, cost and quality shall be made available to the public;

(iii) Training manuals designed for correctional facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;

(iv) Internal security audits of correctional facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional facility or institution;

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(v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;

(vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;

(vii) Logs or other documents containing information on movement of inmates or employees; and

(viii) Documents disclosing contacts between inmates and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Department, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. Personal information, as defined in § 2.1-379 of the Code, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, or (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs. However, access to one's own information shall not be denied.

34. Documents regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Official records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which

cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under subdivisions (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the building code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee; however, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in this Commonwealth. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less. (1968, c. 479; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478.)

§ 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting. — Except as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345, all meetings shall be public meetings, including meetings and work sessions during which no votes are cast or any decisions made. Notice including the time, date and place of each meeting shall be furnished to any citizen of this Commonwealth who requests such information. Requests to be notified on a continual basis shall be made at least once a year in writing and include name, address, zip code and organization of the requestor. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter.

Minutes shall be recorded at all public meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative interim study commissions and committees, including the Virginia Code Commission, (iii) study committees or commissions appointed by the Governor, or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board. (1968, c. 479; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358.)

§ 2.1-343.1. Electronic communication meetings prohibited; exception, experimental program. — A. It is a violation of this chapter for any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government to conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled.

B. Public bodies of the Commonwealth, as provided in the definition of "meeting" in § 2.1-341, but excluding any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government, may conduct any meeting, except executive or closed meetings held pursuant to § 2.1-344, wherein the public business is discussed or transacted through telephonic or video means. For the purposes of subsections B through G of this section, "public body" shall mean any state legislative body, authority, board, bureau, commission, district or agency of the Commonwealth and shall exclude those of local governments.

Meetings conducted through telephonic or video means shall be on an experimental basis commencing on July 1, 1989, and ending on June 30, 1991. The Director of the Department of Information Technology shall submit an evaluation of the effectiveness of meetings by telephonic or video means by public bodies of the Commonwealth prior to January 1, 1992, to the Governor and the General Assembly.

C. Notice of any meetings held pursuant to this section shall be provided at least thirty days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify the location or locations for the meeting. All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

Thirty-day notice shall not be required for telephonic or video meetings continued to address an emergency situation as provided in subsection F of this section or to conclude the agenda of a telephonic or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

The public body shall provide the Director of the Department of Information Technology with notice of all public meetings held through telephonic or video means pursuant to this section.

D. An agenda and materials which will be distributed to members of the public body and which have been made available to the staff of the public body in sufficient time for duplication and forwarding to all location sites where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by telephonic or video means shall be recorded as required by § 2.1-343. Votes taken during any meeting conducted through telephonic or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a telephonic medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be preserved by the public body for a period of three years following the date of the meeting and shall be available to the public.

E. No more than twenty-five percent of all meetings held annually by a public body, including meetings of any ad hoc or standing committees, may be held by telephonic or video means. Any public body which meets by telephonic or video means shall file with the Director of the Department of Information Technology by July 1 of each year a statement identifying the total number of meetings held during the preceding fiscal year, the dates on which the meetings were held and the number and purpose of those conducted through telephonic or video means.

F. Notwithstanding the limitations imposed by subsection E of this section, a public body may meet by telephonic or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. As used in this subsection "emergency" means an unforeseen circumstance rendering the meeting required by this section, or by § 2.1-343 of this chapter, impossible or impracticable and which circumstance requires immediate

action. Public bodies conducting emergency meetings through telephonic or video means shall comply with the provisions of subsection D requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The basis for the emergency shall be stated in the minutes.

G. The provisions of this section establish a two-year experimental program designed to evaluate the effectiveness of meetings by telephonic or video means by public bodies of the Commonwealth. Meetings by telephonic or video means shall be prohibited on and after July 1, 1991, unless the provisions of this section pertaining to the termination of this experimental program are amended and reenacted by the General Assembly. (1984, c. 252; 1989, c. 358.)

§ 2.1-344. Executive or closed meetings. — A. Public bodies are not required to conduct executive or closed meetings. However, should a public body determine that an executive or closed meeting is desirable, such meeting shall be held only for the following purposes:

1. Discussion or consideration of or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body, and evaluation of performance of departments or schools of state institutions of higher education where such matters regarding such specific individuals might be affected by such evaluation. Any teacher shall be permitted to be present during an executive session or closed meeting in which there is a discussion or consideration of a disciplinary matter which involves the teacher and some student or students and the student or students involved in the matter are present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters concerning any student or students of any state institution of higher education or any state school system. However, any such student and legal counsel and, if the student is a minor, the student's parents or legal guardians, shall be permitted to be present during the taking of testimony or presentation of evidence at an executive or closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property, or of plans for the future of a state institution of higher education which could affect the value of property owned or desirable for ownership by such institution.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating in the community.

6. The investing of public funds where competition or bargaining is involved, where if made public initially the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by counsel.

8. In the case of boards of visitors of state institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-

raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a state institution of higher education shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and the Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests or examinations or other documents excluded from this chapter pursuant to § 2.1-342 B 9.

12. Discussion, consideration or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in executive session.

13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have a detrimental effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting or executive session.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the Department of Commerce or Department of Health Professions conducted pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.

16. Discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivisions 37 and 38 of subsection B of § 2.1-342.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the open meeting. Nothing in this section shall be construed to

require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 of this section applies. However, such business or industry must be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same regulations for holding executive or closed sessions as are applicable to any other public body. (1968, c. 479; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478.)

§ 2.1-344.1. Call of closed or executive meetings; certification of proceedings. — A. No meetings shall become an executive or closed meeting unless the public body proposing to convene such meeting shall have taken an affirmative recorded vote in open session to that effect, by motion stating specifically the purpose or purposes which are to be the subject of the meeting, and reasonably identifying the substance of the matters to be discussed. A statement shall be included in the minutes of the open meeting which shall make specific reference to the applicable exemption or exemptions from open meeting requirements provided in subsection A of § 2.1-344 or in § 2.1-345, and the matters contained in such motion shall be set forth in those minutes. A general reference to the provisions of this chapter or authorized exemptions from open meeting requirements shall not be sufficient to satisfy the requirements for an executive or closed meeting.

B. The notice provisions of this chapter shall not apply to executive or closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such executive or closed meeting for the purpose of interviewing candidates the public body shall announce in an open meeting that such executive or closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter.

C. The public body holding an executive or closed meeting shall restrict its consideration of matters during the closed portions only to those purposes specifically exempted from the provisions of this chapter.

D. At the conclusion of any executive or closed meeting convened hereunder, the public body holding such meeting shall reconvene in open session immediately thereafter and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of the member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter, and (ii) only such public business matters as were identified in the motion by which the executive or closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of subdivisions (i) and (ii) above, shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D, above, to receive the affirmative vote of a majority of the members of the public body present during a closed or executive session shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce this chapter.

F. A public body may permit nonmembers to attend an executive or closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic which is a subject of the meeting.

G. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any executive or closed meeting, except at a public meeting for which notice was given as required by § 2.1-343.

H. Minutes may be taken during executive or closed sessions of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure. (1989, c. 358.)

§ 2.1-345. **Public bodies to which chapter inapplicable.** — The provisions of this chapter shall not be applicable to the Virginia Parole Board, petit juries, grand juries, and the Virginia State Crime Commission. (1968, c. 479; 1971, Ex. Sess., c. 1; 1973, c. 461; 1974, c. 332; 1977, c. 677; 1979, c. 369; 1989, c. 358.)

§ 2.1-346. **Proceedings for enforcement of chapter.** — Any person, including the Commonwealth's attorney acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause, addressed to the court of record of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.1-343 shall not preclude any person from enforcing his or her rights and privileges conferred by this chapter.

Any petition alleging denial of rights and privileges conferred by this chapter by a board, bureau, commission, authority, district or agency of the state government or by a standing or other committee of the General Assembly, shall be addressed to the Circuit Court of the City of Richmond. A petition for mandamus or injunction under this chapter shall be heard within

seven days of the date when the same is made; provided, if the petition is made outside of the regular terms of the circuit court of a county which is included in a judicial circuit with another county or counties, the hearing on the petition shall be given precedence on the docket of such court over all cases which are not otherwise given precedence by law. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorney's fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position. The court may also impose appropriate sanctions in favor of the public body as provided in § 8.01-271.1. (1968, c. 479; 1976, c. 709; 1978, c. 826; 1989, c. 358.)

§ 2.1-346.1. Violations and penalties. — In a proceeding commenced against members of public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343, 2.1-343.1, 2.1-344 or § 2.1-344.1, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$25 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$250 nor more than \$1,000. (1976, c. 467; 1978, c. 826; 1984, c. 252; 1989, c. 358; 1996, c. 578.)

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CHAPTER 26.

PRIVACY PROTECTION ACT OF 1976.

Sec.	Sec.
2.1-377. Short title.	2.1-384. Systems to which chapter inapplicable.
2.1-378. Findings; purpose of chapter.	2.1-384.1. Exception for State retirement systems.
2.1-379. Definitions.	2.1-385. Disclosure of social security number.
2.1-380. Administration of systems including personal information.	2.1-386. Injunctive relief.
2.1-381. Same; dissemination of reports.	
2.1-382. Rights of data subjects.	
2.1-383. Agencies to report concerning systems operated or developed; publication of information.	

§ 2.1-377. Short title. — This chapter may be cited as the "Privacy Protection Act of 1976." (1976, c. 597.)

§ 2.1-378. Findings; purpose of chapter. — A. The General Assembly finds:

1. That an individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;
2. That the increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;
3. That an individual's opportunities to secure employment, insurance, credit and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and
4. That in order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

B. The purpose of this chapter is to ensure safeguards for personal privacy by record-keeping agencies of the Commonwealth and her political subdivisions by adherence to the following principles of information practice:

1. There should be no personal information system whose existence is secret.
2. Information should not be collected unless the need for it has been clearly established in advance.
3. Information should be appropriate and relevant to the purpose for which it has been collected.
4. Information should not be obtained by fraudulent or unfair means.
5. Information should not be used unless it is accurate and current.
6. There should be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.
7. There should be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.
8. Any agency holding personal information should assure its reliability and take precautions to prevent its misuse.

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9. There should be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency or political subdivision thereof should not collect personal information except as explicitly or implicitly authorized by law. (1976, c. 597.)

§ 2.1-379. Definitions. — As used in this chapter:

1. The term "*information system*" means the total components and operations of a record-keeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

2. The term "*personal information*" means all information that describes, locates or indexes anything about an individual including his real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. The term does not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

3. The term "*data subject*" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

4. The term "*disseminate*" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

5. The term "*purge*" means to obliterate information completely from the transient, permanent, or archival records of an organization.

6. The term "*agency*" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns and regional governments and the departments and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship. (1976, c. 597; 1983, c. 372.)

§ 2.1-380. Administration of systems including personal information.

Chapter does not render personal information confidential. Indeed, the act does not generally prohibit the dissemination of information. Instead, it requires certain procedural

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steps to be taken in the collection, maintenance, use, and dissemination of such data. *Hinderliter v. Humphries*, — Va. —, 297 S.E.2d 684 (1982).

Burden is on plaintiff to establish lack of necessity or improper purpose for dissemination. *Hinderliter v. Humphries*, — Va. —, 297 S.E.2d 684 (1982).

Since public officials presumed to obey

the law. — There is a presumption that public officials will obey the law, and there is nothing in this chapter that reverses such presumption or imposes the ultimate burden of proof on defendants sued under it. Consequently, the presumption stands until rebutted by contrary evidence. *Hinderliter v. Humphries*, — Va. —, 297 S.E.2d 684 (1982).

§ 2.1-380.1. Administration of systems including personal information; military recruiters to have access to student information, school buildings, etc. — If a public school board or public institution of higher education provides access to its buildings and grounds and the student information directory to persons or groups which make students aware of occupational or educational options, the board or institution shall provide access on the same basis to official recruiting representatives of the military forces of the Commonwealth and the United States for the purpose of informing students of educational and career opportunities available in the military. (1981, c. 377.)

§ 2.1-381. Same; dissemination of reports. — Any agency maintaining an information system that disseminates statistical reports or research findings based on personal information drawn from its system, or from other systems shall:

1. Make available to any data subject or group, without revealing trade secrets, methodology and materials necessary to validate statistical analysis, and

2. Make no materials available for independent analysis without guarantees that no personal information will be used in any way that might prejudice judgments about any data subject. (1976, c. 597.)

§ 2.1-382. Rights of data subjects. — A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences which are known to the agency of providing or not providing such information.

2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing such information, however documented permission for dissemination in the hands of such other agency or organization will satisfy this requirement. Such notice may be given on applications or other data collection forms prepared by data subjects.

3. Upon request and proper identification of any data subject, or of his authorized agent, grant such subject or agent the right to inspect, in a form comprehensible to such individual or agent:

(a) All personal information about that data subject except as provided in § 2.1-342 (b)(3).

(b) The nature of the sources of the information.

(c) The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority.

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4. Comply with the following minimum conditions of disclosure to data subjects:

(a) An agency shall make disclosures to data subjects required under this chapter, during normal business hours.

(b) The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable standard charges for document search and duplication.

(c) The data subject shall be permitted to be accompanied by a person or persons of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting permission to the organization to discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

(a) The agency maintaining the information system shall investigate, and record the current status of that personal information.

(b) If, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely nor necessary to be retained, it shall be promptly corrected or purged.

(c) If the investigation does not resolve the dispute, the data subject may file a statement of not more than 200 words setting forth his position.

(d) Whenever a statement of dispute is filed, the organization maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

(e) The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

(f) Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

B. Nothing in this section or found elsewhere in this chapter shall be construed so as to require an agency to disseminate any recommendation or letter of reference from or to a third party which is a part of the personnel file of any data subject nor to disseminate any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's qualifications or aptitude for employment, retention, or promotion, (iii) qualifications for any license or certificate issued by any public body.

As used in this subsection, "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subsection shall prohibit the release of test scores or results as provided by law, or to limit access to individual records as is provided by law, however, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. Minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

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C. Neither any provision of this chapter nor any provision of Chapter 21 (§ 2.1-340 et seq.) of this title shall be construed as denying public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in this Commonwealth whatsoever. The provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

D. Nothing in this section or in this chapter shall be construed to require an agency to disseminate information derived from tax returns in violation of §§ 2.1-342 and 58-46 of this Code. (1976, c. 597; 1978, c. 810; 1979, cc. 683, 688, 689; 1983, c. 372.)

§ 2.1-383. Agencies to report concerning systems operated or developed; publication of information. — Every agency shall make report of the existence of any information system which it operates or develops which will include a description of the nature of the data in the system and purpose for which it is used. An inventory listing or similar display of such information shall be made available for inspection by the general public in the office of the head of each agency. Copies of such information shall be provided upon request and a fee shall be charged for the same sufficient to cover the reasonable costs of reproduction. (1976, c. 597; 1977, c. 279; 1979, c. 683.)

§ 2.1-384. Systems to which chapter inapplicable. — The provisions of this chapter shall not be applicable to personal information systems:

1. Maintained by any court of this Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ 9-184 through 9-196;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required to be licensed by law in this Commonwealth to engage in the practice of any professional occupation, in which case the names and addresses of persons applying for or possessing any such license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing such licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided such disseminating agency is reasonably assured that the use of such information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission and the Department of Alcoholic Beverage Control;
7. Maintained by the Department of State Police, police departments of cities, counties, and towns, and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of

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Title 23, and which deal with investigations and intelligence gathering relating to criminal activity;

8. Maintained by the Virginia Port Authority as provided in § 62.1-134.1 or § 62.1-132.4; and

9. Maintained by the Virginia Division of Tourism in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Division of Tourism is reasonably assured that the use of such information will be so limited. (1976, c. 597; 1979, c. 685; 1980, c. 752; 1981, cc. 461, 464, 504, 589; 1982, c. 225; 1983, c. 289.)

§ 2.1-385. Disclosure of social security number. — On or after July one, nineteen hundred seventy-seven, it shall be unlawful for any agency to require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because such individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or State law. (1976, c. 597.)

§ 2.1-386. Injunctive relief. — Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency which has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the circuit court of any county or city wherein the person or agency made defendant resides or has a place of business. In the case of any successful proceeding by an aggrieved party, the person or agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorney's fees as determined by the court. (1976, c. 597.)

Chapter 10

Child Welfare, Homes, Agencies and Institutions

§ 63.1-198.1. Employment for compensation of persons or us volunteers convicted of certain offenses prohibited; criminal record check required; suspension or revocation of license. — On or after 1, 1992, a child welfare agency licensed or registered in accordance with provisions of this chapter shall not hire for compensated or voluntary employment nor shall private child-placing agencies approve as foster or adoptive parents or family day systems approve as caretakers persons who have been convicted of murder, abduction for immoral purposes as set out in § 18.2-370, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child or obscenity offenses as set out in § 18.2-374.1, or abuse and neglect of incapacitated adults as set out in § 18.2-369 or convicted under § 18.2-3

Any person desiring to work or volunteer at a child welfare agency desiring to be a foster or adoptive parent with a private child-placing agency desiring to be a family day home provider approved by a family day system shall provide the hiring or approving facility or agency with a sworn statement or affirmation disclosing whether or not the applicant has ever been convicted of or is the subject of pending charges for any offense specified in this section within the Commonwealth or any equivalent offense outside the Commonwealth. Further dissemination of the information provided is prohibited other than to the Commissioner's representative or a federal or state authority of court as may be required to comply with an express requirement of law for further dissemination. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor.

A child welfare agency shall obtain for any compensated employees and volunteers within twenty-one days of employment or commencement of volunteer service, an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. Prior to the approval of the application of licensed private child-placing agencies and family day systems shall obtain criminal record clearance with respect to convictions for offenses specified

this section or an original criminal history record from the Central Criminal Records Exchange for all persons applying to be foster or adoptive parents or family day home providers and any other adult living in the home of the family day home provider. Failure to obtain a criminal record clearance or criminal history record from the Central Criminal Records Exchange for each employee, volunteer, foster or adoptive parent, family day home provider and any other adult living in the home of the family day home provider and the disclosure statement required by this section shall be grounds for denial, suspension or revocation of a license or registration pursuant to this chapter. If an applicant is denied employment or approval because of convictions appearing on his criminal history record, the child welfare agency shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending such licensed or registered facility whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child in a program which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

The provisions of this section shall not apply to local boards of public welfare or social services which place children in foster or adoptive homes pursuant to § 63.1-56.

The provisions of this section shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2. (1985, c. 360; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, c. 746; 1993, cc. 730, 742; 1996, c. 747.)

§ 63.1-199. Issuance or refusal of license; notification. — Upon completion of such investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the children over whom he may have custody or control, (ii) the applicant has submitted satisfactory documentation of financial responsibility such as, but not limited to, a letter of credit, a certified financial statement, or similar documents, and (iii) he, or the officers and agents of the applicant if it is an association, partnership or corporation, is of good character and reputation. Otherwise, the license shall be denied. A license shall not be granted to any applicant who has been convicted of any offense specified in § 63.1-198.1. If an applicant is denied licensure because of convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

The provisions of this section referring to a conviction for any offense specified in § 63.1-198.1 shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2. (Code 1950, § 63-236; 1968, c. 578; 1985, c. 360; 1987, cc. 130, 692; 1993, cc. 730, 742; 1996, c. 747.)

ARTICLE 12.

*Confidentiality and Expungement.***§ 16.1-299. (For effective date — See note) Fingerprints and photographs of juveniles. —**

A. All duly constituted police authorities having the power of arrest may take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange pursuant to subsection A of § 19.2-390. Whenever fingerprints are taken, they shall be maintained separately from adult records and a copy shall be filed with the juvenile court on forms provided by the Central Criminal Records Exchange.

B. If a juvenile of any age is adjudicated delinquent or found guilty of any offense which would be a felony if committed by an adult or any other offense for which a report to the Central Criminal Records Exchange is required by subsection C of § 19.2-390 if the offense were committed by an adult, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

C. If a petition or warrant is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed sixty days after fingerprints were taken. If a juvenile is found not guilty or in any other case resulting in a disposition for which fingerprints are not required to be forwarded to the Central Criminal Records Exchange, the court shall order that the fingerprint card, all copies of the fingerprints and all photographs be destroyed within sixty days of the date of disposition of the case. (1977, c. 559; 1978, c. 383; 1979, c. 267; 1982, c. 514; 1985, c. 211; 1986, c. 264; 1993, cc. 468, 926; 1994, cc. 859, 949; 1996, cc. 755, 914.)

§ 16.1-299. (Delayed effective date — See notes) Fingerprints and photographs of juveniles. — A. All duly constituted police authorities having the power of arrest may take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange pursuant to subsection A of § 19.2-390. Whenever fingerprints are taken, they shall be maintained separately from adult records and a copy shall be filed with the family court on forms provided by the Central Criminal Records Exchange.

B. If a juvenile of any age is adjudicated delinquent or found guilty of any offense which would be a felony if committed by an adult or any other offense for which a report to the Central Criminal Records Exchange is required by subsection C of

§ 19.2-390 if the offense were committed by an adult, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

C. If a petition or warrant is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed sixty days after fingerprints were taken. If a juvenile is found not guilty or in any other case resulting in a disposition for which fingerprints are not required to be forwarded to the Central Criminal Records Exchange, the court shall order that the fingerprint card, all copies of the fingerprints and all photographs be destroyed within sixty days of the date of disposition of the case. (1977, c. 559; 1978, c. 38; 1979, c. 267; 1982, c. 514; 1985, c. 211; 1986, c. 28; 1993, cc. 468, 926, 930; 1994, cc. 859, 949; 1996, cc. 755, 914.)

§ 16.1-299.1. Blood sample required for DNA analysis upon conviction or adjudication of a felony. — A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood taken for DNA analysis provided the juvenile was fourteen years of age or older at the time of the commission of the offense.

The provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all blood samples taken as required by this section, mutatis mutandis. (1996, cc. 755, 914.)

§ 16.1-301. Confidentiality of law-enforcement records. — A. The court shall require law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle law committed by juveniles. Unless a charge of delinquency is transferred for criminal prosecution in circuit court or the court otherwise orders disclosure in the interests of the juvenile or of national security, such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public.

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PART I.

GENERAL.

Pursuant to the provisions of Section 9-170(1), 9-170(15), 9-170(16), 9-170(17), 9-170(21) and Section 9-184 through Section 9-196 of the Code of Virginia, the Criminal Justice Services Board hereby promulgates Regulations Relating to Criminal History Record Information Use and Security.

The purpose of these regulations is to assure that state and local criminal justice agencies maintaining criminal history record information establish required record keeping procedures to ensure that criminal history record information is accurate, complete, timely, electronically and physically secure, and disseminated only in accordance with federal and state legislation and regulations. Agencies may implement specific procedures appropriate to their particular systems, but at a minimum shall abide by the requirements outlined herein.

1.1. DEFINITIONS.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Access" means the ability to obtain, directly or through an intermediary, criminal history record information contained in manual or automated files.

"Board" means the Criminal Justice Services Board, as defined in

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Section 9-168 of the Code of Virginia.

"Central Criminal Records Exchange (CCRE)" means the repository in this Commonwealth which receives, identifies, maintains, and disseminates individual criminal history records, in accordance with Section 9-170(22) of the Code of Virginia.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgement of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (Section 16.1-226 et seq.), of Title 16.1, of the Code of Virginia, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal history record information area" means any office, room, or space in which criminal history record information is regularly

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collected, processed, stored, or disseminated to an authorized user. This area includes computer rooms, computer terminal workstations, file rooms and any other rooms or space in which the above activities are carried out.

"Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity.

"Criminal investigative information" means information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

"Criminal justice agency" means a court or any governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, which is used for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

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"Director" means the chief administrative officer of the Department.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a right and need to know the information.

"Expunge" means to remove, in accordance with a court order, a criminal history record, or a portion of a record, from public inspection or normal access.

"Modify" means to add or delete information from a record to accurately reflect the reported facts of an individual's criminal history record. (See Section 9-192(C) of the Code of Virginia.) This may include eradicating, supplementing, updating, and correcting inaccurate and erroneous information.

"Seal" means to physically prevent access to a criminal history record, or portion of a criminal history record.

PART II.**CRIMINAL HISTORY RECORD INFORMATION USE.****2.1. APPLICABILITY.**

These regulations govern originals and copies of manual or automated criminal history record information which are used, collected, stored, or disseminated by state or local criminal justice agencies or other agencies receiving criminal history record information in the

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Commonwealth. The regulations also set forth the required procedures that ensure the proper processing of the expungement of criminal history record information. The provisions of these regulations apply to the following groups, agencies and individuals:

A. State and local criminal justice agencies and subunits of these agencies in the Commonwealth;

B. The United States Government or the government of another state or its political subdivisions which exchange such information with criminal justice agencies in the Commonwealth, but only to the extent of that exchange;

C. Noncriminal justice agencies or individuals who are eligible under the provisions of Section 19.2-389 of the Code of Virginia to receive limited criminal history record information.

D. The provisions of these regulations do not apply to:

1. original or copied records of entry, such as police blotters, maintained by a criminal justice agency on a chronological basis and permitted to be made public, but only if such records are not indexed or accessible by name;

2. offense and dispatch records maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name or do not contain criminal history record information;

3. court records of public criminal proceedings, including opinions and published compilations thereof;

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4. records of traffic offenses; disseminated to or maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses;

5. statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable;

6. announcements of executive clemency;

7. posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

8. criminal justice intelligence information or criminal justice investigative information.

Nothing in these regulations shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system.

2.2. COLLECTION.

A. RESPONSIBILITY.

Responsibility for collecting and updating criminal history record information rests with:

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1. State officials and criminal justice agencies having the power to arrest, detain, or hold convicted persons in correctional facilities;
2. Sheriffs of cities or counties;
3. Police officials of cities, counties and towns;
4. Other local law enforcement officers or conservators of the peace who have the power to arrest for a felony (see Section 19.2-390 of the Code of Virginia);
5. Clerks of court and court agencies or officers of the court; and
6. Other criminal justice agencies or agencies having criminal justice responsibilities which generate criminal history record information.

B. REPORTABLE OFFENSES.

The above officials and their representatives are required to submit to the Central Criminal Records Exchange, on forms provided by the Central Criminal Records Exchange, a report on every arrest they complete for:

1. Treason;
2. Felonies or offenses punishable as a misdemeanor under Title 54.1 of the Code of Virginia;
3. Class 1 and 2 misdemeanors under Title 18.2 (except an arrest for a violation of Article 2 (Section 18.2-266 et seq.) of Chapter 7 of Title 18.2; violation of Article 2

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(Section 18.2-415) of Chapter 9 of Title 18.2, or 18.2-119; or violation of any similar ordinance of a county, city or town.)

In addition to those offenses enumerated above, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or correctional institution.

The chief of police, sheriff, or criminal justice agency head is responsible for establishing a system to ensure that arrest forms are completed and submitted in a timely and accurate fashion.

C. TIMELINESS OF SUBMISSION.

1. **ARRESTS:** Arrest reports for all offenses noted above, except as provided in this section, and a fingerprint card for the arrested individual shall be forwarded to the Central Criminal Records Exchange in accordance with the time limits specified by the Department of State Police. A copy of the Central Criminal Records Exchange arrest form shall also be sent to the local court (a copy of the form is provided for the courts) at the same time.

The link between the arrest report and the fingerprint card shall be established according to Central Criminal Records Exchange requirements. Arrests that occur simultaneously for multiple offenses need only be accompanied by one fingerprint card.

2. NONCONVICTIONS:

For arrests except as noted in subdivision 3.a below, the

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clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days from the date the order is entered by the presiding judge.

3. CONVICTIONS:

- a. For persons arrested and released on summonses under Section 19.2-74 of the Code of Virginia, the chief law-enforcement officer or his designee who may be the arresting officer, shall furnish fingerprint cards and a completed copy of the Central Criminal Records Exchange form, to the Central Criminal Records Exchange. The form shall be completed immediately upon conviction unless an appeal is noted. In the case of an appeal, officials responsible for reporting the disposition of charges shall report the conviction within 30 days after final action of the case.
- b. For arrests except as noted in subdivision 3.a. above, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days after occurrence of the disposition.

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4. **FINAL DISPOSITION:** State correctional officials shall submit to the Central Criminal Records Exchange the release status of an inmate of the state correctional system within 20 days of the release.

D. UPDATING AND ACCURACY.

Arresting officers and court clerks noted above are responsible for notifying the Central Criminal Records Exchange in a timely fashion, and always within 30 days, of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated. In the case of correctional status or release information, correctional officials are responsible for notifying the Central Criminal Records Exchange within the same time limits of updates or changes in correctional status information. Forms for updating and correcting information are provided by the Central Criminal Records Exchange.

Each criminal justice agency is required to supply timely corrections of criminal history record information the agency has provided to a criminal justice or noncriminal justice agency for a period of two years after the date of dissemination.

E. LOCALLY MAINTAINED AND NON-REPORTABLE OFFENSES.

Criminal history record information generated by a criminal justice agency and maintained in a locally used and maintained file, including criminal history record information on offenses not required to be reported to the Central Criminal Records Exchange but maintained in

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local files, as well as criminal history record information maintained by the Central Criminal Records Exchange, shall adhere to the standards of collection, timeliness, updating and accuracy as required by these regulations. Arrests shall be noted and convictions or adjudications recorded within 30 days of court action or the elapse of time to appeal.

2.3. DISSEMINATION.**A. AUTHORIZATION**

No criminal justice agency or individual shall confirm or deny the existence or non-existence of a criminal history record to persons or agencies that would not be eligible to receive the information. No dissemination of a criminal history record is to be made to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.

Criminal history record information or portions of an individual's record both maintained and used by criminal justice agencies and eligible recipients, maintained either at the Central Criminal Records Exchange, or by the originating criminal justice agency, or both, shall only be disseminated as provided by Section 19.2-389 of the Code of Virginia.

Upon receipt of a request for criminal history record information, by personal contact, mail, or electronic means from an agency or individual claiming to be authorized to obtain such information, the person responding to the request shall determine whether the requesting

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agency or individual is authorized to receive criminal history record information.

Criminal justice agencies shall determine what positions in their agency require regular access to criminal history record information as part of their job responsibilities. These positions will be exempt from the dissemination rules below. Use of criminal history record information by a member of a criminal justice agency not occupying a position authorized to receive criminal history record information, or for a purpose or activity other than one for which the person is authorized to receive criminal history record information, will be considered a dissemination and shall meet the provisions of this section. If the user of criminal history record information does not meet the procedures in subsection B., the use of the information will be considered an unauthorized dissemination.

The release of criminal history record information to an individual or entity not included in Section 19.2-389 of the Code of Virginia is unlawful and unauthorized. An individual or criminal justice agency that releases criminal history record information to a party which does not clearly belong to one of the categories of agencies and individuals authorized to receive the information as outlined in Section 19.2-389 of the Code is subject to being denied access to state and national criminal history record information on a temporary or permanent basis and to the administrative sanctions described in Section 2.8 of these regulations. Unlawful dissemination contrary to the provisions of these

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regulations is also a Class 2 misdemeanor (See Section 9-195 of the Code of Virginia).

B. PROCEDURES FOR RESPONDING TO REQUESTS.

A criminal justice agency disseminating criminal history record information shall adhere to the procedures set forth below:

1. ALLOWABLE RESPONSES TO REQUESTS.

Local and regional criminal justice agencies may respond to requests for criminal history record information in two ways:

a. For offenses required to be reported to the Central Criminal Records Exchange (CCRE), they may refer the requester to the Central Criminal Records Exchange, which will directly provide the requester with the information, or shall themselves query the Central Criminal Records Exchange to obtain the most accurate and complete information available and provide the information to the requester. (See Section 19.2-389 of the Code of Virginia.)

It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to information requests. The local law-enforcement agency may directly provide criminal history record information to the requester without making an inquiry to the Central Criminal Records Exchange or referring the requester to the Central Criminal Records Exchange if time is of the essence and the normal response time of the Exchange would exceed the necessary time period. (See Section 19.2-389 of the Code of Virginia.)

Under circumstances where an inquiry to the Exchange is not made, the

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record provided by the local law-enforcement agency should be accompanied by an appropriate disclaimer indicating that the record may not be complete.

b. For nonreportable offenses (those offenses not reported to the Central Criminal Records Exchange), the law-enforcement agency shall provide the information requested, following the dissemination procedures as required by the regulations below.

2. PRIOR TO DISSEMINATION.

Prior to disseminating criminal history record information a criminal justice agency shall:

a. VERIFY REQUESTER IDENTITY.**(1) INDIVIDUAL REQUESTER:**

For an individual requesting his own record and not known to the person responding to the request, the individual shall provide proper identification, to include at least two of the following, one of which must be a photo identification: (i) a valid passport, (ii) drivers' license with photo, (iii) social security card, (iv) birth certificate, or (v) military identification, if there is more than one name match. Fingerprints or other additional information shall be required if the disseminating criminal justice agency deems it appropriate or necessary to ensure a match of the record and the requesting subject.

(2) CRIMINAL JUSTICE AGENCIES:

For personnel of criminal justice agencies

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requesting a record, the requester shall provide valid agency identification unless the disseminator recognizes the requesting individual as having previously been authorized to receive the information for the same purpose.

(3) NONCRIMINAL JUSTICE AGENCIES OR INDIVIDUALS:

For an individual requesting the record of another, as in the case of an attorney requesting the record of his client, the individual shall provide a sworn written request from the record subject naming the requester as a recipient, as provided in Section 19.2-389(A) of the Code of Virginia. Identification of the attorney or individual shall also be required unless the attorney or individual is known to the official responding to the request.

b. VERIFY RECORD SUBJECT IDENTITY.

Because serious harm could come from the matching of criminal history record information to the wrong individual, verification procedures shall be carefully managed, particularly when dissemination will be to noncriminal justice recipients. The following verification methods are the only acceptable methods:

(1) INDIVIDUAL REQUESTERS: The verification requirements for individuals requesting their own records and for individual requesters with sworn requests from the subject of the information shall be the same as the requirements for noncriminal justice agencies as described below. Only when information supplied and information in the Central Criminal Records Exchange or local files

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satisfactorily match shall information be disseminated.

(2) **CRIMINAL JUSTICE AGENCIES:** Criminal history record information which reasonably corresponds to the name, aliases, and physical identity of the subject can be disseminated to a legitimate requester when time is of the essence or if criminal justice interests will be best served by the dissemination. This includes the dissemination of records with similar but not identical name spellings, similar physical characteristics, and similar but not identical aliases. When criminal history record information is obtained in this manner and results in an apparent match between the identity of the subject and the record, the criminal history record should be verified using fingerprint identification prior to prosecution, adjudication or sentencing of the record subject. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange.

(3) **NONCRIMINAL JUSTICE AGENCIES:** Full name, date of birth, race, and sex of the record subject, must be provided by the requester for a criminal history record to be disseminated. Fingerprint identification may be required prior to dissemination if there is any doubt as to the match. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange. Information supplied by the requester and available through the Central Criminal Records Exchange (or in the local files where the request is for criminal history record

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information maintained only locally) must match to the satisfaction of the disseminator, or the dissemination shall not be made.

c. NOTIFY REQUESTER OF COSTS AND RESTRICTIONS.

The official responsible for aiding the requester shall notify the requester of the costs involved and of restrictions generally imposed on use of the data, or be reasonably assured that the requester is familiar with the costs and restrictions, prior to beginning the search for the requested criminal history record information, and shall obtain the consent of the requester to pay any charges associated with the dissemination.

3. LOCATING AND DISSEMINATING INFORMATION REQUESTED.

Once a request for a criminal history record has been made, and the responsible official is satisfied as to the legitimacy of the request and the identity of the subject and has informed the requester of costs and restrictions, the responsible official conducting the search for the record shall supply the information after querying the Central Criminal Records Exchange. However, if time is of the essence, or the offenses in a criminal history record are not required to be reported to Central Criminal Records Exchange, the responsible official may directly supply the information (Section 19.2-389 of the Code of Virginia).

4. INSTRUCTIONS REGARDING DISSEMINATION TO REQUESTERS.

The disseminated record must be accompanied by one of the three following messages in printed form, whichever matches the category of the requester:

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a. RECORD SUBJECTS:

Record subjects have a right to receive and disseminate their own criminal history record information, subject to these regulations and Section 19.2-389(11) of the Code of Virginia. If a record subject or his attorney complies with the requirements of these sections, he shall be given the requested criminal history record information. However, if an agency or individual receives a record from the record subject, that agency or individual shall not further disseminate the record. The following printed message shall accompany the criminal history record information disseminated to a record subject:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

b. CRIMINAL JUSTICE AGENCIES:

The following printed message shall accompany the criminal history record information disseminated to a criminal justice agency:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

c. NONCRIMINAL JUSTICE AGENCIES AND INDIVIDUALS OTHER THAN
RECORD SUBJECTS:

Even with the sworn consent of the record subject, only criminal history record information that is conviction data shall be disseminated to a noncriminal justice agency or individual in compliance with the existing laws and shall not be disseminated further. The following printed message shall accompany the criminal history record information

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disseminated to an individual or a noncriminal justice agency receiving criminal history record information:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

5. MAINTAINING A DISSEMINATION LOG.

A record of any dissemination shall be maintained at the disseminating criminal justice agency or shall be accessible electronically for a period of at least two years from the date of the dissemination.

The dissemination log must list all requests for criminal history record information. The log may be automated or manual. Records will include the following information on each dissemination:

- a. Date of inquiry;
- b. Requesting agency name and address;
- c. Identifying name and number (either FBI or state identification number of record subject, or notification of "no record found");
- d. Name of requester within the agency requesting criminal history record information; and
- e. Name of disseminator (officer or civilian who provides the criminal history record information to the requester).

6. REPORTING UNAUTHORIZED DISSEMINATIONS.

While individual criminal justice agencies are not expected to audit agencies who receive criminal history record information that they

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provide, in order to identify unauthorized releases, they shall notify the Department of any violations observed of the above dissemination regulations. The Department will investigate and respond to the violation in a manner deemed appropriate by the Department.

A criminal justice agency which knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log to ensure that disseminations are being appropriately managed.

7. INTERSTATE DISSEMINATION.

Interstate dissemination of criminal history record information shall be subject to the procedures described herein. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and these regulations, as if the agency were within the jurisdiction of the Commonwealth.

8. FEES.

Criminal justice agencies may charge a reasonable fee for search and copying time expended when dissemination of criminal history record information is requested by a noncriminal justice agency or individual. The criminal justice agency shall post the schedule of fees to be charged, and shall obtain approval from the requester to pay such costs prior to initiating the search.

2.4. ACCESS AND REVIEW.**A. WHO CAN REVIEW.**

An individual or his attorney, upon providing proper identification and in the case of an attorney representing a client, with a sworn

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written request from the record subject, shall have the right to inspect criminal history record information being maintained on that individual by the Central Criminal Records Exchange or other criminal justice agencies. Completing a request form may be required by the Central Criminal Records Exchange or the local criminal justice agency.

B. REVIEW AT LOCAL LAW-ENFORCEMENT AGENCY OR CENTRAL CRIMINAL RECORDS EXCHANGE.

An individual or his attorney may review the individual's criminal history record arising from arrests for felonies and Class 1 and 2 misdemeanors maintained in the Central Criminal Records Exchange by applying at any law-enforcement agency having terminal capabilities on the Virginia Criminal Information Network or to the Central Criminal Records Exchange of the Virginia Department of State Police, during normal working hours. An individual or his attorney may review the individual's criminal history record regarding offenses not required to be reported to the Central Criminal Records Exchange at the arresting law-enforcement agency. The law-enforcement agency to which the request is directed shall inform the individual or his attorney of the procedures associated with the review.

Individuals shall be provided at cost, one copy of their record. If no record can be found, a statement shall be furnished to this effect.

C. TIMELINESS AND COMPLETENESS.

An individual requesting his own record shall be advised when the

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record will be available. In no case shall the time between request and availability of the record exceed one week, except where fingerprint identification is required; then it shall not exceed 30 days. Criminal justice agencies should seek to provide the record as soon as reasonably possible unless there are questions of identification.

The criminal justice agency locating an individual's criminal history record information shall examine its own files and shall contact the Central Criminal Records Exchange for the most up-to-date criminal history record information, and supply both to the requester.

D. ASSISTANCE.

The criminal justice agency to which the request is directed shall provide reasonable assistance to the individual or his attorney to help understand the record.

The official releasing the record shall also inform the individual of his right to challenge the record.

2.5. CHALLENGE.

Individuals who desire to challenge their own criminal history record information must complete documentation provided by the criminal justice agency maintaining the record and forward it to the Central Criminal Records Exchange or the criminal justice agency maintaining the record. A duplicate copy of the form and the challenged record may be furnished to the individual initiating the challenge or review. The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the Central Criminal Records Exchange

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or the criminal justice agency maintaining the record. For offenses not required to be reported to the Exchange, the challenge shall be made at the arresting law-enforcement agency or the criminal justice agency maintaining the records.

A challenge will be processed as described below.

A. RECORDS MAINTAINED BY THE CENTRAL CRIMINAL RECORDS EXCHANGE.**1. MESSAGE FLAGS.**

If the challenge is made of a record maintained by the Central Criminal Records Exchange, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD". A challenged record shall carry this message when disseminated while under challenge.

2. REVIEW AT EXCHANGE.

The Central Criminal Records Exchange shall compare the information contained in the repository files as reviewed by the individual with the original arrest or disposition form. If no error is located, the Central Criminal Records Exchange shall forward a copy of the challenge form, a copy of the Central Criminal Records Exchange record and other relevant information to the criminal justice agency or agencies which the Central Criminal Records Exchange records indicate as having originated the information under challenge, and shall request them to examine the relevant files to determine the validity of the challenge.

3. EXAMINATION.

The criminal justice agency or agencies responsible for

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originating the challenged record shall conduct an examination of their source data, the contents of the challenge, and information supplied by the Central Criminal Records Exchange for discrepancies or errors, and shall advise the Central Criminal Records Exchange of the results of the examination.

4. CORRECTION.

If any modification of a Central Criminal Records Exchange record is required, the Exchange shall modify the record and shall then notify the criminal justice agency in which the record was originally reviewed of its action, and supply it and other agencies involved in the review with a copy of the corrected record.

5. NOTIFICATION BY CENTRAL CRIMINAL RECORDS EXCHANGE.

The Central Criminal Records Exchange shall also provide notification of the correction to all recipients of the record within the last 24 months.

6. NOTIFICATION BY OTHER CRIMINAL JUSTICE AGENCIES.

Criminal justice agencies which have disseminated an erroneous or incomplete record shall in turn notify agencies which have received the disseminated record or portion of the record in the last two years from the date of the Central Criminal Records Exchange modification of the record. Notification shall consist of sending a copy of the original record, and corrections made, to the recipients of the erroneous record noted in the dissemination log for the two-year period prior to the date of correction by the Central Criminal Records

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Exchange. (See Section 9-192(C) of the Code of Virginia.) The criminal justice agency in which the review and challenge occurred shall notify the individual or his attorney of the action of the Central Criminal Records Exchange.

7. APPEAL.

The record subject or his attorney, upon being told of the results of his record review, shall also be informed of his right to review and appeal those results.

**B. RECORDS MAINTAINED BY A CRIMINAL JUSTICE AGENCY OTHER THAN THE
CENTRAL CRIMINAL RECORDS EXCHANGE.****1. MESSAGE FLAGS.**

If a challenge is made of a record maintained by a criminal justice agency, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD". A disseminated record shall contain this message while under challenge.

2. EXAMINATION AND CORRECTION AGENCY.

If the challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the validity of the challenge. If the review demonstrates that modification is in order, the modification shall be completed and the erroneous information destroyed. If the challenged record pertains to disposition information, the arresting agency shall compare contents of the challenge with information originally supplied by the Clerk of the Court.

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VR 240-02-1****REGULATIONS RELATING TO
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If no error is found in the criminal justice agency's records, the arresting agency shall forward the challenge to the Clerk of the Court that submitted the original disposition. The Clerk of the Court shall examine the court records pursuant to the challenge and shall, in turn, notify the arresting agency of its findings. The arresting agency shall then proceed as described in Subsection B.2. of this section.

4. NOTIFICATION.

The criminal justice agency in which the challenge occurred shall notify the individual or his attorney of the action taken, and shall notify the Central Criminal Records Exchange and other criminal justice agencies receiving the erroneous information of the necessary corrections if required, as well as the noncriminal justice agencies to which it has distributed the information in the last 24 months, as noted in its dissemination log.

5. CORRECTION.

The Central Criminal Records Exchange will correct its records, and notify agencies who received erroneous information within the past 24 months. The agencies will be requested to correct their files and to notify agencies which have the disseminated information, as provided in subsection A.6. of this section.

6. APPEAL.

The record subject or his attorney, upon receiving the results

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of the record review, shall be informed of the right to review and appeal.

C. ADMINISTRATIVE REVIEW OF CHALLENGE RESULTS.**1. REVIEW BY CRIMINAL JUSTICE AGENCY HEAD.**

After the aforementioned review and challenge concerning a record either in the Central Criminal Records Exchange or another criminal justice agency, the individual or his attorney may, within 30 days, request in writing that the agency head of the criminal justice agency in which the challenge was made, review the challenge if the individual is not satisfied with the results of the review and challenge.

2. THIRTY-DAY REVIEW.

The criminal justice agency head or his designated official shall review the challenge by reviewing the action taken by the agency, the Central Criminal Records Exchange, and other criminal justice agencies, and shall notify the individual or his attorney in writing of the decision within 30 days of the receipt of the written request to review the challenge. The criminal justice agency head shall also notify the individual of the option to request an administrative appeal through the Department within 30 days of the postmarked date of the notification of the decision. This notification of the appeal shall include the address of the Department of Criminal Justice Services.

3. CORRECTION AND NOTIFICATION.

If required, correction and notification shall follow the

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procedures outlined in subsections A and B of this section.

4. NOTIFICATION OF THE DEPARTMENT.

A copy of the notice required in Subsection C.2. of this section shall be forwarded to the Department by the criminal justice agency at the same time it is provided to the individual.

D. ADMINISTRATIVE APPEAL.

1. DEPARTMENTAL ASSESSMENT.

The individual or his attorney challenging his record, within 30 days of the postmark of his notification of the decision of the administrative review, may request that the Director of the Department of Criminal Justice Services review the challenge and conduct an informal hearing. The Director may designate a hearing officer for this purpose.

2. DETERMINATION OF MERITS OF CASE.

The Director or his designee shall contact the criminal justice agencies involved and request any and all information needed. Criminal justice agencies shall supply the information requested in a timely manner, to allow the Department to respond to the individual within 30 days. The Director will then rule on the merits of a hearing and notify the individual or his attorney that such hearing will or will not be held.

3. HEARING.

The hearing, if held, shall be conducted within 30 days of the receipt of the request, and the decision of the hearing officer

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communicated to the individual or his attorney within 30 days of the hearing.

4. FINDING.

If the Director or the hearing officer determines that correction and modification of the records is required, correction of the record and notification of all involved parties, shall proceed according to the procedures outlined in subsections A and B of this section.

5. REMOVAL OF A CHALLENGE DESIGNATION.

When records and relevant action taken by the criminal justice agencies involved are deemed to be correct, the Department shall notify the affected criminal justice agencies to remove the challenge designation from their files.

E. DEPARTMENT NOTIFICATION FOLLOWING CORRECTIONS.

For audit purposes, the Central Criminal Records Exchange shall annually forward the names and addresses of the agencies which originated erroneous record information or received erroneous information from the Exchange in that year to the Department of Criminal Justice Services.

The Department shall ensure at its next audit that all records in originating and recipient agencies have been corrected as required and that all erroneous information is destroyed.

2.6. EXPUNGEMENT AND SEALING.**A. RESPONSIBILITY OF THE DIRECTOR.**

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The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order. Upon receipt of a court order, petition and other supporting documents for the expungement of a criminal history record, the Director of the Department, pursuant to Section 19.2-392.2 of the Code of Virginia, shall by letter with an enclosed copy of the order, direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record, to remove the electronic or manual record or portion thereof from its repository and place it in a physically sealed, separate file. The file shall be properly indexed to allow for later retrieval of the record if required by court order, and the record shall be labeled with the following designation: "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."

B. RESPONSIBILITY OF AGENCIES WITH A RECORD TO BE EXPUNGED.

The record named in the Department's letter shall be removed from normal access. The expunged information shall be sealed but remain available, as the courts may call for its reopening at a later date. (See Section 19.2-392.3 of the Code of Virginia.) Access to the record shall be possible only through a name index of expunged records maintained either with the expunged records or in a manner that will allow subsequent retrieval of the expunged record as may be required by the court or as part of the Department's audit procedures. Should the name index make reference to the expunged record, it shall be apart from normally accessed files.

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VR 240-02-1**REGULATIONS RELATING TO
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1. The expungement and sealing of hard copy original records of entry (arrest forms) is accomplished by physically removing them from a file, and filing them in a physically secure location elsewhere, apart from normally accessed files. This file should be used only for expunged records and should be accessible only to the manager of records.

2. If the information to be expunged is included among other information that has not been expunged on the same form or piece of paper, the expunged information shall be obliterated on the original or the original shall be retyped eliminating the expunged information. The expunged information shall then be placed in the file for expunged records, in its original or copied form, and shall be accessible only to the manager of records.

3. If the expunged information is located on a criminal history record provided by the Central Criminal Records Exchange (i.e. "RAP sheet"), the criminal history record information shall be destroyed, and a new copy, not containing the expunged data, shall be obtained when necessary.

D. PROCEDURE FOR EXPUNGING AUTOMATED RECORDS.

Should the record to be expunged be maintained in an automated system, the Central Criminal Records Exchange or the agency known to possess such a record shall copy the automated record onto an off-line medium such as tape, disk or hard copy printouts. The expunged record,

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regardless of the type of medium on which it is maintained, shall then be kept in a file used for expunged records and sealed from normal use, accessible only to the manager of records. No notification that expunged data exists shall be left in the normally accessed files.

E. DEPARTMENT TO BE NOTIFIED FOLLOWING EXPUNGEMENT.

Upon receipt of a request from the Department to expunge and seal a record, the affected agency or agencies shall perform the steps above, and notify the Department of their action in writing within 120 days of their receipt of the request.

F. EXPUNGEMENT ORDER NOT RECEIVED BY DEPARTMENT.

Should a court ordered expungement be directed to a criminal justice agency other than the Department, the directed criminal justice agency shall comply as outlined herein and advise the Director without delay of such order. The Director shall, upon receipt of such notification, obtain a copy of the order from the appropriate circuit court.

2.7. AUDIT.

The Department shall annually conduct an audit of a random representative sample of state and local criminal justice agencies to ensure and verify adherence to these regulations and to ensure that criminal history records are accurate and complete.

The audits may include, but will not be limited to: (i) examination of record accuracy, (ii) completeness, (iii) timely submission of information, (iv) evidence of dissemination limitations

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and adequate dissemination logs, (v) security provisions, (vi) evidence of notification of the individual's right of access and challenge, (vii) appropriate handling of record challenges, (viii) timely modification of erroneous records, (ix) evidence of timely notifications of required changes, and (x) appropriate notifications of the Department as required.

2.8. ADMINISTRATIVE SANCTIONS.

Discovery of violations or failure to comply with these regulations in whole or in part will occasion the following sanctions. Additional criminal penalties and other sanctions may be invoked as provided in Section 2.3. should the violation involve an unauthorized dissemination.

A. LAW-ENFORCEMENT AGENCIES.

1. Should a law-enforcement agency fail to comply with these regulations, a letter will be forwarded by the Department to either the chief of police or sheriff, citing the problem and notifying the police department or the sheriff's department that the matter will be referred to the chief official of the locality or commonwealth's attorney, respectively, if a satisfactory result is not forthcoming. The criminal justice agency shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the offices of the

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city, county or town manager or the local commonwealth's attorney requesting resolution of the matter within 30 days.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the Department, the matter will be referred to the Criminal Justice Services Board and the Office of the Attorney General for action.

B. COURTS.

1. Should a court or officer of the court fail to comply with these regulations, a letter will be forwarded by the Department to the court, citing the problem and notifying the court clerk that the matter will be referred to the chief judge of the locality and the local commonwealth's attorney if a satisfactory result is not forthcoming. The court shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the chief judge requesting resolution of the matter within 30 days. The Executive Secretary of the Supreme Court of Virginia will also be notified.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the Department, the matter will be referred to the Criminal Justice Services Board and the Chief Justice of Virginia.

PART III

CRIMINAL HISTORY RECORD INFORMATION SECURITY.

3.1 APPLICABILITY.

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These regulations are applicable to criminal justice information systems operated within the Commonwealth of Virginia. These regulations on security are not applicable to court records or other records expressly excluded by Section 9-184 (B) of the Code of Virginia.

These regulations establish a minimum set of security standards which shall apply to any manual or automated record keeping system which collects, stores, processes, or disseminates criminal history record information.

Where individuals or noncriminal justice agencies are authorized to have direct access to criminal history record information pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice, the service support agreement will embody the restrictions on dissemination and the security requirements contained in these regulations and the Code of Virginia.

3.2. RESPONSIBILITIES.

In addition to those responsibilities mandated by state and federal laws, the Department of State Police shall have the responsibility for the implementation of these regulations in regard to the operation of the Central Criminal Records Exchange.

The implementation of these regulations, except as set forth in the above paragraph, shall be the responsibility of the criminal justice agency as designated and authorized by the county or municipality in cases of political subdivisions. Nothing in these regulations shall be deemed to affect in any way the exercise of responsibility conferred on

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counties and municipalities of the state under Title 15.1 of the Code of Virginia. The determination of the suitability of the actual procedures instituted by the criminal justice agency will be the subject of study in any audit by the Department, mandated by Section 9-186 of the Code of Virginia.

3.3. PHYSICAL ACCESS.

Access to areas in which criminal history record information is collected, stored, processed or disseminated shall be limited to authorized persons. Control of access shall be ensured through the use of locks, guards or other appropriate means. Authorized personnel shall be clearly identified.

Procedures shall be established to detect an unauthorized attempt or access. Furthermore, a procedure shall be established to be followed in those cases in which an attempt or unauthorized access is detected. Such procedures shall become part of the orientation of employees working in criminal history record information area(s) and shall be reviewed periodically to ensure their effectiveness.

Criminal justice agencies shall provide direct access to criminal history record information only to authorized officers or employees of a criminal justice agency and, as necessary, to other authorized personnel essential to the proper operation of the criminal history record information system.

Each criminal justice agency shall institute, where computer processing is not utilized, procedures to ensure that an individual or

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agency authorized to have direct access is responsible for: (i) the physical security of criminal history record information under its control or in its custody, and (ii) the protection of this information from unauthorized access, disclosure or dissemination.

Procedures shall be instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters.

For criminal justice agencies that have their criminal history files automated, it is highly recommended that "backup" copies of criminal history information be maintained, preferably off-site. Further, for larger criminal justice agencies having automated systems, it is recommended that the criminal justice agencies develop a disaster recovery plan. The plan should be available for inspection and review by the Department.

System specifications and documentation shall be carefully controlled to prevent unauthorized access and dissemination.

3.4. PERSONNEL.

In accordance with applicable laws, ordinances, and regulations, the criminal justice agency shall:

A. Screen and have the right to reject for employment, based on good cause, personnel to be authorized to have direct access to criminal history record information;

B. Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel

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authorized to have direct access to this information where these personnel violate the provisions of the regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information; and

C. Ensure that employees working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations. Designated employees shall be briefed on their roles and responsibilities in protecting the information resources in the criminal justice agency. Special procedures connected with security shall be reviewed periodically to ensure their relevance and continuing effectiveness.

3.5. TELECOMMUNICATIONS.

Direct or remote access to computer systems for the purpose of accessing criminal history record information shall require that the direct or remote access device use dedicated telecommunication lines. The use of any non-dedicated means of data transmission to access criminal history record information shall generally be prohibited. Exceptions may be granted for systems which obtain expressed approval of the Department based on a determination that the system has adequate and verifiable policies and procedures in place to ensure that access to criminal history record information is limited to authorized system users. The Department of State Police shall further approve of any access to the Virginia Criminal Information Network (VCIN), in accordance with State Police regulations governing the network. Nothing

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in this regulation shall be construed to affect the authority of the Department of State Police to regulate access to VCIN.

In those systems where ~~terminal~~ remote access of criminal history record information is permitted, ~~terminal~~ remote access devices must be secure. ~~Terminal~~ Remote access devices capable of receiving or transmitting criminal history record information shall be attended during periods of operation. In cases in which the ~~terminal~~ remote access device is unattended, the device shall, through security means, be made inoperable~~-,~~ for purposes of accessing criminal history record information.

Telecommunications facilities used in connection with the ~~terminal~~ remote access device shall also be secured. The ~~terminal~~ remote access device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the ~~terminal~~ remote access device operator ~~may~~ shall be required. Equipment associated with the ~~terminal~~ remote access device shall be reasonably protected from possible tampering or tapping. ~~In cases in which a computer system provides terminal access to criminal history record information, the use of dial-up lines shall be prohibited to access criminal history record information.~~

3.6. COMPUTER OPERATIONS.

Where computerized data processing is employed, effective and technologically advanced software and hardware design shall be instituted to prevent unauthorized access to this information.

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Computer operations, whether dedicated or shared, which support criminal justice information systems shall operate in accordance with procedures developed or approved by the participating criminal justice agencies.

Criminal history record information shall be stored by the computer in a manner that cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by noncriminal justice terminals.

Operational programs shall be used that will prohibit inquiry, record updates, or destruction of records, from terminals other than criminal justice system terminals which are so designated.

The destruction of records shall be limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

Operational programs shall be used to detect and log all unauthorized attempts to penetrate criminal history record information systems, programs or files.

Programs designed for the purpose of prohibiting unauthorized inquiries, unauthorized record updates, unauthorized destruction of records, or for the detection and logging of unauthorized attempts to penetrate criminal history record information systems shall be known only to the criminal justice agency employees responsible for criminal history record information system control or individuals and agencies which pursuant to a specific agreement with the criminal justice agency

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to provide security programs. The program(s) shall be kept under maximum security conditions.

Criminal justice agencies having automated criminal history record files should designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures.

The criminal justice agency shall have the right to audit, monitor, and inspect procedures established pursuant to these rules and regulations.

3.7. EFFECTIVE DATE:.

These regulations shall be effective on and after February 1, 1994, and until amended or rescinded.

3.8. ADOPTED:

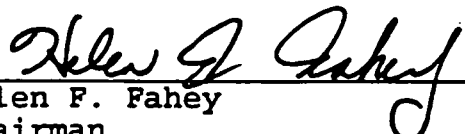
July 27, 1977

3.9. AMENDED:

October 4, 1989

3.10 AMENDED:

October 6, 1993



Helen F. Fahey
Chairman
Criminal Justice Services Board

Nov 8, 1993
Date