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SENATE BILL NO. 543

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 19.2-72, 19.2-74, 19.2-340, and 19.2-390 of the Code of Virginia and to repeal §§ 9.1-101, 9.1-128, 9.1-134, 17.1-293.1, 17.1-502, 19.2-310.7, and 19.2-389.3, as they shall become effective pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, and 17.1-205.1 of the Code of Virginia and the fourth, fifth, sixth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth enactments of Chapter 524 and the fourth, fifth, sixth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth enactments of Chapter 542 of the Acts of Assembly of 2021, Special Session I, relating to criminal records; sealing of records; repeal.

Patron—DeSteph

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-72, 19.2-74, 19.2-340, and 19.2-390 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-72. When it may issue; what to recite and require.

On complaint of a criminal offense to any officer authorized to issue criminal warrants, he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed, he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. A written complaint shall be required if the complainant is not a law-enforcement officer; however, if no arrest warrant is issued in response to a written complaint made by such complainant, the written complaint shall be returned to the complainant. If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest, except that no magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense. The warrant shall (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (iii) describe the offense charged with reasonable certainty, (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing officer. ~~If a warrant is issued for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, the warrant shall reference the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code.~~ The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To any policeman, sheriff or his deputy sheriff of such city (or town);" and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall come or be delivered. A sheriff or his deputy may execute an arrest warrant throughout the county in which he serves and in any city or town surrounded thereby and effect an arrest in any city or town surrounded thereby as a result of a criminal act committed during the execution of such warrant. A jail officer as defined in § 53.1-1 employed at a regional jail or jail farm is authorized to execute a warrant of arrest upon an accused in his jail. The venue for the prosecution of such criminal act shall be the jurisdiction in which the offense occurred.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith

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59 release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful
60 act, the officer may proceed according to the provisions of § 19.2-82.

61 Anything in this section to the contrary notwithstanding, if any person is believed by the arresting
62 officer to be likely to disregard a summons issued under the provisions of this subsection, or if any
63 person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any
64 other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the
65 provisions of § 19.2-82.

66 2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of
67 any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4
68 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise
69 provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting
70 officer shall take the name and address of such person and issue a summons or otherwise notify him in
71 writing to appear at a time and place to be specified in such summons or notice. Upon the giving of
72 such person of his written promise to appear at such time and place, the officer shall forthwith release
73 him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the
74 officer may proceed according to the provisions of § 19.2-82.

75 3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after
76 the issuance of such summons for the purpose of complying with the requirements of Chapter 23
77 (§ 19.2-387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be
78 made pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

79 Any person refusing to give such written promise to appear under the provisions of this section shall
80 be taken immediately by the arresting or other police officer before a magistrate or other issuing
81 authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

82 Any person who willfully violates his written promise to appear, given in accordance with this
83 section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of,
84 and in addition to, the charge upon which he was originally arrested.

85 Any person charged with committing any violation of § 18.2-407 may be arrested and immediately
86 brought before a magistrate who shall proceed as provided in § 19.2-82.

87 B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses
88 pursuant to this section, if such officers are in uniform or displaying a badge of office. On application,
89 the chief law-enforcement officer of the county or city shall supply each officer with a supply of
90 summons forms, for which such officer shall account pursuant to regulation of such chief
91 law-enforcement officer.

92 C. The summons used by a law-enforcement officer pursuant to this section shall be in form the
93 same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. If
94 the summons is issued for an offense in violation of any county, city, or town ordinance that is similar
95 to any provision of this Code, the summons shall reference the offense using both the citation
96 corresponding to the county, city, or town ordinance and the specific provision of this Code.

97 **§ 19.2-340. Fines; how recovered; in what name.**

98 When any statute or ordinance prescribes a fine, unless it is otherwise expressly provided or would
99 be inconsistent with the manifest intention of the General Assembly, it shall be paid to the
100 Commonwealth if prescribed by a statute and recoverable by presentment, indictment, information, or
101 warrant and paid to the locality if prescribed by an ordinance and recoverable by warrant. ~~Whenever any~~
102 ~~warrant or summons is issued pursuant to § 19.2-72 or 19.2-74 for an offense in violation of any county,~~
103 ~~city, or town ordinance that is similar to any provision of this Code, and such warrant or summons~~
104 ~~references the offense using both the citation corresponding to the county, city, or town ordinance and~~
105 ~~the specific provision of this Code, any fine prescribed by the county, city, or town ordinance shall be~~
106 ~~paid to the locality.~~ Fines imposed and costs taxed in a criminal or traffic prosecution, including a
107 prosecution for a violation of an ordinance adopted pursuant to § 46.2-1220, for committing an offense
108 shall constitute a judgment and, if not paid at the time they are imposed, execution may issue thereon in
109 the same manner as upon any other monetary judgment, subject to the period of limitations provided by
110 § 19.2-341.

111 **§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace,**
112 **clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material**
113 **submitted by other agencies.**

114 A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police
115 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
116 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange,
117 on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or
118 service of process upon, any person on charges resulting from an indictment, presentment or
119 information, the arrest on capias or warrant for failure to appear, and the service of a warrant for
120 another jurisdiction, for each charge when any person is arrested on any of the following charges:

- a. Treason;
- b. Any felony;
- c. Any offense punishable as a misdemeanor under Title 54.1;
- d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or
- e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 22.1-289.041, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, or 63.2-1509.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. 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. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

~~Law-enforcement agencies and clerks of court shall only submit reports to the Central Criminal Records Exchange only for those offenses enumerated in this subsection. Only reports received for those offenses enumerated in this subsection shall be included in the Central Criminal Records Exchange.~~

2. For persons arrested and released on summonses in accordance with subsection B of § 19.2-73 or § 19.2-74, such report shall not be required until (i) 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 defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. 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 for each charge after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's 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 Behavioral Health and Developmental Services.

3. For persons arrested on a *capias* for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

4. For any person served with a show cause for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is found to be in violation of the terms or conditions of a suspended sentence or probation for such felony offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

5. If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense.

B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" 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 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal

182 Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the
183 warrant or *capias* may transfer information electronically into VCIN. When the information is
184 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias*
185 to the local police department or sheriff's office. When criminal process has been ordered destroyed
186 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of
187 any information relating to the destroyed criminal process from the VCIN and NCIC.

188 B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant
189 to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his
190 post-release supervision or probation, the law-enforcement agency that received the written statement
191 shall enter, or cause to be entered, the person's name and other appropriate information required by the
192 Department of State Police into the "information systems" known as the Virginia Criminal Information
193 Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.)
194 of Title 52.

195 C. For offenses not charged on a summons in accordance with subsection B of § 19.2-73 or
196 § 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central
197 Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251,
198 or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency
199 or incapacity, deferral, *nolle prosequi*, acquittal, or conviction of, including any sentence imposed, or
200 failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection
201 A, including any action that may have resulted from an indictment, presentment or information, or any
202 finding that the person is in violation of the terms or conditions of a suspended sentence or probation
203 for a felony offense and (ii) any adjudication of delinquency based upon an act that, if committed by an
204 adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A
205 and charged on a summons in accordance with subsection B of § 19.2-73 or § 19.2-74, such electronic
206 report by the clerk of each circuit court and district court to the Central Criminal Records Exchange
207 may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if
208 an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal;
209 (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c)
210 an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court
211 shall make an electronic report to the Central Criminal Records Exchange of any finding that a person
212 charged on a summons is in violation of the terms or conditions of a suspended sentence or probation
213 for a felony offense. *In the case of offenses not required to be reported to the Exchange by subsection*
214 *A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making*
215 *the arrest with the arrest record required to be maintained by § 15.2-1722.* Upon conviction of any
216 person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether
217 sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902,
218 the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against
219 Minors Registry. The report to the Registry shall include the name of the person convicted and all
220 aliases that he is known to have used, the date and locality of the conviction for which registration is
221 required, his date of birth, social security number, and last known address, and specific reference to the
222 offense for which he was convicted. No report of conviction or adjudication in a district court shall be
223 filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event
224 that the records in the office of any clerk show that any conviction or adjudication has been nullified in
225 any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry.
226 In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court,
227 shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the
228 case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or
229 Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition
230 previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall
231 report such action to the law-enforcement agency that entered the warrant or *capias* into the VCIN.

232 D. In addition to those offenses enumerated in subsection A, the Central Criminal Records Exchange
233 may receive, classify, and file any other fingerprints, photographs, and records of *arrest or* confinement
234 submitted to it by any *law-enforcement agency or any* correctional institution or the Department of
235 Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records
236 received by the Central Criminal Records Exchange from any correctional institution or the Department
237 of Corrections may be classified and filed as criminal history record information.

238 E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining
239 correctional status information, as required by the regulations of the Department of Criminal Justice
240 Services, with respect to individuals about whom reports have been made under the provisions of this
241 chapter shall make reports of changes in correctional status information to the Central Criminal Records
242 Exchange. The reports to the Exchange shall include any commitment to or release or escape from a
243 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 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 30 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.

I. As used in this section:

"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.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

2. That §§ 9.1-101, 9.1-128, 9.1-134, 17.1-293.1, 17.1-502, 19.2-310.7, and 19.2-389.3, as they shall become effective pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, and 17.1-205.1 of the Code of Virginia are repealed.

3. That the fourth, fifth, sixth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth enactments of Chapter 524 and the fourth, fifth, sixth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth enactments of Chapter 542 of the Acts of Assembly of 2021, Special Session I, are repealed.