CRIMINAL PROCEDURE: CENTRAL CRIMINAL RECORDS EXCHANGE.

Department of State Police is authorized to provide mental health information maintained in Central Criminal Records Exchange to Federal Bureau of Investigation for use in National Instant Criminal Background Check System Index.

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Superintendent, Department of State Police
April 4, 2002

Issue Presented

You ask whether the Department of State Police has the authority to provide certain mental health information maintained by the Central Criminal Records Exchange to the Federal Bureau of Investigation for use in the National Instant Criminal Background Check System ("NICS") Index.

Response

The Department of State Police has the authority to provide certain mental health information maintained in the Central Criminal Records Exchange to the Federal Bureau of Investigation, so long as it is (i) kept confidential; and (ii) used only to determine a person’s eligibility to possess, purchase or transfer a firearm.

Facts

You advise that the Federal Bureau of Investigation has requested the Department of State Police to provide mental health information for use in the NICS Index. You relate that the Department of State Police retains certain mental health information that has been forwarded to the Central Criminal Records Exchange pursuant to the requirements of §§ 37.1-67.3 and 37.1-134.18(B) of the Code of Virginia.

You further advise that the United States Department of Justice has issued regulations establishing the policies and procedures for maintaining the NICS Index.¹ The sole purpose of the NICS Index is to provide information to any licensed importer, manufacturer or dealer of firearms as to whether the transfer of a firearm to an unlicensed person would be in violation of federal or state law.² The
regulations note that, in addition to records obtained from federal agencies, authorized state and local law enforcement agencies may contribute records to the NICS Index.

**Applicable Law and Discussion**

In order to answer your question, three issues must be resolved: (1) whether orders or adjudications related to mental health may be provided to and retained by the Central Criminal Records Exchange; (2) whether the Federal Bureau of Investigation constitutes a criminal justice agency with which the Exchange may share information; and (3) whether the adjudications and orders related to mental health on file with the Exchange may be shared with the Federal Bureau of Investigation.

The first issue to be resolved is whether orders or adjudications related to mental health may be provided to and retained by the Central Criminal Records Exchange. Chapter 23 of Title 19.2, §§ 19.2-387 through 19.2-392.02, establishes the Central Criminal Records Exchange as a separate division within the Department of State Police and the procedure for reporting criminal offenses to the Exchange. Section 19.2-388 sets forth the duties of the Exchange, including the duty "to receive, classify and file criminal history record information as defined in [§ 9.1-101]."

Section 9.1-101 defines "criminal history record information" as 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, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

Section 37.1-67.3 requires the district court clerk to forward to the Central Criminal Records Exchange "a [certified] copy of any order for involuntary commitment to a hospital" for mental health treatment. Section 37.1-134.18(B) requires the clerk of a court of competent jurisdiction to forward to the Exchange a certified copy of any court order adjudicating a person mentally incapacitated or any order restoring capacity to such person.
It is clear from reading §§ 19.2-387 through 19.2-392.02, § 9.1-101, and §§ 37.1-67.3 and 37.1-134.18(B) that the General Assembly intended the Exchange to receive orders and adjudications related to mental health. The only ambiguity is whether the General Assembly (i) intends to expand the duties of the Exchange, or (ii) considers orders or adjudication related to mental health to be covered within the definition of "criminal history record information." The definition of "criminal history record information" contained in § 9.1-101 is written in broad terms and not limited to criminal convictions. Therefore, it is my opinion that orders and adjudications related to mental health are covered within the definition of "criminal history record information" under § 9.1-101. Once received by the Exchange, however, §§ 37.1-67.3 and 37.1-134.18(B) require that such orders "shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase or transfer a firearm."

As to the second issue of whether the Federal Bureau of Investigation constitutes a criminal justice agency with which the Exchange may share information, § 19.2-389(A) restricts the dissemination of "criminal history record information" to certain individuals and agencies. Section 19.2-389(A)(1) permits the dissemination of criminal history record information to "[a]uthorized officers or employees of criminal justice agencies, as defined by [§ 9.1-101], for purposes of the administration of criminal justice." Section 9.1-101 defines "criminal justice agency" to mean "any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice." Section 9.1-101 also defines "administration of criminal justice" as the "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." The Federal Bureau of Investigation is a criminal justice agency of the federal government. Therefore, under a plain reading of these various statutes, the Federal Bureau of Investigation constitutes a "criminal justice agency" with which the Central Criminal Records Exchange may share information.

The third issue to be addressed is whether adjudications and orders related to mental health on file with the Exchange may be shared with the Federal Bureau of Investigation. Pursuant to § 9.1-102(23), the Department of Criminal Justice Services, the state agency charged with the administration of the criminal history record system, has issued regulations pertaining to the use and
security of information retained by the Exchange.\textsuperscript{10} Though I find no specific regulation granting authority to the Department of State Police to provide a copy of the form and order to be forwarded under §§ 37.1-67.3 and 37.1-134.18(B), neither statutes nor regulations should be interpreted in ways that produce absurd or irrational consequences.\textsuperscript{11} Statutes related to the same subject should be considered in pari materia.\textsuperscript{12} In addition, when construing statutes, the fullest possible effect must be given to the legislative intent embodied in the entire statutory enactment.\textsuperscript{13}

Article 7, Chapter 7 of Title 18.2, §§ 18.2-308 through 18.2-311.2, regulates the carrying of certain types of weapons in the Commonwealth. Section 18.2-308.1:2 makes it "unlawful for any person who has been adjudicated … incapacitated pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1 and whose competency or capacity has not been restored pursuant to former § 37.1-134.1 or § 37.1-134.16, to purchase, possess, or transport any firearm." Section 18.2-308.1:3(A) makes it "unlawful for any person involuntarily committed pursuant to § 37.1-67.3 to purchase, possess or transport a firearm during the period of such person's commitment." The purpose underlying a statute's enactment is particularly significant in construing it.\textsuperscript{14} The obvious purpose of both the federal and state laws is to regulate and restrict the possession of firearms by individuals who may not possess the requisite mental condition to safely possess such firearms, and who could potentially harm the public.\textsuperscript{15} Therefore, adjudications and orders related to mental health maintained by the Exchange may be shared with the Federal Bureau of Investigation.

\textbf{Conclusion}

Accordingly, it is my opinion that the Department of State Police is authorized to provide mental health information maintained in the Central Criminal Records Exchange, pursuant to the requirements of §§ 37.1-67.3 and 37.1-134.18(B), to the Federal Bureau of Investigation for use in the NICS Index.

\textsuperscript{1}28 C.F.R. §§ 25.1 to 25.11 (2001). The NICS Index is the database managed by the Federal Bureau of Investigation, which contains information provided by federal and state agencies about persons who are prohibited by federal law from possessing a firearm. \textit{Id.} § 25.2.

\textsuperscript{2}\textit{Id.} § 25.1.

\textsuperscript{3}"Record means any … information about an individual that is maintained by an agency, including but not limited to information that disqualifies the individual from receiving a firearm." \textit{Id.} § 25.2.
4Id. § 25.4.


6Id. § 19.2-388(A) (Michie Repl. Vol. 2000).


9Section 9.1-102(23) provides that, under the direction of the Criminal Justice Services Board, the Department of Criminal Justice Services has the power and duty to "[a]dopt 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[."


12See supra note 7.


15Compare Grenco v. Nathaniel Green, 218 Va. 228, 231, 237 S.E.2d 107, 109 (1977) (noting that purpose of real estate licensing statutes is to protect public from fraud, misrepresentation, and dishonest and incompetent persons).

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