

01-119

**CRIMINAL PROCEDURE: CENTRAL CRIMINAL RECORDS EXCHANGE.**

**Requirement that law-enforcement agency enter into Virginia Criminal Information Network certain information contained on warrant or capias received by agency is directory in nature, and does not otherwise violate affected individual's constitutional rights.**

The Honorable William W. Davenport  
Commonwealth's Attorney for Chesterfield County  
April 4, 2002

**Issue Presented**

You ask whether § 19.2-390(B) of the *Code of Virginia* requires law-enforcement agencies to enter into the Virginia Criminal Information Network information contained in indictments and capias ordered sealed by a court prior to the arrest of the individual named in such indictments and capias.

**Response**

I am of the opinion that the requirement in § 19.2-390(B) is not intended to circumvent the authority of the circuit court to order indictments and capias to remain sealed under the facts you present.

**Facts**

You relate that many cases involving sealed indictments and capias from a multijurisdictional grand jury are continuing investigations. You state that entry on the Virginia Criminal Information Network of information contained in such indictments and capias jeopardizes the secrecy of ongoing criminal investigations, risks the safety of law-enforcement officers involved in the investigations, and allows for the arrest of a target without the knowledge of the detective assigned to the case. Such reporting does not allow for the coordinated execution of search warrants or arrest of codefendants. Finally, you advise that such a process inhibits the cultivation of potential confidential informants.

**Applicable Law**

Section 19.2-390(B) provides for the reporting to the Department of State Police of information contained in a capias or warrant received by a law-enforcement agency:

Within seventy-two hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony ..., 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 ... Virginia Criminal Information Network .... [Emphasis added.]

## Discussion

"[T]he use of "shall," in a statute requiring action by a public official, is directory and not mandatory unless the statute manifests a contrary intent."<sup>1</sup> Unlike certain procedural criminal statutes that ensure the protection of an individual's constitutional rights, § 19.2-390(B) assists law-enforcement officers in the efficient administration of the criminal justice system. Where there is no deprivation of an individual's constitutional rights, lawful restraint in compliance with a procedural statute that is purely directory in nature is permissible.<sup>2</sup>

## Conclusion

I am of the opinion that § 19.2-390(B) clearly is not intended to circumvent the authority of the circuit court to order indictments and capiases to remain sealed under the facts you present. I am also of the opinion that the particular requirement in § 19.2-390(B) that a law-enforcement agency enter into the Virginia Criminal Information Network certain information contained on a warrant or capias received by the agency is clearly directory in nature, and does not otherwise violate an affected individual's constitutional rights. Therefore, it is my view that § 19.2-390(B) contains no prohibitory or limiting language that is clearly mandatory to law-enforcement officers.

Accordingly, I am of the opinion that § 19.2-390(B) does not require the reporting of information contained in indictments and capiases ordered sealed by the court prior to the arrest of the individual named in such indictments and capiases.

<sup>1</sup>Commonwealth v. Wilks, 260 Va. 194, 199, 530 S.E.2d 665, 667 (2000) (quoting Jamborsky v. Baskins, 247 Va. 506, 511, 442 S.E.2d 636, 638 (1994)).

<sup>2</sup>See Caccioppo v. Com., 20 Va. App. 534, 537, 458 S.E.2d 592, 594 (1995) (citing West v. Commonwealth, 16 Va. App. 679, 692, 432 S.E.2d 730, 738(1993)).

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