

024757826

HOUSE BILL NO. 1205

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 4, 2002)

(Patron Prior to Substitute—Delegate Marrs)

*A BILL to amend and reenact §§ 16.1-300 and 16.1-305 of the Code of Virginia, relating to confidentiality of juvenile records.***Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-300 and 16.1-305 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-300. Confidentiality of Department records.

A. The social, medical, psychiatric and psychological reports and records of children who are or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or who are committed to the Department of Juvenile Justice shall be confidential and shall be open for inspection only to the following:

1. The judge, prosecuting attorney, probation officers and professional staff assigned to serve a court having the child currently before it in any proceeding;

2. Any public agency, child welfare agency, private organization, facility or person who is treating or providing services to the child pursuant to a contract with the Department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of this title;

3. The child's parent, guardian, legal custodian or other person standing in loco parentis and the child's attorney;

4. Any person who previously has been a ward of the Department and who has reached the age of majority and requests access to his own records or reports;

5. Any state agency providing funds to the Department of Juvenile Justice and required by the federal government to monitor or audit the effectiveness of programs for the benefit of juveniles which are financed in whole or in part by federal funds;

6. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court;

7. Any person, agency or institution having a legitimate interest when release of the confidential information is (i) for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information or (ii) when the requesting party has custody or is providing supervision for a juvenile and the release of the confidential information is in the interest of maintaining security in a secure facility as defined by § 16.1-228; and

8. *The attorney for the Commonwealth and adult probation and parole officers for the purpose of preparing presentence reports as provided in §19.2-299 or discretionary sentencing guidelines worksheets, including related risk assessment instruments, as directed by the court pursuant to subsection C of §19.2-298.01; and*

9. Any person, agency, organization or institution outside the Department that, at the Department's request, is conducting research or evaluation on the work of the Department or any of its divisions.

A designated individual treating or responsible for the treatment of a person who was previously a ward of the Department may inspect such reports and records as are kept by the Department on such person or receive copies thereof, when the person who is the subject of the reports and records or his parent, guardian, legal custodian or other person standing in loco parentis if the person is under the age of eighteen, provides written authorization to the Department prior to the release of such reports and records for inspection or copying to the designated individual.

B. The Department may withhold from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis that portion of the records referred to in A hereof, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child, provided that the juvenile and domestic relations district court having jurisdiction over the facility where the child is currently placed shall concur in such determination.

If a parent, guardian, legal custodian or other person standing in loco parentis requests to inspect the reports and records concerning his child and if the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information about the child's progress as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court having jurisdiction over the facility where the child is currently placed shall have jurisdiction over petitions filed by a parent,

60 guardian, legal custodian or other person standing in loco parentis for review of the Department's
61 decision to withhold reports or records as provided herein.

62 § 16.1-305. Confidentiality of court records.

63 A. Social, medical and psychiatric or psychological records, including reports or preliminary
64 inquiries, predisposition studies and supervision records, of neglected and abused children, children in
65 need of services, children in need of supervision and delinquent children shall be filed with the other
66 papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and
67 records of the court and shall be open for inspection only to the following:

68 1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic
69 relations district courts;

70 2. Representatives of a public or private agency or department providing supervision or having legal
71 custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

72 3. The attorney for any party, including the attorney for the Commonwealth;

73 4. Any other person, agency or institution, by order of the court, having a legitimate interest in the
74 case or in the work of the court; ~~however.~~ *However, for the purposes of an investigation conducted by a*
75 *local community-based probation agency, preparation of a pretrial investigation report, or of a*
76 *presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a*
77 *background report for the Parole Board, adult probation and parole officers, including United States*
78 *Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or*
79 *operated pursuant to Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a*
80 *local community-based probation program established or operated pursuant to the Comprehensive*
81 *Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an*
82 *accused's or inmate's records in juvenile court without a court order and for the purpose of preparing*
83 *the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by*
84 *the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and the*
85 *probation officer shall have access to the defendant's records in juvenile court without a court order.*

86 A copy of the court order of disposition in a delinquency case shall be provided to a probation
87 officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing
88 guidelines. The copies shall remain confidential, but reports may be prepared using the information
89 contained therein as provided in §§ 19.2-298.01 and 19.2-299.

90 B. All or any part of the records enumerated in subsection A, or information secured from such
91 records, which is presented to the judge in court or otherwise in a proceeding under this law shall also
92 be made available to the parties to the proceedings and their attorneys.

93 B1. If a juvenile fourteen years of age or older at the time of the offense is adjudicated delinquent
94 on the basis of an act which would be a felony if committed by an adult, all court records regarding that
95 adjudication and any subsequent adjudication of delinquency, other than those records specified in
96 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that
97 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile
98 victim or juvenile witness.

99 C. All other juvenile records, including the docket, petitions, motions and other papers filed with a
100 case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by
101 those persons and agencies designated in subsections A and B of this section.

102 D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for
103 which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles,
104 which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney
105 shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney
106 that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding
107 and that such papers will be only used for such evidentiary purpose.

108 E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to
109 the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an
110 award to the victim of a crime, and such information shall not be disseminated or used by the
111 Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

112 F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the
113 disposition in a case involving a juvenile who is committed to state care after being adjudicated for a
114 criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the
115 victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a
116 written request, the Department of Juvenile Justice shall provide advance notice of such juvenile
117 offender's anticipated date of release from commitment.

118 G. Any record in a juvenile case file which is open for inspection by the professional staff of the
119 Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the
120 court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted
121 shall be subject to the provisions of § 16.1-300.