

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 119

An Act to amend and reenact §§ 16.1-301, 16.1-305.1, 16.1-305.2, 16.1-309, 22.1-254, 22.1-277, 22.1-277.2:1 and 22.1-288.2 of the Code of Virginia, relating to juvenile records.

[H 1572]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-301, 16.1-305.1, 16.1-305.2, 16.1-309, 22.1-254, 22.1-277, 22.1-277.2:1, and 22.1-288.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-301. Confidentiality of law-enforcement records; disclosures to school principal.

A. The court shall require all 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 laws committed by juveniles. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile ~~fourteen~~ 14 years of age or older is charged with a violent juvenile felony as specified in subsections B and C of § 16.1-269.1.

B. Notwithstanding any other provision of law, the chief of police or sheriff of a jurisdiction or his designee may disclose, for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile is a suspect in or has been charged with (i) a violent juvenile felony, as specified in subsections B and C of § 16.1-269.1; (ii) a violation of any of the provisions of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) a violation of law involving any weapon as described in subsection A of § 18.2-308. *If a chief of police, sheriff or a designee has disclosed to a school principal pursuant to this section that a juvenile is a suspect in or has been charged with a crime listed above, upon a court disposition of a proceeding regarding such crime in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the chief of police, sheriff or a designee shall, within 15 days of the expiration of the appeal period, if there is no notice of appeal, provide notice of the disposition ordered by the court to the school principal to whom disclosure was made. If the court defers disposition or if charges are withdrawn, dismissed or nolle prosequi, the chief of police, sheriff or a designee shall, within 15 days of such action provide notice of such action to the school principal to whom disclosure was made. If charges are withdrawn in intake or handled informally without a court disposition or if charges are not filed within 90 days of the initial disclosure, the chief of police, sheriff or a designee shall so notify the school principal to whom disclosure was made.*

~~B~~ C. Inspection of ~~such~~ law-enforcement records concerning juveniles shall be permitted only by the following:

1. A court having the juvenile currently before it in any proceeding;
2. The officers of public and nongovernmental institutions or agencies to which the juvenile is currently committed, and those responsible for his supervision after release;
3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;
4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;
5. The probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;
6. The juvenile, parent, guardian or other custodian and counsel for the juvenile by order of the court; and
7. As provided in §§ 19.2-389.1 and 19.2-390.

€ D. The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

Ð E. Nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies.

§ 16.1-305.1. Disclosure of disposition in certain delinquency cases.

Upon a court's disposition of a proceeding in a court of competent jurisdiction where a juvenile is charged with a crime listed in subsection G of § 16.1-260 in which a juvenile is adjudicated delinquent or, convicted of a crime based upon a violation of the law involving (i) a firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2; (ii) homicide, pursuant to Article 1 (§ 18.2-31 et seq.) of Chapter 4 of Title 18.2; (iii) felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; (iv) criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; (v) manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; (vi) manufacture, sale, gift, distribution, or possession of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; (vii) arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; (viii) burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93; or (ix) robbery pursuant to § 18.2-58, found not guilty or the charges are reduced, the clerk of the court in which the disposition is entered shall, within fifteen 15 days of the expiration of the appeal period, if there has been no notice of an appeal, provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication or conviction disposition was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. If the court defers disposition, or the charges are nolle prosequi, withdrawn, or dismissed the clerk shall, within 15 days of such action, provide written notice of such action to the superintendent of the school division in which the child is enrolled at such time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. If charges are withdrawn in intake or handled informally without a court disposition, the intake officer shall, within 15 days of such action, provide written notification of the action to the superintendent of the school division in which the child is enrolled at that time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense.

If the child is not enrolled in the school division that receives notification under this section, the superintendent of that division may forward the notification to the superintendent of the school division where the child is enrolled.

A superintendent who receives notification under this section may disclose the information received to anyone to whom he or a principal disclosed that a petition had been filed. Further disclosure of this information received under this section by the superintendent to school personnel is authorized only as provided in § 22.1-288.2.

§ 16.1-305.2. Disclosure of notice of the filing of a petition by division superintendent.

Except as otherwise provided in this section, a division superintendent shall not disclose information contained in or derived from a notice of petition received pursuant to § 16.1-260. If the juvenile is not enrolled as a student in a public school in the division to which the notice was given, the superintendent shall promptly so notify the intake officer of the juvenile court in which the petition was filed and may forward the notice of petition to the superintendent of the division in which the juvenile is enrolled, if known.

If the division superintendent believes that disclosure to school personnel is necessary to ensure the physical safety of the juvenile, other students or school personnel within the division, he may at any time prior to receipt of the notice of disposition in accordance with § 16.1-305.1, disclose the fact of the filing of the petition and the nature of the offense to the principal of the school in which the juvenile who is the subject of the petition is enrolled. The principal may further disseminate the information, after the juvenile has been taken into custody, whether or not the child has been released, only to those students and school personnel having direct contact with the juvenile and need of the information to ensure physical safety or the appropriate educational placement or other educational services.

§ 16.1-309. Penalty.

A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, 16.1-305 and 16.1-307, any person who (i) files a petition, (ii) receives a petition or has access to court records in an official capacity, (iii) participates in the investigation of allegations which form the basis of a petition, (iv) is interviewed concerning such allegations and whose information is derived solely from such interview or (v) is present during any court proceeding, who discloses or makes use of or knowingly permits the use of identifying information not otherwise available to the public concerning a juvenile who is suspected of being or is the subject of a proceeding within the jurisdiction of the juvenile court pursuant to subdivisions 1 through 5 of subsection A of § 16.1-241 or who is in the custody of the State Department of Juvenile Justice, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Juvenile Justice or acquired in the course of official duties, shall be guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses to school personnel identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act that has met applicable criteria of § 16.1-260 and is committed or alleged to have been committed on school property during a school-sponsored activity or on the way to or from such activity, if the disclosure is made solely for the purpose of enabling school

personnel to take appropriate disciplinary action within the school setting against the juvenile. Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to §§ 16.1-305.1 and 22.1-288.2, if the disclosure is made solely to enable school personnel to take appropriate actions within the school setting with regard to the juvenile or another student in compliance with those sections.

§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.

A. Except as otherwise provided in this article, every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child as described in § 22.1-254.1.

As prescribed in the regulations of the Board of Education, the requirements of this section may also be satisfied by sending a child to an alternative program of study or work/study offered by a public, private, denominational or parochial school or by a public or private degree-granting institution of higher education. Further, in the case of any five-year-old child who is subject to the provisions of this subsection, the requirements of this section may be alternatively satisfied by sending the child to any public educational prekindergarten program, including a Head Start program, or in a private, denominational or parochial educational prekindergarten program.

Instruction in the home of a child or children by the parent, guardian or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.

The requirements of this section shall apply to (i) any child in the custody of the Department of Juvenile Justice or the Department of Corrections who has not passed his eighteenth birthday and (ii) any child whom the division superintendent has required to take a special program of prevention, intervention, or remediation as provided in subsection C of § 22.1-253.13:1 and in § 22.1-254.01. However, the requirements of this section shall not apply to any child who has obtained a high school diploma, its equivalent, or a certificate of completion or who has otherwise complied with compulsory school attendance requirements as set forth in this article.

B. A school board shall excuse from attendance at school:

1. Any pupil who, together with his parents, by reason of bona fide religious training or belief is conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code; and

2. On the recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides and for such period of time as the court deems appropriate, any pupil who, together with his parents, is opposed to attendance at a school by reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension for personal safety when such concern or apprehension in that pupil's specific case is determined by the court, upon consideration of the recommendation of the principal and division superintendent, to be justified.

C. A school board may excuse from attendance at school:

1. On recommendation of the principal and the division superintendent and with the written consent of the parent or guardian, any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school; and

2. On recommendation of the juvenile and domestic relations district court of the county or city in which the pupil resides, any pupil who, in the judgment of such court, cannot benefit from education at such school.

D. Local school boards may allow the requirements of subsection A of this section to be met under the following conditions:

For a student who is at least ~~sixteen~~ 16 years of age, there shall be a meeting of the student, the student's parents, and the principal or his designee of the school in which the student is enrolled in which an individual student alternative education plan shall be developed in conformity with guidelines prescribed by the Board, which plan must include:

- a. Career guidance counseling;
- b. Mandatory enrollment and attendance in a general educational development preparatory program or other alternative education program approved by the local school board with attendance requirements that provide for reporting of student attendance by the chief administrator of such GED preparatory program or approved alternative education program to such principal or his designee;
- c. Counseling on the economic impact of failing to complete high school; and
- d. Procedures for reenrollment to comply with the requirements of subsection A of this section.

A student for whom an individual student alternative education plan has been granted pursuant to this subsection and who fails to comply with the conditions of such plan shall be in violation of the compulsory school attendance law, and the division superintendent or attendance officer of the school division in which such student was last enrolled shall seek immediate compliance with the compulsory school attendance law as set forth in this article.

Students enrolled with an individual student alternative education plan shall be counted in the average daily membership of the school division.

E. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et seq.) of Chapter 14 of this title and upon a finding that a school-age child has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that resulted in or could have resulted in injury to others, or ~~for which the disposition ordered by a court of an offense that~~ is required to be disclosed to the superintendent of the school division pursuant to ~~§ 16.1-305.1 subsection G of § 16.1-260;~~ (iii) suspended pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or § 22.1-277.07 or subsection B of § 22.1-277, require the child to attend an alternative education program as provided in § 22.1-209.1:2 or § 22.1-277.2:1.

F. Whenever a court orders any pupil into an alternative education program offered in the public schools, the local school board of the school division in which the program is offered shall determine the appropriate alternative education placement of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its school division.

The juvenile and domestic relations district court of the county or city in which a pupil resides or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other education program designed to offer instruction to students for whom the regular program of instruction may be inappropriate.

This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277.04, 22.1-277.05, 22.1-277.06, 22.1-277.07, and 22.1-277.2. As used in this subsection, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

G. Within one calendar month of the opening of school, each school board shall send to the parents or guardian of each student enrolled in the division a copy of the compulsory school attendance law and the enforcement procedures and policies established by the school board.

H. The provisions of this article shall not apply to:

1. Children suffering from contagious or infectious diseases while suffering from such diseases;
2. Children whose immunizations against communicable diseases have not been completed as provided in § 22.1-271.2;
3. Children under ~~ten~~ 10 years of age who live more than two miles from a public school unless public transportation is provided within one mile of the place where such children live;
4. Children between the ages of ~~ten~~ 10 and ~~seventeen~~ 17, inclusive, who live more than 2.5 miles from a public school unless public transportation is provided within 1.5 miles of the place where such children live; and
5. Children excused pursuant to subsections B and C of this section.

Further, any child who will not have reached his sixth birthday on or before September 30 of each school year whose parent or guardian notifies the appropriate school board that he does not wish the child to attend school until the following year because the child, in the opinion of the parent or guardian, is not mentally, physically or emotionally prepared to attend school, may delay the child's attendance for one year.

The distances specified in subdivisions 3 and 4 of this subsection shall be measured or determined from the child's residence to the entrance to the school grounds or to the school bus stop nearest the entrance to the residence of such children by the nearest practical routes which are usable for walking or riding. Disease shall be established by the certificate of a reputable practicing physician in accordance with regulations adopted by the Board of Education.

§ 22.1-277. Suspensions and expulsions of pupils generally.

A. Pupils may be suspended or expelled from attendance at school for sufficient cause.

B. Any student for whom the division superintendent of the school division in which such student is enrolled has received a report pursuant to § 16.1-305.1 of an adjudication of delinquency or a conviction *for an offense listed in subsection G of § 16.1-260* may be suspended or expelled from school attendance pursuant to this article.

C. The authority provided in § 22.1-276.2 for teachers to remove students from their classes in certain instances of disruptive behavior shall not be interpreted to affect the operation of §§ 22.1-277.04, 22.1-277.05, or § 22.1-277.06.

§ 22.1-277.2:1. Disciplinary authority of school boards under certain circumstances; alternative education program.

A. A school board may, in accordance with the procedures set forth in this article, require any student who has been (i) charged with an offense relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol or drugs, or intentional injury to another person; (ii) found guilty or not innocent of an offense relating to the Commonwealth's laws on weapons, alcohol, or drugs, or of a crime that resulted in or could have resulted in injury to others, or ~~for which the disposition ordered by a court of an offense that~~ is required to be disclosed to the superintendent of the school division pursuant to ~~§ 16.1-305.1 subsection G of § 16.1-260~~; (iii) found to have committed a serious offense or repeated offenses in violation of school board policies; (iv) suspended pursuant to § 22.1-277.05; or (v) expelled pursuant to §§ 22.1-277.06, 22.1-277.07, or § 22.1-277.08, or subsection B of § 22.1-277, to attend an alternative education program. A school board may require such student to attend such programs regardless of where the crime occurred. School boards may require any student who has been found, in accordance with the procedures set forth in this article, to have been in possession of, or under the influence of, drugs or alcohol on a school bus, on school property, or at a school-sponsored activity in violation of school board policies, to undergo evaluation for drug or alcohol abuse, or both, and, if recommended by the evaluator and with the consent of the student's parent, to participate in a treatment program.

As used in this section, the term "charged" means that a petition or warrant has been filed or is pending against a pupil.

B. A school board may adopt regulations authorizing the division superintendent or his designee to require students to attend an alternative education program consistent with the provisions of subsection A after (i) written notice to the student and his parent that the student will be required to attend an alternative education program and (ii) notice of the opportunity for the student or his parent to participate in a hearing to be conducted by the division superintendent or his designee regarding such placement. The decision of the superintendent or his designee regarding such alternative education placement shall be final unless altered by the school board, upon timely written petition, as established in regulation, by the student or his parent, for a review of the record by the school board.

§ 22.1-288.2. Receipt, dissemination and maintenance of records of certain law-enforcement information.

A. A division superintendent shall disseminate the notice or information *regarding an adjudication of delinquency or conviction for an offense listed in subsection G of § 16.1-260*, contained in a notice received by him pursuant to § 16.1-305.1 to school personnel responsible for the management of student records and to other relevant school personnel, including, but not limited to, the principal of the school in which the student is enrolled. The principal shall further disseminate such information to licensed instructional personnel and other school personnel who (i) provide direct educational or support services to the student and (ii) have a legitimate educational interest in such information.

B. A parent, guardian or other person having control or charge of a student in a public school and, with consent of a parent or in compliance with a court order, the court in which the disposition was rendered, shall be notified in writing of any disciplinary action taken with regard to any incident upon which the adjudication of *delinquency or conviction for an offense listed in subsection G of § 16.1-260* was based and the reasons therefor. The parent or guardian shall also be notified of his or her right to review, and to request an amendment of, the student's scholastic record, in accordance with regulations of the Board of Education governing the management of scholastic records.

Every notice of adjudication of *delinquency or conviction for an offense listed in subsection G of § 16.1-260* received by a superintendent, and information contained in the notice, which is not a disciplinary record as defined in Board of Education regulations, shall be maintained by him and by any others to whom he disseminates it, separately from all other records concerning the student. However, if the school administrators or the school board takes disciplinary action against a student based upon an incident which formed the basis for the adjudication of *delinquency or conviction for an offense listed in subsection G of § 16.1-260*, the notice shall become a part of the student's disciplinary record.

C. When a superintendent receives notice of the filing of a petition from the intake officer in accordance with § 16.1-260, or upon request of a court services unit for information made in conjunction with the preparation of a social history report pursuant to § 16.1-273, the superintendent shall provide information regarding the student's educational and attendance status to the intake officer or court services unit, as the case may be. Whenever a division superintendent receives notice of a student's commitment to the Department of Juvenile Justice, the superintendent or his designee shall participate in the development of a reenrollment plan as provided in § 16.1-293.