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SENATE BILL NO. 173

Offered January 9, 2008

Prefiled January 7, 2008

A *BILL to amend and reenact §§ 16.1-69.55 and 17.1-213 of the Code of Virginia, relating to retention of records in domestic violence cases.*

Patron—Blevins

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-69.55 and 17.1-213 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.

A. Criminal and traffic infraction proceedings:

1. In misdemeanor and traffic infraction cases, *except misdemeanor cases under § 16.1-253.2 or 18.2-57.2*, all documents shall be retained for 10 years, including cases sealed in expungement proceedings under § 19.2-392.2. *In misdemeanor cases under § 16.1-253.2 or 18.2-57.2, all documents shall be retained for 20 years.* Documents in misdemeanor and traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the appropriate circuit court pursuant to § 16.1-135;

2. In felony cases which are certified to the grand jury, all documents shall be certified to the clerk of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall be handled as provided in subdivision A 1 of this section;

3. Dockets and indices shall be retained for 10 years.

B. Civil proceedings:

1. All documents in civil proceedings in district court which are dismissed, including dismissal under § 8.01-335, shall be retained until completion of the Commonwealth's audit of the court records. Notwithstanding § 8.01-275.1, the clerks of the district courts may destroy documents in civil proceedings in which no service of process is had 24 months after the last return date;

2. In civil actions which result in a judgment all documents in the possession of the general district court shall be retained for 10 years and, unless sooner satisfied, the judgment shall remain in force for a period of 10 years;

3. In civil cases that are appealed to the circuit court pursuant to § 16.1-112, all documents pertaining thereto shall be transferred to the circuit court in accordance with those sections;

4. The limitations on enforcement of general district court judgments provided in § 16.1-94.1 shall not apply if the plaintiff, prior to the expiration of that period for enforcement, pays the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. However, a judgment debtor wishing to discharge a judgment pursuant to the provisions of § 8.01-456, when the judgment creditor cannot be located, may, prior to the expiration of that period for enforcement, pay the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. After the expiration of the period provided in § 16.1-94.1, executions on such docketed civil judgments may issue from the general district court wherein the judgment was obtained upon the filing in the general district court of an abstract from the circuit court. In all other respects, the docketing of a general district court judgment in a circuit court confers upon such judgment the same status as if the judgment were a circuit court judgment;

5. Dockets for civil cases shall be retained for 10 years;

6. Indices in civil cases shall be retained for 10 years.

C. Juvenile and domestic relations district court proceedings:

1. In adult criminal cases, all records shall be retained as provided in subdivision A 1 of this section;

2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

3. In all cases involving support arising under Titles 16.1, 20 or 63.2, all documents and indices shall be retained until the last juvenile involved, if any, has reached 19 years of age and 10 years have elapsed from either dismissal or termination of the case by court order or by operation of law. Financial records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

4. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents pertaining thereto shall be transferred to circuit court;

5. All dockets in juvenile cases shall be governed by the provisions of § 16.1-306 F.

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59 § 17.1-213. Disposition of papers in ended cases.

60 A. All case files for cases ended prior to January 1, 1913, shall be permanently maintained in
61 hardcopy form, either in the locality served by the circuit court where such files originated or in The
62 Library of Virginia in accordance with the provisions of § 42.1-86 and subsection C of § 42.1-87.

63 B. The following records for cases ending on or after January 1, 1913, may be destroyed in their
64 entirety at the discretion of the clerk of each circuit court after having been retained for 10 years after
65 conclusion:

- 66 1. Conditional sales contracts;
- 67 2. Concealed weapons permit applications;
- 68 3. Minister appointments;
- 69 4. Petitions for appointment of trustee;
- 70 5. Name changes;
- 71 6. Nolle prosequi cases;
- 72 7. Civil actions that are voluntarily dismissed, including nonsuits, cases that are dismissed as settled
73 and agreed, cases that are dismissed with or without prejudice, cases that are discontinued or dismissed
74 under § 8.01-335 and district court appeals dismissed under § 16.1-113 prior to 1988;
- 75 8. Misdemeanor and traffic cases, *except as provided in subdivision C 3*, including those which were
76 commenced on a felony charge but concluded as a misdemeanor;
- 77 9. Suits to enforce a lien;
- 78 10. Garnishments;
- 79 11. Executions except for those covered in § 8.01-484;
- 80 12. Miscellaneous oaths and qualifications, but only if the order or oath or qualification is spread in
81 the appropriate order book; and
- 82 13. Civil cases pertaining to declarations of habitual offender status and full restoration of driving
83 privileges.

84 C. All other records or cases ending on or after January 1, 1913, may be destroyed in their entirety
85 at the discretion of the clerk of each circuit court subject to the following guidelines:

- 86 1. All civil case files to which subsection D does not pertain may be destroyed after 20 years from
87 the court order date.
- 88 2. All criminal cases dismissed, including those not a true bill, acquittals and not guilty verdicts, may
89 be destroyed after 10 years from the court order date.
- 90 3. All criminal case files involving a felony conviction *or a misdemeanor conviction under*
91 *§ 16.1-253.2 or 18.2-57.2* may be destroyed (i) after 20 years from the sentencing date or (ii) when the
92 sentence term ends, whichever comes later.

93 D. Under the provisions of subsections B and C, the entire file of any case deemed by the local clerk
94 of court to have historical value, as defined in § 42.1-77, or genealogical or sensational significance shall
95 be retained permanently as shall all cases in which the title to real estate is established, conveyed or
96 condemned by an order or decree of the court. The final order for all cases in which the title to real
97 estate is so affected shall include an appropriate notification thereof to the clerk.

98 E. Except as provided in subsection A, the clerk of a circuit court may cause (i) any or all ended
99 records, papers, or documents pertaining to civil and criminal cases which have been ended for a period
100 of three years or longer; (ii) any unexecuted search warrants and affidavits for unexecuted search
101 warrants, provided at least three years have passed since issued; (iii) any abstracts of judgments; and (iv)
102 original wills, to be destroyed if such records, papers, documents, or wills no longer have administrative,
103 fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or
104 documents have been microfilmed or converted to an electronic format. Such microfilm and
105 microphotographic processes and equipment shall meet state archival microfilm standards pursuant to
106 § 42.1-82, or such electronic format shall follow state electronic records guidelines, and such records,
107 papers, or documents so converted shall be placed in conveniently accessible files and provisions made
108 for examining and using same. The clerk shall further provide security negative copies of any such
109 microfilmed materials for storage in The Library of Virginia.