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HOUSE BILL NO. 2310

Offered January 14, 2009

Prefiled January 14, 2009

A *BILL to amend and reenact § 16.1-305 of the Code of Virginia, relating to confidentiality of court records.*

Patron—Melvin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-305 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-305. Confidentiality of court records.

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

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

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

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

4. 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. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

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

A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A 1 through A 4 shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

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

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

59 C. All other juvenile records, including the docket, petitions, motions and other papers filed with a
60 case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by
61 those persons and agencies designated in subsections A and B of this section. However, a licensed bail
62 bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a
63 juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any
64 other portion of his principal's juvenile court records.

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

71 D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act
72 that would be a felony if committed by an adult, which show the charge, finding, disposition, name of
73 the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for
74 the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal
75 prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary
76 purpose.

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

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

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