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## HOUSE BILL NO. 2347

Offered February 8, 2013

A *BILL to amend and reenact §§ 16.1-260, 16.1-300, 16.1-305.1, 16.1-305.2, 19.2-389, 19.2-389.1, 22.1-3.2, 22.1-254, 22.1-277, 22.1-277.2:1, 22.1-279.3:1, 22.1-288.2, 22.1-360, and 32.1-127.1:03 of the Code of Virginia, relating to sharing juvenile intake and petition information with school divisions and public and private institutions of higher education.*

Patrons—Ramadan and Torian

Introduced at the request of the Governor

Referred to Committee on Militia, Police and Public Safety

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-260, 16.1-300, 16.1-305.1, 16.1-305.2, 19.2-389, 19.2-389.1, 22.1-3.2, 22.1-254, 22.1-277, 22.1-277.2:1, 22.1-279.3:1, 22.1-288.2, 22.1-360, and 32.1-127.1:03 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H 1 and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) designated nonattorney employees of the Department of Social Services may complete, sign and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated

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59 delinquent for an offense that would be a felony if committed by an adult.

60 If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and  
61 the attendance officer has provided documentation to the intake officer that the relevant school division  
62 has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the  
63 court. The intake officer may defer filing the complaint for 90 days and proceed informally by  
64 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not  
65 previously been proceeded against informally or adjudicated in need of supervision for failure to comply  
66 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,  
67 guardian or other person standing in loco parentis must agree, in writing, for the development of a  
68 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,  
69 guardian or other person standing in loco parentis participate in such programs, cooperate in such  
70 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's  
71 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer  
72 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an  
73 interagency interdisciplinary team approach. The team may include qualified personnel who are  
74 reasonably available from the appropriate department of social services, community services board, local  
75 school division, court service unit and other appropriate and available public and private agencies and  
76 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the  
77 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then  
78 the intake officer shall file the petition.

79 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child  
80 is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for  
81 the juvenile, which may include restitution and the performance of community service, based upon  
82 community resources and the circumstances which resulted in the complaint, (ii) create an official record  
83 of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise  
84 the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the  
85 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent  
86 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241  
87 will result in the filing of a petition with the court.

88 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,  
89 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has  
90 deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such  
91 child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment,  
92 rehabilitation or other services which are required by law, (iv) family abuse has occurred and a  
93 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of  
94 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,  
95 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such  
96 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to  
97 be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer  
98 believes that probable cause does not exist, or that the authorization of a petition will not be in the best  
99 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other  
100 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a  
101 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written  
102 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders  
103 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant  
104 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the  
105 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to  
106 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

107 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall  
108 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be  
109 in need of supervision have utilized or attempted to utilize treatment and services available in the  
110 community and have exhausted all appropriate nonjudicial remedies which are available to them. When  
111 the intake officer determines that the parties have not attempted to utilize available treatment or services  
112 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the  
113 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility  
114 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake  
115 officer determines that the parties have made a reasonable effort to utilize available community  
116 treatment or services may he permit the petition to be filed.

117 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an  
118 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in  
119 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate  
120 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic

relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. *The intake officer shall verbally notify the principal of any private primary or secondary school in which a student is known to be enrolled, and shall notify the school division superintendent in the jurisdiction in which a student is known to be enrolled or the chief of the campus police department established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 of any public or private nonprofit institution of higher education in which a student is known to be enrolled, and the local chief of police or sheriff, if the intake officer reasonably believes the student poses a credible danger of serious bodily injury or death to any students, school personnel, or others on school property. Information provided with such notification shall include the nature of the danger. Any information provided to a school division superintendent pursuant to this subsection may be disclosed only as provided in § 16.1-305.2*

G. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

~~G. H.~~ Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall verbally notify the principal of any private primary or secondary school in which a student is known to be enrolled, and shall file a report with the division superintendent of the school division in which ~~any student who~~ a student is known to be enrolled or with the chief of the campus police department established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 of any public or private nonprofit institution of higher education in which a student is known to be enrolled if the student is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, ~~which~~ that would be a crime if committed by an adult, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. The report shall notify the principal, division superintendent or chief of the campus police department of the filing of the petition and the nature of the offense, if the violation involves:

1. 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;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. 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;

6. Manufacture, sale or distribution of marijuana or synthetic cannabinoids pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or

12. An act of violence by a mob pursuant to § 18.2-42.1; or

13. A violent juvenile felony as defined in § 16.1-228.

*The intake officer shall verbally notify the principal of any private primary or secondary school in which a student is known to be enrolled, and shall file a report with the school division superintendent in the jurisdiction in which a student is known to be enrolled or with the chief of the campus police department established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 of any public or private nonprofit institution of higher education in which a student is known to be enrolled when a petition is filed with the court pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11.*

The failure to provide information regarding the school in which the student who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent, principal of any private primary or secondary school, or to the chief of the campus police department established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 of any public or private nonprofit institution of higher education pursuant to this section may be disclosed only as provided in § 16.1-305.2.

~~H. I.~~ The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and

182 other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating  
183 surfing or any ordinance establishing curfew violations, animal control violations or littering violations.  
184 In such cases the court may proceed on a summons issued by the officer investigating the violation in  
185 the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle  
186 accident may, at the scene of the accident or at any other location where a juvenile who is involved in  
187 such an accident may be located, proceed on a summons in lieu of filing a petition.

188 2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H  
189 of § 16.1-241.

190 3. In the case of a misdemeanor violation of § 18.2-250.1, 18.2-266, 18.2-266.1, or 29.1-738, or the  
191 commission of any other alcohol-related offense, provided the juvenile is released to the custody of a  
192 parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of  
193 a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons  
194 requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the  
195 charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so  
196 charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a  
197 sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to  
198 §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed  
199 except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be  
200 served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to  
201 the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons,  
202 the juvenile shall be entitled to have the charge referred to intake for consideration of informal  
203 proceedings pursuant to subsection B, provided such right is exercised by written notification to the  
204 clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1  
205 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge  
206 referred to intake on a form approved by the Supreme Court and make return of such service to the  
207 court. If the officer fails to make such service or return, the court shall dismiss the summons without  
208 prejudice.

209 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or  
210 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in  
211 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as  
212 provided by law for adults provided that notice of the summons to appear is mailed by the investigating  
213 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

214 ~~I. J.~~ Failure to comply with the procedures set forth in this section shall not divest the juvenile court  
215 of the jurisdiction granted it in § 16.1-241.

216 **§ 16.1-300. Confidentiality of Department records.**

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

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

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

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

228 4. Any person who has reached the age of majority and requests access to his own records or  
229 reports;

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

233 6. Any other person, agency or institution, including any law-enforcement agency, school  
234 administration, or probation office by order of the court, having a legitimate interest in the case, the  
235 juvenile, or in the work of the court *except as provided in § 16.1-260*;

236 7. Any person, agency, or institution, in any state, having a legitimate interest (i) when release of the  
237 confidential information is for the provision of treatment or rehabilitation services for the juvenile who  
238 is the subject of the information, (ii) when the requesting party has custody or is providing supervision  
239 for a juvenile and the release of the confidential information is in the interest of maintaining security in  
240 a secure facility, as defined by § 16.1-228 if the facility is located in Virginia, or as similarly defined by  
241 the law of the state in which such facility is located if it is not located in Virginia, or (iii) when release  
242 of the confidential information is for consideration of admission to any group home, residential facility,  
243 or postdispositional facility, and copies of the records in the custody of such home or facility shall be

destroyed if the child is not admitted to the home or facility;

8. Any attorney for the Commonwealth, any pretrial services officer, local community-based probation officer and adult probation and parole officer for the purpose of preparing pretrial investigation, including risk assessment instruments, presentence reports, including those provided in § 19.2-299, discretionary sentencing guidelines worksheets, including related risk assessment instruments, as directed by the court pursuant to subsection C of § 19.2-298.01 or any court-ordered post-sentence investigation report;

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; or any state criminal justice agency that is conducting research, provided that the agency agrees that all information received shall be kept confidential, or released or published only in aggregate form;

10. With the exception of medical, psychiatric, and psychological records and reports, any full-time or part-time employee of the Department of State Police or of a police department or sheriff's office that is a part of or administrated by the Commonwealth or any political subdivision thereof, and who is responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth, is entitled to any information related to a criminal street gang including that a person is a member of a criminal street gang as defined in § 18.2-46.1. Information shall be provided by the Department to law enforcement without their request to aid in initiating an investigation or assist in an ongoing investigation of a criminal street gang as defined in § 18.2-46.1. The Department shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. No person who obtains information pursuant to this subdivision shall divulge such information except in connection with a criminal investigation regarding a criminal street gang as defined in § 18.2-46.1 that is authorized by the Attorney General or by the attorney for the Commonwealth or in connection with a prosecution or proceeding in court;

11. The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as permitted under subsection B of § 66-3.2;

12. Any state or local correctional facility as defined in § 53.1-1 when such facility has custody of or is providing supervision for a person convicted as an adult who is the subject of the reports and records. The reports and records shall remain confidential and shall be open for inspection only in accordance with this section; ~~and~~

13. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; ~~and~~

*14. A threat assessment team established by a school division, by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of higher education to aid in the assessment, treatment or support of or intervention with individuals whose behavior may present a threat to safety when such records concern a minor or adult student enrolled in a school within the school division or in the public or private nonprofit institution of higher education; however, no member of a threat assessment team shall disclose any confidential record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose for which such disclosure was made to the threat assessment team.*

A designated individual treating or responsible for the treatment of a person 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 18, 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 subsection A hereof, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child or to a third party, provided that the juvenile and domestic relations district court (i) having jurisdiction over the facility where the child is currently placed or (ii) that last had jurisdiction over the child if such child is no longer in the custody or under the supervision of the Department shall concur in such determination.

If any person authorized under subsection A to inspect Department records requests to inspect the reports and records 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 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 (a) having jurisdiction over the facility where the child is currently placed or (b) that had jurisdiction over the original proceeding or over an appeal of the

juvenile and domestic relations district court final order of disposition concerning the child if such child is no longer in the custody or under the supervision of the Department shall have jurisdiction over petitions filed for review of the Department's decision to withhold reports or records as provided herein.

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

Upon a court's disposition of a proceeding where a juvenile is charged with a crime listed in subsection G H of § 16.1-260 in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the clerk of the court in which the disposition is entered shall, within 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 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 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 and certain reports by division superintendent or the chief of the campus police department.**

Except as otherwise provided in this section, a division superintendent, *principal of any private primary or secondary school, or the chief of the campus police department established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 of any public or private nonprofit institution of higher education* shall not disclose information contained in or derived from a (i) notice of petition received pursuant to § 16.1-260 or (ii) report received pursuant to § 66-25.2:1. If the juvenile is not enrolled as a student in a public school in the division *or in the public or private nonprofit institution of higher education* to which the notice or report was given, the superintendent, *principal of any private primary or secondary school, or the chief of the campus police department* shall promptly so notify the intake officer of the juvenile court in which the petition was filed or the Director of the Department who sent the report and may forward the notice of petition or report to the superintendent of the division in which the juvenile is enrolled, if known.

If the division superintendent *or the chief of the campus police department* believes that disclosure of information regarding a petition to school personnel is necessary to ensure the physical safety of the juvenile, other students or school personnel within the division *or the public or private nonprofit institution of higher education*, 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 *or a threat assessment team of the public or private nonprofit institution of higher education* in which the juvenile who is the subject of the petition is enrolled. The principal *or threat assessment team of the public or private nonprofit institution of higher education* may further disseminate the information regarding a petition, after the juvenile has been taken into custody, whether or not the child has been released, only to those students and school, *college or university* 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.

If the division superintendent believes that disclosure of information regarding a report received pursuant to § 66-25.2:1 to school personnel is necessary to ensure the physical safety of the juvenile, other students, or school personnel within the division he may disclose the information to the principal of the school in which the juvenile is enrolled. The principal may further disseminate the information regarding such report only to school personnel as necessary to protect the juvenile, the subject or subjects of the danger, other students, or school personnel.

Any information released pursuant to this section may be further disseminated to members of a *violence prevention committee or threat assessment team established by a school division, by a public institution of higher education pursuant to § 23-9.2:10, or by a private nonprofit institution of higher education to aid in the assessment, treatment or support of or intervention with individuals whose behavior may present a threat to safety. No member of a threat assessment team shall disclose any*

juvenile record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose for which such disclosure was made to the threat assessment team.

Notwithstanding the provisions of this section, no information regarding a petition filed pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 may be disseminated to any student.

**§ 19.2-389. Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency

428 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of  
429 Compeer; or (vi) any board member or any individual who has been offered membership on the board  
430 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

431 12. Administrators and board presidents of and applicants for licensure or registration as a child  
432 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
433 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
434 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes  
435 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing  
436 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data  
437 shall not be further disseminated by the facility or agency to any party other than the data subject, the  
438 Commissioner of Social Services' representative or a federal or state authority or court as may be  
439 required to comply with an express requirement of law for such further dissemination;

440 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
441 offered or who accept public school employment and those current school board employees for whom a  
442 report of arrest has been made pursuant to § 19.2-83.1;

443 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery  
444 Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
445 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

446 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations  
447 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital  
448 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject  
449 to the limitations set out in subsection E;

450 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers  
451 for the conduct of investigations of applicants for compensated employment in licensed homes for adults  
452 pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed  
453 adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

454 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
455 § 4.1-103.1;

456 18. The State Board of Elections and authorized officers and employees thereof in the course of  
457 conducting necessary investigations with respect to registered voters, limited to any record of felony  
458 convictions;

459 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
460 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
461 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

462 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
463 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
464 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

465 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
466 Department of Education, or the Department of Behavioral Health and Developmental Services for the  
467 purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
468 services;

469 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
470 Department for the purpose of determining an individual's fitness for employment pursuant to  
471 departmental instructions;

472 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious  
473 elementary or secondary schools which are accredited by a statewide accrediting organization  
474 recognized, prior to January 1, 1996, by the State Board of Education or a private organization  
475 coordinating such records information on behalf of such governing boards or administrators pursuant to  
476 a written agreement with the Department of State Police;

477 24. Public and nonprofit private colleges and universities for the purpose of screening individuals  
478 who are offered or accept employment;

479 25. Members of a threat assessment team established by a public institution of higher education  
480 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, *or a school division*  
481 *superintendent or a threat assessment team established by such superintendent* for the purpose of  
482 assessing or intervening with an individual whose behavior may present a threat to safety; however, no  
483 member of a threat assessment team shall redisclose any criminal history record information obtained  
484 pursuant to this section or otherwise use any record of an individual beyond the purpose that such  
485 disclosure was made to the threat assessment team;

486 26. Executive directors of community services boards or the personnel director serving the  
487 community services board for the purpose of determining an individual's fitness for employment  
488 pursuant to §§ 37.2-506 and 37.2-607;

489 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of



determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12; and

43. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons

designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

#### **§ 19.2-389.1. Dissemination of juvenile record information.**

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a presentence or post-sentence investigation report pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Department of Forensic Science to verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1; (viii) to the Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act

(§ 37.2-900 et seq.); (ix) to the Virginia Criminal Sentencing Commission for research purposes; (x) to members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or, by a private nonprofit institution of higher education, or by a school division superintendent, to aid in the assessment or intervention with individuals whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any juvenile record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team; and (xi) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time or part-time employment with the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof.

**§ 22.1-3.2. Notice of student's school status required as condition of admission; penalty.**

A. Prior to admission to any public school of the Commonwealth, a school board shall require the parent, guardian, or other person having control or charge of a child of school age to provide, upon registration:

1. A sworn statement or affirmation indicating whether the student has been expelled from school attendance at a private school or in a public school division of the Commonwealth or in another state for an offense in violation of school board policies relating to weapons, alcohol or drugs, or for the willful infliction of injury to another person. This document shall be maintained as a part of the student's scholastic record.

2. A sworn statement or affirmation indicating whether the student has been found guilty of or adjudicated delinquent for any offense listed in subsection G of § 16.1-260 or any substantially similar offense under the laws of any state, the District of Columbia, or the United States or its territories. This document shall be maintained as provided in § 22.1-288.2.

B. When the child is registered as a result of a foster care placement as defined in § 63.2-100, the information required under this section shall be furnished by the local social services agency or licensed child-placing agency that made the foster care placement.

C. Any person making a materially false statement or affirmation shall be guilty upon conviction of a Class 3 misdemeanor.

**§ 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 pre-kindergarten program, including a Head Start program, or in a private, denominational, or parochial educational pre-kindergarten 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. The requirements of this section shall not apply to (a) any person 16 through 18 years of age who is housed in an adult correctional facility when such person is actively pursuing a general educational development (GED) certificate but is not enrolled in an individual student alternative education plan pursuant to subsection E, and (b) any child who has obtained a high school diploma or its equivalent, a certificate of completion, or a GED certificate, 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

674 conscientiously opposed to attendance at school. For purposes of this subdivision, "bona fide religious  
675 training or belief" does not include essentially political, sociological or philosophical views or a merely  
676 personal moral code; and

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

684 C. Each local school board shall develop policies for excusing students who are absent by reason of  
685 observance of a religious holiday. Such policies shall ensure that a student shall not be deprived of any  
686 award or of eligibility or opportunity to compete for any award, or of the right to take an alternate test  
687 or examination, for any which he missed by reason of such absence, if the absence is verified in a  
688 manner acceptable to the school board.

689 D. A school board may excuse from attendance at school:

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

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

696 E. Local school boards may allow the requirements of subsection A to be met under the following  
697 conditions:

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

702 a. Career guidance counseling;

703 b. Mandatory enrollment and attendance in a general educational development preparatory program or  
704 other alternative education program approved by the local school board with attendance requirements  
705 that provide for reporting of student attendance by the chief administrator of such GED preparatory  
706 program or approved alternative education program to such principal or his designee;

707 c. Mandatory enrollment in a program to earn a Board of Education-approved career and technical  
708 education credential, such as the successful completion of an industry certification, a state licensure  
709 examination, a national occupational competency assessment, or the Virginia workplace readiness skills  
710 assessment;

711 d. Successful completion of the course in economics and personal finance required to earn a Board  
712 of Education-approved high school diploma;

713 e. Counseling on the economic impact of failing to complete high school; and

714 f. Procedures for reenrollment to comply with the requirements of subsection A.

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

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

722 F. A school board may, in accordance with the procedures set forth in Article 3 (§ 22.1-276.01 et  
723 seq.) of Chapter 14 and upon a finding that a school-age child has been (i) charged with an offense  
724 relating to the Commonwealth's laws, or with a violation of school board policies, on weapons, alcohol  
725 or drugs, or intentional injury to another person; (ii) found guilty or not innocent of a crime that  
726 resulted in or could have resulted in injury to others, or of an offense that is required to be disclosed to  
727 the superintendent of the school division pursuant to subsection G & H of § 16.1-260; (iii) suspended  
728 pursuant to § 22.1-277.05; or (iv) expelled from school attendance pursuant to § 22.1-277.06 or  
729 22.1-277.07 or subsection B of § 22.1-277, require the child to attend an alternative education program  
730 as provided in § 22.1-209.1:2 or 22.1-277.2:1.

731 G. Whenever a court orders any pupil into an alternative education program, including a program of  
732 general educational development, offered in the public schools, the local school board of the school  
733 division in which the program is offered shall determine the appropriate alternative education placement  
734 of the pupil, regardless of whether the pupil attends the public schools it supervises or resides within its  
735 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 that 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.

H. 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.

I. 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 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 10 and 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 D.

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; however, in no cases may sufficient cause for suspensions include only instances of truancy.

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 H 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, or with an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G H of § 16.1-260; (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 of an offense that is required to be disclosed to the superintendent of the school division pursuant to subsection G H 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

897 school-sponsored activity in violation of school board policies, to undergo evaluation for drug or alcohol  
898 abuse, or both, and, if recommended by the evaluator and with the consent of the student's parent, to  
899 participate in a treatment program.

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

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

910 C. A school board may adopt regulations authorizing the principal or his designee to impose a  
911 short-term suspension, pursuant to § 22.1-277.04, upon a student who has been charged with an offense  
912 involving intentional injury enumerated in subsection G H of § 16.1-260, to another student in the same  
913 school pending a decision as to whether to require that such student attend an alternative education  
914 program.

915 **§ 22.1-279.3:1. Reports of certain acts to school authorities.**

916 A. Reports shall be made to the division superintendent and to the principal or his designee on all  
917 incidents involving (i) the assault or assault and battery, without bodily injury, of any person on a  
918 school bus, on school property, or at a school-sponsored activity; (ii) the assault and battery that results  
919 in bodily injury, sexual assault, death, shooting, stabbing, cutting, or wounding of any person, or  
920 stalking of any person as described in § 18.2-60.3, on a school bus, on school property, or at a  
921 school-sponsored activity; (iii) any conduct involving alcohol, marijuana, synthetic cannabinoids as  
922 defined in § 18.2-248.1:1, a controlled substance, imitation controlled substance, or an anabolic steroid  
923 on a school bus, on school property, or at a school-sponsored activity, including the theft or attempted  
924 theft of student prescription medications; (iv) any threats against school personnel while on a school bus,  
925 on school property or at a school-sponsored activity; (v) the illegal carrying of a firearm, as defined in  
926 § 22.1-277.07, onto school property; (vi) any illegal conduct involving firebombs, explosive materials or  
927 devices, or hoax explosive devices, as defined in § 18.2-85, or explosive or incendiary devices, as  
928 defined in § 18.2-433.1, or chemical bombs, as described in § 18.2-87.1, on a school bus, on school  
929 property, or at a school-sponsored activity; (vii) any threats or false threats to bomb, as described in  
930 § 18.2-83, made against school personnel or involving school property or school buses; or (viii) the  
931 arrest of any student for an incident occurring on a school bus, on school property, or at a  
932 school-sponsored activity, including the charge therefor.

933 B. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of Title 16.1,  
934 local law-enforcement authorities shall report, and the principal or his designee and the division  
935 superintendent shall receive such reports, on offenses, wherever committed, by students enrolled at the  
936 school if the offense would be a felony if committed by an adult or would be a violation of the Drug  
937 Control Act (§ 54.1-3400 et seq.) and occurred on a school bus, on school property, or at a  
938 school-sponsored activity, or would be an adult misdemeanor involving any incidents described in  
939 clauses (i) through (viii) of subsection A, and whether the student is released to the custody of his  
940 parent or, if 18 years of age or more, is released on bond. As part of any report concerning an offense  
941 that would be an adult misdemeanor involving an incident described in clauses (i) through (viii) of  
942 subsection A, local law-enforcement authorities and attorneys for the Commonwealth shall be authorized  
943 to disclose information regarding terms of release from detention, court dates, and terms of any  
944 disposition orders entered by the court, to the superintendent of such student's school division, upon  
945 request by the superintendent, if, in the determination of the law-enforcement authority or attorney for  
946 the Commonwealth, such disclosure would not jeopardize the investigation or prosecution of the case.  
947 No disclosures shall be made pursuant to this section in violation of the confidentiality provisions of  
948 subsection A of § 16.1-300 or the record retention and redisclosure provisions of § 22.1-288.2. Further,  
949 any school superintendent who receives notification that a juvenile has committed an act that would be a  
950 crime if committed by an adult pursuant to subsection G H of § 16.1-260 shall report such information  
951 to the principal of the school in which the juvenile is enrolled.

952 C. The principal or his designee shall submit a report of all incidents required to be reported  
953 pursuant to this section to the superintendent of the school division. The division superintendent shall  
954 annually report all such incidents to the Department of Education for the purpose of recording the  
955 frequency of such incidents on forms that shall be provided by the Department and shall make such  
956 information available to the public.

957 In submitting reports of such incidents, principals and division superintendents shall accurately  
958 indicate any offenses, arrests, or charges as recorded by law-enforcement authorities and required to be

reported by such authorities pursuant to subsection B.

A division superintendent who knowingly fails to comply or secure compliance with the reporting requirements of this subsection shall be subject to the sanctions authorized in § 22.1-65. A principal who knowingly fails to comply or secure compliance with the reporting requirements of this section shall be subject to sanctions prescribed by the local school board, which may include, but need not be limited to, demotion or dismissal.

The principal or his designee shall also notify the parent of any student involved in an incident required pursuant to this section to be reported, regardless of whether disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall relate to only the relevant student's involvement and shall not include information concerning other students.

Whenever any student commits any reportable incident as set forth in this section, such student shall be required to participate in such prevention and intervention activities as deemed appropriate by the superintendent or his designee. Prevention and intervention activities shall be identified in the local school division's drug and violence prevention plans developed pursuant to the federal Improving America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).

D. Except as may otherwise be required by federal law, regulation, or jurisprudence, the principal shall immediately report to the local law-enforcement agency any act enumerated in clauses (ii) through (vii) of subsection A that may constitute a criminal offense and may report to the local law-enforcement agency any incident described in clause (i) of subsection A.

Further, except as may be prohibited by federal law, regulation, or jurisprudence, the principal shall also immediately report any act enumerated in clauses (ii) through (v) of subsection A that may constitute a criminal offense to the parents of any minor student who is the specific object of such act. Further, the principal shall report that the incident has been reported to local law enforcement as required by law and that the parents may contact local law enforcement for further information, if they so desire.

E. A statement providing a procedure and the purpose for the requirements of this section shall be included in school board policies required by § 22.1-253.13:7.

The Board of Education shall promulgate regulations to implement this section, including, but not limited to, establishing reporting dates and report formats.

F. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person having control or charge of a child.

G. This section shall not be construed to diminish the authority of the Board of Education or to diminish the Governor's authority to coordinate and provide policy direction on official communications between the Commonwealth and the United States government.

#### **§ 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 H 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 H 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 H 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 H 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.

**§ 22.1-360. Interstate Compact on Educational Opportunity for Military Children.**

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article I.

Purpose.

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

Article II.

Definitions.

As used in this compact, unless the context clearly requires a different construction:

"Active duty" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211.

"Children of military families" means school-aged children, enrolled in kindergarten through 12th grade, in the household of an active duty member.

"Compact commissioner" means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

"Deployment" means the period one month prior to the service members' departure from their home station on military orders through six months after return to their home station.

"Educational records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

"Extracurricular activities" means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include but are not limited to preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

"Interstate Commission on Educational Opportunity for Military Children" means the commission that is created under Article IX of this compact, which is generally referred to as the Interstate Commission.

"Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through 12th grade public educational institutions.

"Member state" means a state that has enacted this compact.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Nonmember state" means a state that has not enacted this compact.

"Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.



"Rule" means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission and has the force and effect of statutory law in a member state if approved by the legislature of the member state.

"Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

"Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through 12th grade.

"Transition" means: (i) the formal and physical process of transferring from school to school or (ii) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

"Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

"Veteran" means a person who served in the active military, naval, or air service and who was discharged or released there from under conditions other than dishonorable.

### Article III.

#### Applicability.

A. Except as otherwise provided in subsection B, this compact shall apply to the children of:

1. Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211;

2. Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

3. Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. Inactive members of the National Guard and Military Reserves;

2. Members of the uniformed services now retired, except as provided in subsection A;

3. Veterans of the uniformed services, except as provided in subsection A; and

4. Other U.S. Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

### Article IV.

#### Educational Records and Enrollment.

A. Unofficial or "hand-carried" education records. In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records/transcripts. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education records from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within 10 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations. Compacting states shall give 30 days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission for students to obtain any immunization(s) required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and first grade entrance age. Students shall be allowed to continue their enrollment at the grade level in the receiving state commensurate with their grade level (including kindergarten) from a local education agency in the sending state at the time of transition, regardless of minimum age. A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state,

regardless of minimum age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from a local education agency in the sending state.

#### Article V.

##### Placement and Attendance.

A. Course placement. When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes, but is not limited to, honors, International Baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the course(s).

B. Educational program placement. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to, (i) gifted and talented programs and (ii) English as a second language (ESL) programs. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services. In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP) and in compliance with the requirements of § 504 of the Rehabilitation Act, 29 U.S.C. § 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12165, and the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility. Local education agency administrative officials shall have flexibility in waiving course/program prerequisites or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities. A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

#### Article VI.

##### Eligibility.

##### A. Eligibility for enrollment.

1. Children of military families shall be eligible for enrollment in the public schools of Virginia provided that the documents required by §§ 22.1-3.1 and 22.1-3.2 are provided and subject to the authority of a local education agency to exclude such children from attendance pursuant to § 22.1-277.2 or if such children have been found guilty or adjudicated delinquent for any offense listed in subsection G of § 16.1-260 or any substantially similar offense under the laws of any state, the District of Columbia, or the United States or its territories;

2. Special power of attorney, relative to the guardianship of a child of a military family, and executed under Title 10, United States Code, § 1044b, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent;

3. A local education agency shall be prohibited from charging local tuition to a military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent; and

4. A military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation. State and local education agencies shall facilitate the opportunity for military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

#### Article VII.

##### Graduation.

In order to facilitate the on-time graduation of children of military families, states and local

education agencies shall incorporate the following procedures:

A. Waiver requirements. Local education agency administrative officials shall waive specific courses required for graduation if similar coursework has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams. States shall accept: (i) exit or end-of-course exams required for graduation from the sending state, (ii) national norm-referenced achievement tests, or (iii) alternative testing acceptable to the receiving state, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state, then the provisions of subsection C of this Article shall apply. Within 12 months of the effective date of this compact, the Interstate Commission shall adopt a rule addressing the acceptance of exit exams.

C. Transfers during senior year. Should a military student transferring in his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending local education agency, with the cooperation of the receiving local education agency, shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections A and B of this Article.

#### Article VIII.

##### State Coordination.

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: (i) the state superintendent of education, (ii) the superintendent of a school district with a high concentration of military children, (iii) one representative from a military installation, and (iv) one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. Each member state shall employ a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The Governor of each member state shall appoint or designate a compact commissioner responsible for the administration and management of the state's participation in the compact and who is empowered to establish statewide policy related to matters governed by this compact.

D. The compact commissioner and the military family education liaison described herein shall be ex officio members of the State Council, unless either is already a full voting member of the State Council.

#### Article IX.

##### Interstate Commission on Educational Opportunity for Military Children.

The member states hereby create the Interstate Commission on Educational Opportunity for Military Children. The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner and who is empowered to establish statewide policy related to matters governed by this compact.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote;

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission;

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from the state for a specified meeting; and

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include, but not be limited to, members of the

1166 representative organizations of military family advocates, local education agency officials, parent and  
1167 teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate  
1168 Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the  
1169 education of children of military members.

1170 D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon  
1171 the request of a simple majority of the member states, shall call additional meetings.

1172 E. Establish an executive committee, whose members shall include the officers of the Interstate  
1173 Commission and such other members of the Interstate Commission as determined by the bylaws.  
1174 Members of the executive committee shall serve a one-year term. Members of the executive committee  
1175 shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the  
1176 Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission  
1177 is not in session. The executive committee shall oversee the day-to-day activities of the administration of  
1178 the compact, including enforcement and compliance with the provisions of the compact, its bylaws and  
1179 rules, and other such duties as deemed necessary. The U.S. Department of Defense shall serve as an ex  
1180 officio, nonvoting member of the executive committee.

1181 F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate  
1182 Commission shall make its information and official records available to the public for inspection or  
1183 copying. The Interstate Commission may exempt from disclosure information or official records to the  
1184 extent they would adversely affect personal privacy rights or proprietary interests.

1185 G. Public notice shall be given by the Interstate Commission of all meetings, and all meetings shall  
1186 be open to the public, except as set forth in the rules or as otherwise provided in the compact. The  
1187 Interstate Commission and its committees may close a meeting, or portion thereof, when it determines  
1188 by two-thirds vote that an open meeting would be likely to:

- 1189 1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
- 1190 2. Disclose matters specifically exempted from disclosure by federal and state statute;
- 1191 3. Disclose trade secrets or commercial or financial information that is privileged or confidential;
- 1192 4. Involve accusing a person of a crime or formally censuring a person;
- 1193 5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted  
1194 invasion of personal privacy;
- 1195 6. Disclose investigative records compiled for law-enforcement purposes; or
- 1196 7. Specifically relate to the Interstate Commission's participation in a civil action or other legal  
1197 proceeding.

1198 H. For a meeting, or portion of a meeting, closed pursuant to the provisions of subsection G, the  
1199 Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall  
1200 reference each relevant exemptible provision. The Interstate Commission shall keep minutes, which shall  
1201 fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate  
1202 summary of actions taken, and the reasons therefore, including a description of the views expressed and  
1203 the record of a roll call vote. All documents considered in connection with an action shall be identified  
1204 in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to  
1205 release by a majority vote of the Interstate Commission.

1206 I. The Interstate Commission shall collect standardized data concerning the educational transition of  
1207 the children of military families under this compact as directed through its rules, which shall specify the  
1208 data to be collected, the means of collection and data exchange, and reporting requirements. Such  
1209 methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to  
1210 current technology and coordinate its information functions with the appropriate custodian of records as  
1211 identified in the bylaws and rules.

1212 J. The Interstate Commission shall create a process that permits military officials, education officials,  
1213 and parents to inform the Interstate Commission if and when there are alleged violations of the compact  
1214 or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the  
1215 state or local education agency. This section shall not be construed to create a private right of action  
1216 against the Interstate Commission, any member state, or any local education agency.

1217 Article X.

1218 Powers and Duties of the Interstate Commission.

1219 The Interstate Commission shall have the following powers:

1220 A. To provide for dispute resolution among member states.

1221 B. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as  
1222 enumerated in this compact. The rules shall have the force and effect of regulations adopted under the  
1223 Administrative Process Act (§ 2.2-4000 et seq.), and shall be binding in the compact states to the extent  
1224 and in the manner provided in this compact.

1225 C. To issue, upon request of a member state, advisory opinions concerning the meaning or  
1226 interpretation of the interstate compact, its bylaws, rules, and actions.

1227 D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate

Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process. Any action to enforce compliance with the compact provisions by the Interstate Commission shall be brought against a member state only.

E. To establish and maintain offices, which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire, or contract for services of personnel.

H. To establish and appoint committees, including but not limited to an executive committee as required by Article IX, subsection E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of them.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training, and public awareness regarding the compact, its implementation, and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting, and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

#### Article XI.

#### Organization and Operation of the Interstate Commission.

A. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

1. Establishing the fiscal year of the Interstate Commission;

2. Establishing an executive committee and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and

7. Providing "start-up" rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have the authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, officers, and personnel.

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to: (i) managing the affairs of the Interstate Commission in a manner

consistent with the bylaws and purposes of the Interstate Commission; (ii) overseeing an organizational structure within and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and (iii) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

2. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities, provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or the Interstate Commission representatives, acting within the scope of their employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## Article XII.

### Rulemaking Functions of the Interstate Commission.

A. Rulemaking authority. The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking procedure. Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981, Uniform Laws Annotated, Vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

## Article XIII.

### Oversight, Enforcement, and Dispute Resolution.

#### A. Oversight.

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as regulations adopted under the Administrative Process Act (§ 2.2-4000 et seq.);

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the Interstate Commission; and

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

B. Default, technical assistance, suspension, and termination.

If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default;

2. Provide remedial training and specific technical assistance regarding the default;

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default;

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states;

5. The state that has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination, including obligations the performance of which extends beyond the effective date of suspension or termination;

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or that has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state; and

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute resolution.

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and that may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for mediation for disputes as appropriate.

#### Article XIV.

##### Financing of the Interstate Commission.

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate

1412 Commission.

1413 Article XV.

1414 Member States, Effective Date, and Amendment.

1415 A. Any state is eligible to become a member state.

1416 B. The compact shall become effective and binding upon legislative enactment of the compact into  
1417 law by no less than 10 of the states. Thereafter it shall become effective and binding as to any other  
1418 member state upon enactment of the compact into law by that state. The Governors of nonmember states  
1419 or their designees shall be invited to participate in the activities of the Interstate Commission on a  
1420 nonvoting basis prior to adoption of the compact by all states.

1421 C. The Interstate Commission may propose amendments to the compact for enactment by the  
1422 member states. No amendment shall become effective and binding upon the Interstate Commission and  
1423 the member states unless and until it is enacted into law by unanimous consent of the member states.

1424 Article XVI.

1425 Withdrawal and Dissolution.

1426 A. Withdrawal.

1427 1. Once effective, the compact shall continue in force and remain binding upon each and every  
1428 member state, provided that a member state may withdraw from the compact specifically by repealing  
1429 the statute that enacted the compact into law.

1430 2. Withdrawal from this compact shall be by the enactment of a statute repealing the same.

1431 3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in  
1432 writing upon the introduction of legislation repealing this compact in the withdrawing state. The  
1433 Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw  
1434 within 60 days of its receipt thereof.

1435 4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred  
1436 through the effective date of withdrawal, including obligations the performance of which extends beyond  
1437 the effective date of withdrawal.

1438 5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state  
1439 reenacting the compact or upon such later date as determined by the Interstate Commission.

1440 B. Dissolution of compact.

1441 1. This compact shall dissolve effective upon the date of the withdrawal or default of the member  
1442 state that reduces the membership in the compact to one member state.

1443 2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no  
1444 further force or effect and the business and affairs of the Interstate Commission shall be concluded and  
1445 surplus funds shall be distributed in accordance with the bylaws.

1446 Article XVII.

1447 Severability and Construction.

1448 A. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision  
1449 is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

1450 B. The provisions of this compact shall be liberally construed to effectuate its purposes.

1451 C. Nothing in this compact shall be construed to prohibit the applicability of other interstate  
1452 compacts to which the states are members.

1453 Article XVIII.

1454 Binding Effect of Compact and Other Laws.

1455 A. Other laws.

1456 1. Nothing herein prevents the enforcement of any other law of a member state that is not  
1457 inconsistent with this compact.

1458 2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

1459 B. Binding effect of the compact.

1460 1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the  
1461 Interstate Commission, are binding upon the member states.

1462 2. All agreements between the Interstate Commission and the member states are binding in  
1463 accordance with their terms.

1464 3. In the event any provision of this compact exceeds the constitutional limits imposed on the  
1465 legislature of any member state, such provision shall be ineffective to the extent of the conflict with the  
1466 constitutional provision in question in that member state.

1467 **§ 32.1-127.1:03. Health records privacy.**

1468 A. There is hereby recognized an individual's right of privacy in the content of his health records.  
1469 Health records are the property of the health care entity maintaining them, and, except when permitted  
1470 or required by this section or by other provisions of state law, no health care entity, or other person  
1471 working in a health care setting, may disclose an individual's health records.

1472 Pursuant to this subsection:

1473 1. Health care entities shall disclose health records to the individual who is the subject of the health



record, except as provided in subsections E and F and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA)(42 U.S.C. § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

4. Health care entities shall, upon the request of the individual who is the subject of the health record, disclose health records to other health care entities, in any available format of the requestor's choosing, as provided in subsection E.

B. As used in this section:

"Agent" means a person who has been appointed as an individual's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Certification" means a written representation that is delivered by hand, by first-class mail, by overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

"Guardian" means a court-appointed guardian of the person.

"Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a public or private entity, such as a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that performs either of the following functions: (i) processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or (ii) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

"Health care entity" means any health care provider, health plan or health care clearinghouse.

"Health care provider" means those entities listed in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified, registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Health plan" means an individual or group plan that provides, or pays the cost of, medical care. "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

"Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual.

"Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as payment or reimbursement for any such services.

"Individual" means a patient who is receiving or has received health services from a health care entity.

"Individually identifying prescription information" means all prescriptions, drug orders or any other prescription information that specifically identifies an individual.

"Parent" means a biological, adoptive or foster parent.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a

1535 mental health professional, documenting or analyzing the contents of conversation during a private  
1536 counseling session with an individual or a group, joint, or family counseling session that are separated  
1537 from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations  
1538 relating to medication and prescription monitoring, counseling session start and stop times, treatment  
1539 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,  
1540 functional status, treatment plan, or the individual's progress to date.

1541 C. The provisions of this section shall not apply to any of the following:

1542 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia  
1543 Workers' Compensation Act;

1544 2. Except where specifically provided herein, the health records of minors; or

1545 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to  
1546 § 16.1-248.3.

1547 D. Health care entities may, and, when required by other provisions of state law, shall, disclose  
1548 health records:

1549 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the  
1550 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of  
1551 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment  
1552 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an  
1553 individual's written authorization, pursuant to the individual's oral authorization for a health care  
1554 provider or health plan to discuss the individual's health records with a third party specified by the  
1555 individual;

1556 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant  
1557 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a  
1558 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health  
1559 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in  
1560 this subdivision shall be construed to prohibit any staff or employee of a health care entity from  
1561 providing information about such individual to a law-enforcement officer in connection with such  
1562 subpoena, search warrant, or court order;

1563 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure  
1564 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care  
1565 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of  
1566 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly  
1567 authorized law-enforcement, licensure, accreditation, or professional review entity;

1568 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

1569 5. In compliance with the provisions of § 8.01-413;

1570 6. As required or authorized by law relating to public health activities, health oversight activities,  
1571 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,  
1572 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,  
1573 those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283,  
1574 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506,  
1575 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

1576 7. Where necessary in connection with the care of the individual;

1577 8. In connection with the health care entity's own health care operations or the health care operations  
1578 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in  
1579 accordance with accepted standards of practice within the health services setting; however, the  
1580 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a  
1581 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with  
1582 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

1583 9. When the individual has waived his right to the privacy of the health records;

1584 10. When examination and evaluation of an individual are undertaken pursuant to judicial or  
1585 administrative law order, but only to the extent as required by such order;

1586 11. (Effective until October 1, 2012) To the guardian ad litem and any attorney representing the  
1587 respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a  
1588 proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;

1589 11. (Effective October 1, 2012) To the guardian ad litem and any attorney representing the  
1590 respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a  
1591 proceeding under Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2;

1592 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who  
1593 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5  
1594 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title  
1595 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of  
1596 Title 37.2;

13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a designee of a community services board or behavioral health authority, or a law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained;

14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or administrative proceeding, if the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health care entity of such order;

15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in accord with § 9.1-156;

16. To an agent appointed under an individual's power of attorney or to an agent or decision maker designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

17. To third-party payors and their agents for purposes of reimbursement;

18. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

21. Where necessary in connection with the implementation of a hospital's routine contact process for organ donation pursuant to subdivision B 4 of § 32.1-127;

22. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

24. If the health records are those of a deceased or mentally incapacitated individual to the personal representative or executor of the deceased individual or the legal guardian or committee of the incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood relationship;

25. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks;

26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2;

27. To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1;

29. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth

1658 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time  
1659 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)  
1660 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by  
1661 the person;

1662 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law  
1663 enforcement of the death if the health care entity has a suspicion that such death may have resulted  
1664 from criminal conduct;

1665 31. To law-enforcement officials if the health care entity believes in good faith that the information  
1666 disclosed constitutes evidence of a crime that occurred on its premises;

1667 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a  
1668 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article  
1669 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

1670 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed  
1671 emergency medical services agency when the records consist of the prehospital patient care report  
1672 required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while  
1673 performing duties or tasks that are within the scope of his employment;

1674 34. To notify a family member or personal representative of an individual who is the subject of a  
1675 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8  
1676 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement  
1677 with the individual's health care, which may include the individual's location and general condition,  
1678 when the individual has the capacity to make health care decisions and (i) the individual has agreed to  
1679 the notification, (ii) the individual has been provided an opportunity to object to the notification and  
1680 does not express an objection, or (iii) the health care provider can, on the basis of his professional  
1681 judgment, reasonably infer from the circumstances that the individual does not object to the notification.  
1682 If the opportunity to agree or object to the notification cannot practicably be provided because of the  
1683 individual's incapacity or an emergency circumstance, the health care provider may notify a family  
1684 member or personal representative of the individual of information that is directly relevant to such  
1685 person's involvement with the individual's health care, which may include the individual's location and  
1686 general condition if the health care provider, in the exercise of his professional judgment, determines  
1687 that the notification is in the best interests of the individual. Such notification shall not be made if the  
1688 provider has actual knowledge the family member or personal representative is currently prohibited by  
1689 court order from contacting the individual;

1690 35. To a threat assessment team established by a public institution of higher education pursuant to  
1691 § 23-9.2:10 or by a private nonprofit institution of higher education when such records concern a student  
1692 at the institution of higher education, including a student who is a minor; ~~and~~

1693 36. *To the principal of any private primary or secondary school, to the superintendent of a school*  
1694 *division, or to a threat assessment team established by a school division superintendent when such*  
1695 *records concern a minor or adult student enrolled in a school within the school division; and*

1696 37. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes limited  
1697 to monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

1698 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an  
1699 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by  
1700 the health care entity is (i) for its own training programs in which students, trainees, or practitioners in  
1701 mental health are being taught under supervision to practice or to improve their skills in group, joint,  
1702 family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of  
1703 wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1,  
1704 to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in  
1705 the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a  
1706 duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise  
1707 required by law.

1708 E. Health care records required to be disclosed pursuant to this section shall be made available  
1709 electronically only to the extent and in the manner authorized by the federal Health Information  
1710 Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the  
1711 Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing  
1712 regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be  
1713 required to provide records in an electronic format requested if (i) the electronic format is not  
1714 reasonably available without additional cost to the health care entity, (ii) the records would be subject to  
1715 modification in the format requested, or (iii) the health care entity determines that the integrity of the  
1716 records could be compromised in the electronic format requested. Requests for copies of or electronic  
1717 access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature  
1718 of the information requested; and (c) include evidence of the authority of the requester to receive such  
1719 copies or access such records, and identification of the person to whom the information is to be

disclosed; and (d) specify whether the requester would like the records in electronic format, if available, or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of or electronic access to health records, the health care entity shall do one of the following: (A) furnish such copies of or allow electronic access to the requested health records to any requester authorized to receive them in electronic format if so requested; (B) inform the requester if the information does not exist or cannot be found; (C) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or (D) deny the request (1) under subsection F, (2) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (3) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records not specifically governed by other provisions of state law.

F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an individual's health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf when the individual's treating physician or the individual's treating clinical psychologist has made a part of the individual's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the individual of such health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a request for copies of or electronic access to health records based on such statement, the health care entity shall inform the individual of the individual's right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist, whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to whether to make the health record available to the individual.

The health care entity denying the request shall also inform the individual of the individual's right to request in writing that such health care entity designate, at its own expense, a physician or clinical psychologist, whose licensure, training, and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial is based and who did not participate in the original decision to deny the health records, who shall make a judgment as to whether to make the health record available to the individual. The health care entity shall comply with the judgment of the reviewing physician or clinical psychologist. The health care entity shall permit copying and examination of the health record by such other physician or clinical psychologist designated by either the individual at his own expense or by the health care entity at its expense.

Any health record copied for review by any such designated physician or clinical psychologist shall be accompanied by a statement from the custodian of the health record that the individual's treating physician or clinical psychologist determined that the individual's review of his health record would be reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to cause substantial harm to a person referenced in the health record who is not a health care provider.

Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his behalf.

#### AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name .....

Health Care Entity's Name .....

Person, Agency, or Health Care Entity to whom disclosure is to be made .....

Information or Health Records to be disclosed .....

Purpose of Disclosure or at the Request of the Individual .....

As the person signing this authorization, I understand that I am

giving my permission to the above-named health care entity for

disclosure of confidential health records. I understand that the

health care entity may not condition treatment or payment on my

willingness to sign this authorization unless the specific

circumstances under which such conditioning is permitted by law

are applicable and are set forth in this authorization. I also

understand that I have the right to revoke this authorization at

any time, but that my revocation is not effective until delivered

in writing to the person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.

This authorization expires on (date) or (event) .....  
Signature of Individual or Individual's Legal Representative if  
Individual is Unable to Sign .....  
Relationship or Authority of Legal Representative .....  
Date of Signature .....

H. Pursuant to this subsection:

1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of the subpoena except by order of a court or administrative agency for good cause shown. When a court or administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the individual whose health records are being sought is pro se or a nonparty.

In instances where health records being subpoenaed are those of a pro se party or nonparty witness, the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

**NOTICE TO INDIVIDUAL**

The attached document means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor, other health care providers (names of health care providers inserted here) or other health care entity (name of health care entity to be inserted here) requiring them to produce your health records. Your doctor, other health care provider or other health care entity is required to respond by providing a copy of your health records. If you believe your health records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health care provider(s), or other health care entity, that you are filing the motion so that the health care provider or health care entity knows to send the health records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's health records shall include a Notice in the same part of the request in which the recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice shall be in boldface capital letters and shall include the following language:

**NOTICE TO HEALTH CARE ENTITIES**

**A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL**

1840 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT  
1841 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED  
1842 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION  
1843 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

1844 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN  
1845 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED  
1846 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

1847 NO MOTION TO QUASH WAS FILED; OR

1848 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE  
1849 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH  
1850 SUCH RESOLUTION.

1851 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE  
1852 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A  
1853 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO  
1854 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA  
1855 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE  
1856 FOLLOWING PROCEDURE:

1857 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED  
1858 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY  
1859 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE  
1860 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.  
1861 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER  
1862 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE  
1863 AGENCY.

1864 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the  
1865 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

1866 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a  
1867 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such  
1868 health records until they have received a certification as set forth in subdivision 5 or 8 from the party on  
1869 whose behalf the subpoena duces tecum was issued.

1870 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been  
1871 filed or if the health care entity files a motion to quash the subpoena for health records, then the health  
1872 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or  
1873 administrative agency issuing the subpoena or in whose court or administrative agency the action is  
1874 pending. The court or administrative agency shall place the health records under seal until a  
1875 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened  
1876 on order of the judge or administrative agency. In the event the court or administrative agency grants  
1877 the motion to quash, the health records shall be returned to the health care entity in the same sealed  
1878 envelope in which they were delivered to the court or administrative agency. In the event that a judge or  
1879 administrative agency orders the sealed envelope to be opened to review the health records in camera, a  
1880 copy of the order shall accompany any health records returned to the health care entity. The health  
1881 records returned to the health care entity shall be in a securely sealed envelope.

1882 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued  
1883 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the  
1884 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion  
1885 to quash was filed. Any health care entity receiving such certification shall have the duty to comply  
1886 with the subpoena duces tecum by returning the specified health records by either the return date on the  
1887 subpoena or five days after receipt of the certification, whichever is later.

1888 6. In the event that the individual whose health records are being sought files a motion to quash the  
1889 subpoena, the court or administrative agency shall decide whether good cause has been shown by the  
1890 discovering party to compel disclosure of the individual's health records over the individual's objections.  
1891 In determining whether good cause has been shown, the court or administrative agency shall consider (i)  
1892 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of  
1893 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the  
1894 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or  
1895 proceeding; and (v) any other relevant factor.

1896 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if  
1897 subpoenaed health records have been submitted by a health care entity to the court or administrative  
1898 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no  
1899 submitted health records should be disclosed, return all submitted health records to the health care entity  
1900 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide

1901 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon  
1902 determining that only a portion of the submitted health records should be disclosed, provide such portion  
1903 to the party on whose behalf the subpoena was issued and return the remaining health records to the  
1904 health care entity in a sealed envelope.

1905 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose  
1906 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed  
1907 health care entity a statement of one of the following:

1908 a. All filed motions to quash have been resolved by the court or administrative agency and the  
1909 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the  
1910 health records previously delivered in a sealed envelope to the clerk of the court or administrative  
1911 agency will not be returned to the health care entity;

1912 b. All filed motions to quash have been resolved by the court or administrative agency and the  
1913 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no  
1914 health records have previously been delivered to the court or administrative agency by the health care  
1915 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records  
1916 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,  
1917 whichever is later;

1918 c. All filed motions to quash have been resolved by the court or administrative agency and the  
1919 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no  
1920 health records shall be disclosed and all health records previously delivered in a sealed envelope to the  
1921 clerk of the court or administrative agency will be returned to the health care entity;

1922 d. All filed motions to quash have been resolved by the court or administrative agency and the  
1923 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only  
1924 limited disclosure has been authorized. The certification shall state that only the portion of the health  
1925 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall  
1926 be disclosed. The certification shall also state that health records that were previously delivered to the  
1927 court or administrative agency for which disclosure has been authorized will not be returned to the  
1928 health care entity; however, all health records for which disclosure has not been authorized will be  
1929 returned to the health care entity; or

1930 e. All filed motions to quash have been resolved by the court or administrative agency and the  
1931 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no  
1932 health records have previously been delivered to the court or administrative agency by the health care  
1933 entity, the health care entity shall return only those health records specified in the certification,  
1934 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five  
1935 days after receipt of the certification, whichever is later.

1936 A copy of the court or administrative agency's ruling shall accompany any certification made  
1937 pursuant to this subdivision.

1938 9. The provisions of this subsection have no application to subpoenas for health records requested  
1939 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,  
1940 audit, review or proceedings regarding a health care entity's conduct.

1941 The provisions of this subsection shall apply to subpoenas for the health records of both minors and  
1942 adults.

1943 Nothing in this subsection shall have any effect on the existing authority of a court or administrative  
1944 agency to issue a protective order regarding health records, including, but not limited to, ordering the  
1945 return of health records to a health care entity, after the period for filing a motion to quash has passed.

1946 A subpoena for substance abuse records must conform to the requirements of federal law found in 42  
1947 C.F.R. Part 2, Subpart E.

1948 I. Health care entities may testify about the health records of an individual in compliance with  
1949 §§ 8.01-399 and 8.01-400.2.

1950 J. If an individual requests a copy of his health record from a health care entity, the health care  
1951 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and  
1952 labor of copying the requested information, postage when the individual requests that such information  
1953 be mailed, and preparation of an explanation or summary of such information as agreed to by the  
1954 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on  
1955 behalf of the individual who is the subject of the health record in making decisions related to his health  
1956 care.

1957 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a  
1958 controlled substance required to be reported to the Prescription Monitoring Program established pursuant  
1959 to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained  
1960 from the Prescription Monitoring Program and contained in a patient's health care record to another  
1961 health care provider when such disclosure is related to the care or treatment of the patient who is the  
1962 subject of the record.