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HOUSE BILL NO. 709

Offered January 13, 2016

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A *BILL to amend and reenact §§ 16.1-305 and 16.1-306 of the Code of Virginia, relating to expungement of juvenile records; certain felony larceny offenses.*

Patron—Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-305 and 16.1-306 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-305. Confidentiality of court records.**

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

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

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

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

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

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

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

6. 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.

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

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

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, *unless (i) such act would be a felony larceny offense in violation of clause (ii) of § 18.2-95 if committed by an adult, (ii) the amount of the goods or chattels taken by the juvenile was less than \$750, and (iii) the juvenile has not been*

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59 *adjudicated delinquent of any other violation of clause (ii) of § 18.2-95*, all court records regarding that
60 adjudication and any subsequent adjudication of delinquency, other than those records specified in
61 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that
62 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile
63 victim or juvenile witness.

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

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

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

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

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

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

96 **§ 16.1-306. Expungement of court records.**

97 A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations
98 district court shall, on January 2 of each year or on a date designated by the court, destroy its files,
99 papers and records, including electronic records, connected with any proceeding concerning a juvenile in
100 such court, if such juvenile has attained the age of 19 years and five years have elapsed since the date
101 of the last hearing in any case of the juvenile which is subject to this section. However, if the juvenile
102 was found guilty of an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the
103 Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of
104 29. If the juvenile was found guilty of a delinquent act which would be a felony if committed by an
105 adult, the records shall be retained, *unless (i) such act would be a felony larceny offense in violation of*
106 *clause (ii) of § 18.2-95 if committed by an adult, (ii) the amount of the goods or chattels taken by the*
107 *juvenile was less than \$750, and (ii) the juvenile has not been adjudicated delinquent of any other*
108 *violation of clause (ii) of § 18.2-95, in which case the records shall be destroyed pursuant to this*
109 *subsection.*

110 B. However, in all files in which the court records concerning a juvenile contain a finding of guilty
111 of any offense ancillary to (i) a delinquent act that would be a felony if committed by an adult, *unless*
112 *(a) such act would be a felony larceny offense in violation of clause (ii) of § 18.2-95 if committed by an*
113 *adult, (b) the amount of the goods or chattels taken by the juvenile was less than \$750, and (c) the*
114 *juvenile has not been adjudicated delinquent of any other violation of clause (b) of § 18.2-95, or (ii) any*
115 offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor
116 Vehicles, the records of any such ancillary offense shall also be retained for the time specified for the
117 felony or the offense reported to the Department of Motor Vehicles as specified in subsection A, and all
118 such records shall be available for inspection as provided in § 16.1-305.

119 C. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found
120 innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the

destruction of all records pertaining to such charge. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

D. Each person shall be notified of his rights under subsections A and C of this section at the time of his dispositional hearing.

E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

F. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.