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SENATE BILL NO. 564

Offered January 10, 2018

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A BILL to amend and reenact §§ 2.2-3703, 17.1-208, 17.1-292, and 17.1-293 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-69.54:1 and 17.1-293.1, relating to public access to nonconfidential court records.

Patrons—Obenshain and Mason

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3703, 17.1-208, 17.1-292, and 17.1-293 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-69.54:1 and 17.1-293.1 as follows:

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by the Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by the Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704; (ii) all guidance documents, as defined in § 2.2-4101, shall be public records and subject to the provisions of this chapter; and (iii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information. The information required by clause (ii) shall include all documents establishing the policy of the Board or any change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision of parole or geriatric release or the process for consideration thereof, and shall be clearly and conspicuously posted on the Board's website. However, such information shall not include any portion of any document reflecting the application of any policy or policy change or clarification of such policy to an individual inmate;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207;

4. The Virginia State Crime Commission; and

5. The records ~~required by law to be~~ maintained by the clerks of the courts of record, as defined in § 1-212, ~~for which clerks are custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which clerks are custodians under § 16.1-69.54, including those transferred for storage, maintenance, or archiving. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-208, as appropriate.~~

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

§ 16.1-69.54:1. Request for district court records.

A. For the purposes of this section, "confidential court records," "court records," and "nonconfidential court records" shall have the same meaning as set forth in § 17.1-292.

B. Requests for copies of nonconfidential court records maintained in individual case files shall be made to the clerk.

C. Requests for reports of aggregated, nonconfidential case data fields that are viewable through the online case information systems maintained by the Executive Secretary of the Supreme Court shall be made to the Office of the Executive Secretary. Such reports of aggregated case data shall not include

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59 the name, date of birth, or social security number of any party.

60 D. Any clerk or the Executive Secretary may require that the request be in writing and that the
61 requester provide his name and legal address. A request for nonconfidential records shall identify the
62 requested records with reasonable specificity. Any clerk or the Executive Secretary may determine the
63 costs to provide the requested records to the requester, advise the requester of such costs, and, before
64 continuing to process the request, require the requester to agree to payment of a deposit not to exceed
65 the amount of the advance determination, which shall be credited to the final cost of supplying the
66 requested records. No clerk, nor the Executive Secretary, shall be required to create a new record if the
67 record does not already exist; however, a clerk or the Executive Secretary may abstract or summarize
68 information under such terms and conditions as agreed to by the requester and the clerk or Executive
69 Secretary.

70 E. Except as otherwise provided by law, the requested records shall be provided to the requester
71 within a reasonable period of time, given the nature of the request and the availability of staff to
72 respond to the request, but in no event longer than 30 days from the date of a complete request made
73 by a requester that is fully compliant with the requirements of this section and other applicable law.
74 Any objection or assertion of confidentiality shall be provided to the requester within a reasonable
75 period of time, but in no event longer than 30 days from the date of a complete request made by a
76 requester.

77 F. Any clerk, or the Executive Secretary, may require payment in advance of all reasonable costs,
78 not to exceed the actual cost incurred in accessing, duplicating, reviewing, supplying, or searching for
79 the requested records, including removing any confidential information contained in the court records
80 from the nonconfidential court records being provided, excluding any extraneous, intermediary, or
81 surplus fees or expenses to recoup the general overhead costs associated with creating or maintaining
82 records or transacting the general business of the clerk or the Office of the Executive Secretary. Before
83 processing a request for records, any clerk or the Executive Secretary may require the requester to pay
84 any amounts owed to the clerk or the Office of the Executive Secretary for previous requests for records
85 that remain unpaid 30 days or more after billing.

86 G. Any clerk and the Executive Secretary shall be immune from any suit arising from the production
87 of records and data in accordance with this section absent gross negligence or willful misconduct.

88 **§ 17.1-208. Records, etc., open to inspection; copies; exception.**

89 A. Except as otherwise provided by law, any records that are maintained by the clerk clerks of the
90 circuit court courts of record, as defined in § 1-212, shall be open to inspection in the office of the clerk
91 by any person and the clerk shall, when requested, furnish copies thereof subject to any reasonable fee
92 charged by the clerk pursuant to §§ 17.1-275, except in cases in which it is otherwise specially provided
93 by statute 17.1-328, and 17.1-418. No person shall be permitted to use the clerk's office for the purpose
94 of making copies of records in such manner, or to such extent, as will, in the determination of the clerk,
95 interfere with the business of the office or with its reasonable use by the general public. The certificate
96 of the clerk to copies furnished by the clerk shall, if the paper copied be recorded in a bound volume,
97 contain the name and number of the volume and the page or folio at which the recordation of the paper
98 begins, or the instrument number as applicable, and the clerk may charge a fee therefor pursuant to §§
99 17.1-275, 17.1-328, and 17.1-418. The certificate of the circuit court clerk to such copies may be
100 provided electronically subject to the provisions of § 17.1-258.3:2. Such electronic certificate may
101 reference an instrument number, bound volume, or other case number, but is not required to do so.

102 B. Written requests for paper copies of nonconfidential circuit court records, as defined in §
103 17.1-292, or for electronic records viewable through the online case information systems maintained by
104 the Executive Secretary of the Supreme Court pursuant to § 17.1-293.1, or maintained by any private
105 technology vendor pursuant to subsection B of § 17.1-293, shall be made to the clerk. The clerk shall
106 make available such records in compliance with § 17.1-293 and in accordance with the following
107 procedures:

108 1. The requester shall provide his name and legal address;

109 2. A request for nonconfidential court records shall be in writing and identify the requested records
110 with reasonable specificity;

111 3. The clerk may determine the costs to provide the requested records to the requester, advise the
112 requester of such costs, and, before continuing to process the request, require the requester to agree to
113 payment of a deposit not to exceed the amount of the advance determination, which shall be credited to
114 the final cost of supplying the requested records;

115 4. Before processing a request for records, the clerk may require the requester to pay any amounts
116 owed to the clerk for previous requests for records that remain unpaid 30 days or more after billing;

117 5. In addition to the fees required by § 17.1-275, the clerk may make reasonable charges not to
118 exceed his actual cost incurred in accessing, duplicating, reviewing, supplying, or searching for the
119 requested records, including removing any confidential information contained in the court records from
120 the nonconfidential court records being provided; however, the clerk shall not impose any extraneous,

intermediary, or surplus fees or expenses to recoup the overhead costs associated with creating or maintaining records or transacting the general business of the clerk;

6. No clerk shall be required to create a new record if the record does not already exist; however, a clerk may abstract or summarize information under such terms and conditions as agreed to between the requester and the clerk;

7. The clerk may request assistance from its technology vendor, including the Executive Secretary of the Supreme Court, in preparing a response to the requester in accordance with this section and include any costs assessed thereby in the costs recovered from the requester; and

8. The clerk shall supply the requested records to the requester within a reasonable period of time, given the nature of the request and the availability of staff to respond to the request, but in no event longer than 30 days from the date of a complete request made by a requester that is fully compliant with the requirements of this subsection and other applicable law. Any objection or assertion of confidentiality shall be provided to the requester within a reasonable period of time, but in no event longer than 30 days from the date of a complete request made by a requester.

C. Upon request of the clerk, and subject to payment of any reasonable cost incurred by the Executive Secretary, the Executive Secretary shall provide online case information to any clerk to assist such clerk in responding to requests for nonconfidential court records from such system pursuant to this section.

D. Any clerk and the Executive Secretary shall be immune from any suit arising from the production of records and data in accordance with this section absent gross negligence or willful misconduct.

E. Nothing in this section shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records.

F. Nothing in this section shall be construed to permit any data requested in bulk by online access to be sold or posted on any other website or in any way redistributed to any third party, and the clerk, in his discretion, may deny such request to ensure compliance with these provisions. However, such data access may be included in products or services provided to a third party, provided that such data is not made available to the general public.

§ 17.1-292. Applicability; definitions.

A. The provisions of § 17.1-293 of this article shall apply to clerks of the courts of record as defined in § 1-212 and courts not of record as defined in § 16.1-69.5.

B. As used in this article:

"Confidential court records" means court records maintained by a clerk of a court of record, as defined in § 1-212, or a court not of record, as defined in § 16.1-69.5, and recognized as confidential under any applicable law or sealed pursuant to court order.

"Court records" means any record maintained by the clerk in a civil, traffic, or criminal proceeding in the court, and any appeal from a district court.

"Internet" means the international computer network of interoperable packet-switched data networks.

"Land records" means any writing authorized by law to be recorded on paper or in electronic format that the clerk records affecting title to real property, including but not limited to instruments, orders, or any other writings recorded under this title, Article 5 (§ 8.01-446 et seq.) of Chapter 17 of Title 8.01, Title 8.9A and Chapter 6 (§ 55-106 et seq.) of Title 55.

"Nonconfidential court records" means all court records except those court records that are confidential court records.

§ 17.1-293. Posting and availability of certain information on the Internet; prohibitions.

A. Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 or subsection B, it shall be unlawful for any court clerk to disclose the social security number or other identification numbers appearing on driver's licenses or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to a court clerk for the purpose of paying fees, fines, taxes, or other charges collected by such court clerk. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

B. Beginning January 1, 2004, no court clerk shall post on the Internet any document that contains the following information: (i) an actual signature, (ii) a social security number, (iii) a date of birth identified with a particular person, (iv) the maiden name of a person's parent so as to be identified with a particular person, (v) any financial account number or numbers, or (vi) the name and age of any minor child.

C. Each such clerk shall post notice that includes a list of the documents routinely posted on its website. However, the clerk shall not post information on his website that includes private activity for private financial gain.

182 D. Nothing in this section shall be construed to prohibit access to any original document as provided
183 by law.

184 E. This section shall not apply to the following:

185 1. Providing access to any document among the land records via secure remote access pursuant to
186 § 17.1-294;

187 2. Postings related to legitimate law-enforcement purposes;

188 3. Postings of historical, genealogical, interpretive, or educational documents and information about
189 historic persons and events;

190 4. Postings of instruments and records filed or recorded that are more than 100 years old;

191 5. Providing secure remote access to any person, his counsel, or staff which counsel directly
192 supervises to documents filed in matters to which such person is a party;

193 6. Providing official certificates and certified records in digital form of any document maintained by
194 the clerk pursuant to § 17.1-258.3:2; and

195 7. Providing secure remote access to nonconfidential court records, subject to any fees charged by
196 the clerk, to members in good standing with the Virginia State Bar and their authorized agents, pro hac
197 vice attorneys authorized by the court for purposes of the practice of law, and such governmental
198 agencies as authorized by the clerk; and

199 8. *Providing electronic access to the online case information system of certain nonconfidential*
200 *information entered into the case management system for cases in the circuit courts participating in the*
201 *Executive Secretary's case management system.*

202 F. Nothing in this section shall prohibit the Supreme Court or any other court clerk from providing
203 online access to a case management system that may include abstracts of case filings and proceedings in
204 the courts of the Commonwealth, including online access to subscribers of nonconfidential criminal case
205 information to confirm the complete date of birth of a defendant.

206 G. The court clerk shall be immune from suit arising from any acts or omissions relating to
207 providing remote access on the Internet pursuant to this section unless the clerk was grossly negligent or
208 engaged in willful misconduct.

209 This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity
210 already existing in statutory or common law, or to affect any cause of action accruing prior to July 1,
211 2005.

212 H. Nothing in this section shall be construed to permit any data accessed by secure remote access *or*
213 *online access* to be sold or posted on any other website or in any way redistributed to any third party,
214 and the clerk, in his discretion, may deny secure remote access to ensure compliance with these
215 provisions. However, ~~the any such data accessed by secure remote access~~ may be included in products
216 or services provided to a third party ~~of the subscriber~~, provided that (i) such data is not made available
217 to the general public and (ii) the subscriber maintains administrative, technical, and security safeguards
218 to protect the confidentiality, integrity, and limited availability of the data.

219 **§ 17.1-293.1. Online case information system.**

220 *The Executive Secretary shall make available a publicly viewable online case information system of*
221 *certain nonconfidential information entered into the case management system for (i) criminal cases in*
222 *the circuit courts participating in the Executive Secretary's case management system and in the general*
223 *district courts and (ii) adult criminal cases in the juvenile and domestic relations district courts. Such*
224 *system shall be searchable by defendant name across all participating courts, and search results shall*
225 *be viewable free of charge.*

226 **2. That the provisions of § 17.1-293.1 of the Code of Virginia, as created by this act, shall become**
227 **effective on July 1, 2019.**