

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.2-3703, 17.1-208, and 17.1-292 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.

[S 564]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3703, 17.1-208, and 17.1-292 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. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-208, as appropriate.* However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

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 of a district court.

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 the name, date of birth, or social security number of any party and shall not include images of the individual records in the respective case files. However, nothing in this section shall be construed to

57 permit any reports or aggregated case data to be sold or posted on any other website or in any way
 58 redistributed to any third party. The Executive Secretary, in his discretion, may deny such request to
 59 ensure compliance with these provisions. However, such data may be included in products or services
 60 provided to a third party, provided that such data is not made available to the general public.

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

73 E. Except where the nature or size of the request would interfere with the business of the court or
 74 with its use by the general public, or as otherwise provided by law, the requested court records or
 75 reports of aggregated, nonconfidential case data shall be provided to the requester within a reasonable
 76 period of time, given the nature of the request and the availability of staff to respond to the request, but
 77 in no event longer than 30 days from the date of a complete request made by a requester that is fully
 78 compliant with the requirements of this section and other applicable law. Any objection or assertion of
 79 confidentiality shall be provided to the requester within a reasonable period of time, but in no event
 80 longer than 30 days from the date of a complete request made by a requester.

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

92 G. Any clerk and the Executive Secretary shall be immune from any suit arising from the production
 93 of court records or reports of aggregated nonconfidential case data in accordance with this section
 94 absent gross negligence or willful misconduct.

95 **§ 17.1-208. Records, etc., open to inspection; copies; exception.**

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

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

111 C. Requests for copies of nonconfidential court records maintained in individual case files shall be
 112 made to the clerk of the circuit court.

113 D. Requests for reports of aggregated, nonconfidential case data fields that are viewable through the
 114 online case information systems maintained by the Executive Secretary of the Supreme Court shall be
 115 made to the Office of the Executive Secretary. Such reports of aggregated case data shall not include
 116 the name, date of birth, or social security number of any party, and shall not include images of the
 117 individual records in the respective case files. However, nothing in this section shall be construed to

118 permit any reports of aggregated case data to be sold or posted on any other website or in any way
 119 redistributed to any third party. The clerk or the Executive Secretary, in his discretion, may deny such
 120 request to ensure compliance with these provisions. However, such data may be included in products or
 121 services provided to a third party, provided that such data is not made available to the general public.

122 E. Any clerk or the Executive Secretary, as applicable, may require that the request be in writing
 123 and that the requester provide his name and legal address. A request for nonconfidential court records
 124 or reports of aggregated, nonconfidential case data shall identify the requested records with reasonable
 125 specificity. Any clerk or the Executive Secretary, as applicable, may determine the costs for providing
 126 the requested records to the requester, advise the requester of such costs, and, before continuing to
 127 process the request, require the requester to agree to payment of a deposit not to exceed the amount of
 128 the advance determination, which shall be credited to the final cost of supplying the requested records.
 129 Neither a clerk nor the Executive Secretary shall be required to create a new record if the record does
 130 not already exist or provide a report of aggregated, nonconfidential case data in a format not regularly
 131 used by the clerk or the Executive Secretary; however, a clerk or the Executive Secretary, as applicable,
 132 may abstract or summarize information under such terms and conditions as agreed to by the requester
 133 and the clerk or Executive Secretary, as provided herein.

134 F. Except as otherwise provided by law, the requested court records or reports of aggregated,
 135 nonconfidential case data shall be provided to the requester within a reasonable period of time, given
 136 the nature of the request and the availability of staff to respond to the request, but in no event longer
 137 than 30 days from the date of a complete request made by a requester that is fully compliant with the
 138 requirements of this section and other applicable law. Any objection or assertion of confidentiality shall
 139 be provided to the requester within a reasonable period of time, but in no event longer than 30 days
 140 from the date of a complete request made by a requester.

141 G. Any clerk or the Executive Secretary may require payment in advance of all reasonable costs, not
 142 to exceed the actual cost incurred in accessing, duplicating, reviewing, supplying, or searching for the
 143 requested court records or reports of aggregated, nonconfidential case data, including removing any
 144 confidential information contained in the court records from the nonconfidential court records being
 145 provided, excluding any extraneous, intermediary, or surplus fees or expenses to recoup the general
 146 overhead costs associated with creating or maintaining records or transacting the general business of
 147 the clerk or the Office of the Executive Secretary. Before processing a request for court records or
 148 reports of aggregated, nonconfidential case data, any clerk or the Executive Secretary may require the
 149 requester to pay any amounts owed to the clerk or the Office of the Executive Secretary for previous
 150 requests for court records or reports of aggregated, nonconfidential case data that remain unpaid 30
 151 days or more after billing.

152 H. Any clerk and the Executive Secretary shall be immune from any suit arising from the production
 153 of court records or reports of aggregated, nonconfidential case data in accordance with this section
 154 absent gross negligence or willful misconduct.

155 I. Nothing in this section shall be construed to apply to court records transferred to the Library of
 156 Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act
 157 (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such
 158 permanently archived records and shall be responsible for responding to requests for such records.

159 **§ 17.1-292. Applicability; definitions.**

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

162 B. As used in this article:

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

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

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

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

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

175 **§ 17.1-293.1. Online case information system.**

176 The Executive Secretary shall make available a publicly viewable online case information system of
 177 certain nonconfidential information entered into the case management system for criminal cases in the
 178 circuit courts participating in the Executive Secretary's case management system and in the general

179 *district courts. Such system shall be searchable by defendant name across all participating courts, and*
180 *search results shall be viewable free of charge.*
181 **2. That the provisions of § 17.1-293.1 of the Code of Virginia, as created by this act, shall become**
182 **effective on July 1, 2019.**