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SENATE BILL NO. 564

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 23, 2018)

(Patrons Prior to Substitute—Senators Obenshain and Mason [SB 519])

A *BILL 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.*

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 permit any reports or aggregated case data to be sold or posted on any other website or in any way*

redistributed to any third party. The Executive Secretary, in his discretion, may deny such request to ensure compliance with these provisions. However, such data may be included in products or services provided to a third party, provided that such data is not made available to the general public.

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

E. Except where the nature or size of the request would interfere with the business of the court or with its use by the general public, or as otherwise provided by law, the requested court records or reports of aggregated, nonconfidential case data shall be provided 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 section 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.

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

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

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

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

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

D. 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 permit any reports of aggregated case data to be sold or posted on any other website or in any way redistributed to any third party. The clerk or the Executive Secretary, in his discretion, may deny such

request to ensure compliance with these provisions. However, such data may be included in products or services provided to a third party, provided that such data is not made available to the general public.

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

F. Except as otherwise provided by law, the requested court records or reports of aggregated, nonconfidential case data shall be provided 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 section 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.

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

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

I. Nothing in this section shall be construed to apply to court 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.

§ 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.

§ 17.1-293.1. Online case information system.

The Executive Secretary shall make available a publicly viewable online case information system of certain nonconfidential information entered into the case management system for criminal cases in the circuit courts participating in the Executive Secretary's case management system and in the general district courts. Such system shall be searchable by defendant name across all participating courts, and search results shall be viewable free of charge.

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