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## SENATE BILL NO. 1206

Offered January 13, 2021

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A *BILL to amend and reenact § 16.1-305 of the Code of Virginia, relating to confidentiality of juvenile court records; exceptions.*

Patrons—Barker; Delegates: Cole, M.L. and Herring

Referred to Committee on the Judiciary

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

**1. That § 16.1-305 of the Code of Virginia is 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. *This shall include (i) the Department of Social Services or any local department of social services that is providing services or care for, or has accepted a referral for investigation and the provision of services in accordance with subsection A of § 16.1-277.02 regarding, a juvenile who is the subject of the record for (a) a purpose relevant to the provision of the services or care or (b) the purpose of conducting an investigation or family assessment of child abuse or neglect involving the juvenile who is the subject of the record and (ii) the Department of Behavioral Health and Developmental Services or any local community services board that is providing treatment, services, or care for a juvenile who is the subject of the record for a purpose relevant to the provision of the treatment, services, or care;*

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,

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59 conditions, or prohibitions that the court may impose.

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

63 B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the  
64 basis of an act which would be a felony if committed by an adult, all court records regarding that  
65 adjudication and any subsequent adjudication of delinquency, other than those records specified in  
66 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that  
67 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile  
68 victim or juvenile witness.

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

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

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

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

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

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