

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 913

An Act to amend and reenact §§ 16.1-305.1, 16.1-309 as it will become effective and as it may become effective, and § 22.1-289 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-274.1 and 22.1-288.2, relating to disclosure of disposition in certain delinquency cases; maintenance of records of disposition; admission of evidence of juvenile's age; penalty.

[H 742]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-305.1, 16.1-309 as it will become effective and as it may become effective, and § 22.1-289 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-274.1 and 22.1-288.2 as follows:

§ 16.1-274.1. Admission of evidence of juvenile's age.

In any delinquency proceeding, the Commonwealth shall be permitted to introduce evidence establishing the age of the juvenile who is the subject of the delinquency petition at any time prior to adjudication of the case.

§ 16.1-305.1. Disclosure of disposition in certain delinquency cases.

~~Whenever a child~~ Upon disposition of a proceeding in a court of competent jurisdiction in which a juvenile is adjudicated delinquent ~~and the adjudication is or convicted of a crime based upon a violation of the law involving (i) the unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2, (ii) homicide, an assault or any unlawful wounding homicide, pursuant to Article 1 (§ 18.2-31 et seq.) of Chapter 4 of Title 18.2, (iii) any controlled substance or marijuana felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, (iv) arson or criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, (v) manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (vi) manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (vii) arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (viii) burglary, pursuant to § 18.2-89, the clerk of the juvenile court in which the disposition is entered shall, within fifteen days if there has been no notice of an appeal, provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication or conviction was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. Further disclosure of this information by the superintendent to school personnel is authorized only to allow appropriate action within the school setting with regard to the juvenile or another student as provided in § 22.1-288.2.~~

§ 16.1-309. Penalty.

A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, 16.1-305 and 16.1-307, any person who files a petition, receives a petition or has access to court records in an official capacity, participates in the investigation of allegations which form the basis of a petition, is interviewed concerning such allegations and whose information is derived solely from such interview or is present during any court proceeding who discloses or makes use of or knowingly permits the use of identifying information concerning a juvenile who is suspected of being or is the subject of a proceeding within the jurisdiction of the juvenile court pursuant to subdivisions 1 through 5 of subsection A of § 16.1-241 or who is in the custody of the State Department of Youth and Family Services, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Youth and Family Services or acquired in the course of official duties, shall be guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses to school personnel identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act that has met applicable criteria of § 16.1-260 and is committed or alleged to have been committed on school property during a school-sponsored activity or on the way to or from such activity, if the disclosure is made solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to §§ 16.1-305.1 and 22.1-288.2, if the disclosure is made solely to enable school personnel to take appropriate actions within the school setting with regard to the juvenile or another student.

§ 16.1-309. (Delayed effective date) Penalty.

A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, 16.1-305 and 16.1-307, any person who

files a petition, receives a petition or has access to court records in an official capacity, participates in the investigation of allegations which form the basis of a petition, is interviewed concerning such allegations and whose information is derived solely from such interview or is present during any court proceeding who discloses or makes use of or knowingly permits the use of identifying information concerning a juvenile who is suspected of being or is the subject of a proceeding within the jurisdiction of the family court pursuant to subdivisions 1 through 5 of subsection A of § 16.1-241 or who is in the custody of the State Department of Youth and Family Services, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Youth and Family Services or acquired in the course of official duties, shall be guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses to school personnel identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act that has met applicable criteria of § 16.1-260 and is committed or alleged to have been committed on school property during a school-sponsored activity or on the way to or from such activity, if the disclosure is made solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to §§ 16.1-305.1 and 22.1-288.2, if the disclosure is made solely to enable school personnel to take appropriate actions within the school setting with regard to the juvenile or another student.

§ 22.1-288.2. *Receipt, dissemination and maintenance of records of certain adjudications or convictions.*

The superintendent shall disseminate the notice or information contained in a notice received by him pursuant to § 16.1-305.1 to school personnel responsible for the management of student records and to other relevant school personnel, including, but not limited to, the principal of the school in which the student is enrolled, only (i) if the student poses a danger to himself or others or (ii) to facilitate the student's appropriate educational placement or other educational services.

A parent, guardian or other person having control or charge of the student and, with consent of a parent or in compliance with a court order, the court in which the disposition was rendered, shall be notified in writing of any disciplinary action taken with regard to any incident upon which the adjudication or conviction was based and the reasons therefor. The parent or guardian shall also be notified of his or her right to review, and to request an amendment of, the student's scholastic record, in accordance with regulations of the Board of Education governing the management of scholastic records.

Every notice of adjudication or conviction received by a superintendent, and information contained in the notice, which is not a disciplinary record as defined in Board of Education regulations, shall be maintained by him and by any others to whom he disseminates it, separately from all other records concerning the student. However, if the school administrators or the school board takes disciplinary action against a student based upon an incident which formed the basis for the adjudication or conviction, the notice shall become a part of the student's disciplinary record.

§ 22.1-289. Transfer and management of scholastic records; disclosure of information in court notices; penalty.

A. As used in this section:

"Category I record" means continuous and current documentation of significant factual information pertinent to the educational growth and development of individual students as they progress through school.

"Category II record" means information of a sensitive or confidential nature and shall include, but need not be limited to, the disciplinary records of the student; reports prepared by professional staff of a local school division for the express use of other professionals within the local school division; and appropriate confidential information from the records of cooperating individuals or agencies, such as psychiatrists, child welfare agencies, hospitals, juvenile courts, local health departments, and local social services departments.

"Scholastic record" means those Category I and Category II records that are directly related to a student which are maintained by an educational agency or institution or by a party acting for the agency or institution. *A notice of adjudication or conviction received by a superintendent relating to an incident which did not occur on school property or during a school-sponsored activity shall not be a part of a student's scholastic record.*

B. Whenever a pupil transfers from one school division to another, the scholastic record or a copy of the scholastic record shall be transferred to the school division to which the pupil transfers upon request from such school division.

C. Any notice of disposition received pursuant to § 16.1-305.1 shall not be retained after the student has been awarded a diploma or a certificate as provided in § 22.1-253.13:4.

D. Every student's scholastic record (Category I and Category II records) shall be available to the student and his parent, guardian, or other person having control or charge of the student for inspection during the regular school day. ~~However,~~ Permission of the parent, guardian, or other person having control or charge of the student, *or of a student who is eighteen years of age or older,* shall not be

required for transfer of such scholastic record to another school or school division within or without this Commonwealth. *However, a school responding to a request for the transfer of the scholastic record from another school division shall provide written notice of the transfer of the record, including the identity of the requester, to the parent, guardian, or other person having control or charge of the student, or to a student who is eighteen years of age or older, within five days of the date in which the record was transferred.*

E. Whenever the division superintendent is notified by the Department of Correctional Education, pursuant to § 22.1-344 of this title, or by a school division employee responsible for education programs in a local jail or a detention center, that a pupil who last attended a school within the school division is a pupil in a school of a learning center of the Department of Youth and Family Services, or a pupil in an educational program in a local jail or detention center, the school division superintendent or his designee shall transfer the scholastic record of such pupil to the designated learning center or local jail or a detention center, as the case may be, within five work days. The Department of Correctional Education shall notify the relevant division superintendent when a student who last attended school while residing in the school division has been released from a learning center of the Department of Youth and Family Services and shall transfer such student's scholastic record to the relevant school division within five work days of a request from the school superintendent or his designee.

The Board of Education shall adopt regulations concerning the transfer *and management* of scholastic records from one school division to another ~~and~~, to the learning centers of the Department of Youth and Family Services, *and to educational programs in local jails and detention centers.*

~~C.~~ *F.* The division superintendent or his designee shall notify the local police or sheriff's department for investigation as a possible missing child of any enrolled pupil whose scholastic record he is unable to obtain within sixty days or sooner, if the division superintendent or his designee has reason to suspect that the pupil is a missing child.

~~D.~~ *G.* Superintendents and their designees shall be immune from any civil or criminal liability in connection with any notice to a police or sheriff's department of a pupil lacking a scholastic record or failure to give such notice as required by this section.

~~E.~~ *H.* Except as provided in §§ 16.1-309 and 22.1-287 and this section, a superintendent or his designee, or other school personnel who unlawfully discloses information obtained pursuant to § 16.1-305.1 shall be guilty of a Class 3 misdemeanor.