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HOUSE BILL NO. 742

Offered January 25, 1994

A BILL to amend and reenact §§ 16.1-305.1, 16.1-309, and 22.1-289 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-288.2, relating to notification of school personnel regarding enrollment of certain students; penalty.

Patron—Tata

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-305.1, 16.1-309, and 22.1-289 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-288.2 as follows:

§ 16.1-305.1. (Effective July 1, 1994) Disclosure of disposition in certain delinquency cases.

~~Whenever~~ A. Upon the disposition of a proceeding against a child in a court of competent jurisdiction in which such 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, (ii) homicide, an assault or any unlawful wounding, (iii) any controlled substance or marijuana, (iv) arson or (v) burglary, the clerk of the juvenile court in which the disposition is entered shall, within fifteen days, 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. If, upon appeal, the adjudication or conviction is reversed, the clerk of the court which initially provided the notice shall, within fifteen days, provide written notice of the reversal to the superintendent who received the initial notice.

§ 16.1-309. (Effective July 1, 1994) 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 - See notes) 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

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60 Youth and Family Services or acquired in the course of official duties, shall be guilty of a Class 3
61 misdemeanor.

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

71 § 22.1-288.2. *Receipt, dissemination and maintenance of records of certain adjudications or*
72 *convictions.*

73 A. *The superintendent shall disseminate the notice or information contained in a notice received by*
74 *him pursuant to § 16.1-305.1 to administrative and instructional school personnel only if the student*
75 *poses a danger to himself or others. Such notice shall be disseminated within fifteen days of the notice*
76 *received pursuant to § 16.1-305.1 if the student is enrolled in such school at the time of the*
77 *adjudication, or within fifteen days of receipt by the school division of the student's scholastic and*
78 *disciplinary records, if the adjudication or conviction occurred prior to the student's enrollment in such*
79 *school division. Every notice of adjudication or conviction received by a superintendent, and information*
80 *contained in the notice, shall become a part of the student's disciplinary record, as defined in*
81 *§ 22.1-289.*

82 B. *Whenever the superintendent receives notice that an adjudication or conviction has been reversed*
83 *on appeal, he shall ensure that any person to whom information concerning the conviction or*
84 *adjudication was disseminated promptly receives notice of the reversal. Any person receiving the notice*
85 *of reversal shall promptly destroy the notice and any reference to the notice contained in any other*
86 *record.*

87 C. *Each school board shall develop and implement policies and procedures mandating a review of*
88 *all records including such notices. The review shall be conducted annually at the end of the school*
89 *year. All notices and records containing information contained in the notice shall be destroyed at the*
90 *end of the school year in which the notice was received unless retention of the information is authorized*
91 *pursuant to § 22.1-289, but in no event shall the notice be retained after the student either graduates*
92 *from secondary school or completes a program adopted by the Board of Education, or leaves school.*

93 D. *Any superintendent who fails to deliver the notices required by subsections A and B of this*
94 *section shall be guilty of a Class 3 misdemeanor.*

95 § 22.1-289. *Transfer and management of scholastic records; disclosure of information in court*
96 *notices; penalty.*

97 A. As used in this section:

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

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

107 "Disciplinary record" means all notices of adjudication or conviction sent to the superintendent
108 pursuant to § 16.1-305.1 and information pertaining to disciplinary action taken against a student by
109 school administrators or school boards for the violation of school board policies governing student
110 conduct on school property or at school-sponsored activities.

111 "Scholastic record" means those Category I and Category II records that are directly related to a
112 student which are maintained by an educational agency or institution or by a party acting for the agency
113 or institution.

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

117 C. *Each school board shall develop and implement policies and procedures mandating an annual*
118 *review of all disciplinary records, to be conducted at the end of the school year. Disciplinary records*
119 *shall be destroyed at the end of the school year in which the record was created except that the*
120 *following records may be retained until no longer educationally relevant: (i) a notice of disposition*
121 *received pursuant to § 16.1-305.1 or information contained in the notice; (ii) records involving*

disciplinary actions resulting from possession or use of firearms or other weapons, alcohol or drugs or assault upon staff or others on school property or at school-sponsored activities; (iii) records relating to expulsion or suspension of the student; or (iv) records required to be maintained under regulations of the Board governing the management of scholastic records. In no event shall a notice of disposition received pursuant to § 16.1-305.1 be retained after the student either graduates from secondary school or completes a program adopted by the Board of Education, or leaves school.

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 shall not be required for transfer of such scholastic record to another school or school division within or without this Commonwealth.

E. Whenever the division superintendent is notified by the Department of Correctional Education, pursuant to § 22.1-344 of this title, 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, the school division superintendent or his designee shall transfer the scholastic record of such pupil to the designated learning center within five work days.

F. 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.

G. 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.

H. 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.

I. Except as provided in §§ 16.1-309 and 22.1-287 22.1-288.2 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.