

LD6204442

HOUSE BILL NO. 2475

Offered January 23, 1995

A *BILL to amend and reenact §§ 16.1-305.1, 22.1-257 as it is currently effective and as it may become effective, 22.1-288.2, and 22.1-289 of the Code of Virginia, relating to disclosure of arrest and disposition in delinquency cases; disciplinary authority of school boards; record of arrests, adjudications or corrections; scholastic records.*

Patron—Ruff

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-305.1, 22.1-257 as it is currently effective and as it may become effective, 22.1-288.2, and 22.1-289 of the Code of Virginia are amended and reenacted as follows:

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-305.1, 22.1-288.2 and 22.1-289 of the Code of Virginia are amended and reenacted as follows:

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

A. Whenever a petition is filed against a juvenile or a warrant is issued against a juvenile alleging 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, pursuant to Article 1 (§ 18.2-31 et seq.) of Chapter 4 of Title 18.2, (iii) felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, (iv) 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, (viii) burglary, pursuant to § 18.2-89, or (ix) robbery pursuant to Article 5 of Title 18.2 (§ 18.2-58 et seq.), the intake officer of the court or the magistrate shall provide written notice of the nature of the offense for which the juvenile was charged by petition or warrant and the conditions of confinement, to the superintendent of the school division in which the juvenile 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 as provided in § 22.1-288.2.

B. Upon disposition of a proceeding in a court of competent jurisdiction in which a juvenile *criminal case is nolle prosequi or the juvenile is adjudicated delinquent or, convicted or acquitted* 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, pursuant to Article 1 (§ 18.2-31 et seq.) of Chapter 4 of Title 18.2, (iii) felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, (iv) 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, or (ix) robbery pursuant to Article 5 of Title 18.2 (§ 18.2-58 et seq.), the clerk of the 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 as provided in § 22.1-288.2.

§ 22.1-257. Excusing children who cannot benefit from education or whose parents conscientiously object; excusing children for reasons of health or apprehension for personal safety; school board and court authority to order alternatives.

A. A school board:

1. May, on recommendation of the principal and the division superintendent, with the written consent of the parent or guardian, excuse from attendance at school any pupil who the school board determines, in accordance with regulations of the Board of Education, cannot benefit from education at such school;

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60 2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of
61 bona fide religious training or belief, is conscientiously opposed to attendance at school;

62 3. Shall, on the recommendation of the juvenile and domestic relations district court of the county or
63 city in which the pupil resides, excuse from attendance at school for such period of time as the court
64 deems appropriate any pupil who, together with his parents, is opposed to attendance at a school by
65 reason of concern for such pupil's health, as verified by competent medical evidence, or by reason of
66 such pupil's reasonable apprehension for personal safety when such concern or apprehension in that
67 pupil's specific case is determined by the court to be justified;

68 4. May, on recommendation of the juvenile and domestic relations district court of the county or city
69 in which the pupil resides, excuse from attendance at school any pupil who, in the judgment of such
70 court, cannot benefit from education at such school;

71 5. May, upon a finding that a school-age child has committed an offense in violation of school board
72 policies, *or upon notice of arrest as provided in § 16.1-305.1*, or against whom such charges are
73 pending as described in subsection A of § 22.1-209.1:2, require the child to attend an alternative
74 education program as provided in § 22.1-209.1:2 or § 22.1-277.1. *The local school board of the school*
75 *division in which the pupil resides shall determine the appropriate alternative education placement for*
76 *such pupil. This subsection shall not be construed to limit the authority of school boards to expel,*
77 *suspend, or exclude students, as provided in §§ 22.1-277 and 22.1-277.2.*

78 B. The court in reaching its determination as to whether the concern or apprehension referred to in
79 subdivision A 3 of this section is justified shall take into consideration the recommendation of the
80 principal and division superintendent.

81 C. The juvenile and domestic relations district court of the county or city in which a pupil resides, or
82 in which charges are pending against a pupil, or any court in which charges are pending against a pupil,
83 may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in
84 injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any
85 offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend
86 an alternative education program, including, but not limited to, night school, adult education, or any
87 other educational program designed to offer instruction to students for whom the regular program of
88 instruction may be inappropriate. The local school board of the school division in which the pupil
89 resides shall determine the appropriate alternative education placement for such pupil. This subsection
90 shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as
91 provided in §§ 22.1-277 and 22.1-277.2.

92 D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does
93 not include essentially political, sociological or philosophical views or a merely personal moral code.

94 § 22.1-257. (Delayed effective date) Excusing children who cannot benefit from education or whose
95 parents conscientiously object; excusing children for reasons of health or apprehension for personal
96 safety; court authority to order alternatives.

97 A. A school board:

98 1. May, on recommendation of the principal and the division superintendent, with the written consent
99 of the parent or guardian, excuse from attendance at school any pupil who the school board determines,
100 in accordance with regulations of the Board of Education, cannot benefit from education at such school;

101 2. Shall excuse from attendance at school any pupil who, together with his parents, by reason of
102 bona fide religious training or belief, is conscientiously opposed to attendance at school;

103 3. Shall, on the recommendation of the family court of the county or city in which the pupil resides,
104 excuse from attendance at school for such period of time as the court deems appropriate any pupil who,
105 together with his parents, is opposed to attendance at a school by reason of concern for such pupil's
106 health, as verified by competent medical evidence, or by reason of such pupil's reasonable apprehension
107 for personal safety when such concern or apprehension in that pupil's specific case is determined by the
108 court to be justified;

109 4. May, on recommendation of the family court of the county or city in which the pupil resides,
110 excuse from attendance at school any pupil who, in the judgment of such court, cannot benefit from
111 education at such school;

112 5. May, upon a finding that a school-age child has committed an offense in violation of school board
113 policies, *or upon notice of arrest as provided in § 16.1-305.1*, or against whom such charges are
114 pending as described in subsection A of § 22.1-209.1:2, require the child to attend an alternative
115 education program as provided in § 22.1-209.1:2 or § 22.1-277.1. *The local school board of the school*
116 *division in which the pupil resides shall determine the appropriate alternative education placement for*
117 *such pupil. This subsection shall not be construed to limit the authority of school boards to expel,*
118 *suspend, or exclude students, as provided in §§ 22.1-277 and 22.1-277.2.*

119 B. The court in reaching its determination as to whether the concern or apprehension referred to in
120 subdivision A 3 of this section is justified shall take into consideration the recommendation of the
121 principal and division superintendent.

C. The family court of the county or city in which a pupil resides, or in which charges are pending against a pupil, or any court in which charges are pending against a pupil, may require the pupil who has been charged with (i) a crime which resulted in or could have resulted in injury to others, (ii) a violation of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or (iii) any offense related to possession or distribution of any Schedule I, II, or III controlled substances to attend an alternative education program, including, but not limited to, night school, adult education, or any other educational program designed to offer instruction to students for whom the regular program of instruction may be inappropriate. The local school board of the school division in which the pupil resides shall determine the appropriate alternative education placement for such pupil. This subsection shall not be construed to limit the authority of school boards to expel, suspend, or exclude students, as provided in §§ 22.1-277 and 22.1-277.2.

D. As used in subdivision A 2 of this section, the term "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code.

§ 22.1-288.2. Receipt, dissemination and maintenance of records of certain arrests 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 *petition or warrant*, 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 *petition or warrant*, 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 *petition or warrant*, 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:

"Scholastic record" means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. These include, but are not limited to, documentation pertinent to the educational growth and development of students as they progress through school, student disciplinary records, achievement and test data, cumulative health records, reports of assessments for eligibility for special education services, and Individualized Education Programs. A notice of a *petition or warrant*, 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.

The term "scholastic record" does not include records of instructional, supervisory, administrative, and ancillary educational personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the 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. 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 outside the Commonwealth.

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 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. 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

183 provide written notice of the transfer of the record, including the identity of the requester, to the parent,
184 guardian, or other person having control or charge of the student, or to a student who is eighteen years
185 of age or older, within five days of the date in which the record was transferred.

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

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

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

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

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