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**SENATE BILL NO. 96**

Offered January 10, 1996

*A BILL to amend and reenact §§ 16.1-69.55, 16.1-306 and 16.1-307 of the Code of Virginia, as they are currently effective and as they may become effective, relating to juvenile records; expungement.*

Patrons—Gartlan; Delegates: Almand, Croshaw, Forbes and Watts

Referred to the Committee for Courts of Justice

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

**1. That §§ 16.1-69.55, 16.1-306 and 16.1-307 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted as follows:**

§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.

A. Criminal and traffic infraction proceedings:

1. In misdemeanor and traffic infraction cases, all documents shall be retained for ten years, including cases sealed in expungement proceedings under § 19.2-392.2. Documents in misdemeanor and traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the appropriate circuit court pursuant to § 16.1-135;

2. In felony cases which are certified to the grand jury, all documents shall be certified to the clerk of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall be handled as provided in subdivision A 1 of this section;

3. Dockets and indices shall be retained for ten years.

B. Civil proceedings:

1. All documents in civil proceedings in district court which are dismissed, including dismissal under § 8.01-335 or in which no service of process is had, shall be retained until completion of the Commonwealth's audit of the court records;

2. In civil actions which result in a judgment all documents in the possession of the general district court shall be retained for ten years and, unless sooner satisfied, the judgment shall remain in force for a period of ten years;

3. In civil cases which are either removed or appealed to the circuit court pursuant to §§ 16.1-92 and 16.1-112 respectively, all documents pertaining thereto shall be transferred to the circuit court in accordance with those sections;

4. In civil cases in which the general district court has granted the motion by the plaintiff for extension of the limitation of enforcement of judgment and upon payment of the circuit court docketing and indexing fees on judgments from other courts and filing fees, all documents associated with the case and the fees described herein shall be forwarded to the circuit court having jurisdiction in the same geographic area as the general district court and docketed therein. Such judgment, upon docketing, as described above, shall thereafter be treated as a judgment of the circuit court. Upon the docketing of an abstract of judgment in circuit court, the limitation for the enforcement of that district court judgment in circuit court shall be the same as for a judgment of a circuit court, regardless of the disposition of the documents in the case in district court; in all other respects, such judgments shall be treated as are other district court judgments. If an abstract of judgment has been docketed in circuit court, the judgment creditor may extend the limitation for the enforcement of judgment or the revival of a judgment in circuit court pursuant to § 8.01-251, as if the abstract of the district court judgment docketed in the circuit court were a circuit court judgment;

5. Dockets for civil cases shall be retained for ten years;

6. Indices in civil cases shall be retained for ten years.

C. Juvenile and domestic relations district court proceedings:

1. In adult criminal cases, all records shall be retained as provided in subdivision A 1 of this section;

2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

3. In all cases involving support arising under Titles 16.1, 20 or 63.1, all documents and indices shall be retained until the last juvenile involved, if any, has reached nineteen years of age and ten years have elapsed from either dismissal or termination of the case by court order or by operation of law. Financial records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

4. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents pertaining thereto shall be transferred to circuit court;

5. All dockets in juvenile cases shall be governed by the provisions of § 16.1-306 ~~GF~~.

§ 16.1-69.55. (Delayed effective date) Retention of case records; limitations on enforcement of judgments; extensions.

INTRODUCED

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60 A. Criminal and traffic infraction proceedings:

61 1. In misdemeanor and traffic infraction cases, all documents shall be retained for ten years,  
62 including cases sealed in expungement proceedings under § 19.2-392.2. Documents in misdemeanor and  
63 traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk  
64 of the appropriate circuit court pursuant to § 16.1-135;

65 2. In felony cases which are certified to the grand jury, all documents shall be certified to the clerk  
66 of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents  
67 shall be handled as provided in subdivision A 1 of this section;

68 3. Dockets and indices shall be retained for ten years.

69 B. Civil proceedings:

70 1. All documents in civil proceedings in district court which are dismissed, including dismissal under  
71 § 8.01-335 or in which no service of process is had, shall be retained until completion of the  
72 Commonwealth's audit of the court records;

73 2. In civil actions which result in a judgment all documents in the possession of the general district  
74 court shall be retained for ten years and, unless sooner satisfied, the judgment shall remain in force for a  
75 period of ten years;

76 3. In civil cases which are either removed or appealed to the circuit court pursuant to §§ 16.1-92 and  
77 16.1-112 respectively, all documents pertaining thereto shall be transferred to the circuit court in  
78 accordance with those sections;

79 4. In civil cases in which the general district court has granted the motion by the plaintiff for  
80 extension of the limitation of enforcement of judgment and upon payment of the circuit court docketing  
81 and indexing fees on judgments from other courts and filing fees, all documents associated with the case  
82 and the fees described herein shall be forwarded to the circuit court having jurisdiction in the same  
83 geographic area as the general district court and docketed therein. Such judgment, upon docketing, as  
84 described above, shall thereafter be treated as a judgment of the circuit court. Upon the docketing of an  
85 abstract of judgment in circuit court, the limitation for the enforcement of that district court judgment in  
86 circuit court shall be the same as for a judgment of a circuit court, regardless of the disposition of the  
87 documents in the case in district court; in all other respects, such judgments shall be treated as are other  
88 district court judgments. If an abstract of judgment has been docketed in circuit court, the judgment  
89 creditor may extend the limitation for the enforcement of judgment or the revival of a judgment in  
90 circuit court pursuant to § 8.01-251, as if the abstract of the district court judgment docketed in the  
91 circuit court were a circuit court judgment;

92 5. Dockets for civil cases shall be retained for ten years;

93 6. Indices in civil cases shall be retained for ten years.

94 C. Family court proceedings:

95 1. In adult criminal cases and in family abuse cases not involving a child, all records shall be  
96 retained as provided in subdivision A 1 of this section;

97 2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

98 3. In all cases involving support arising under ~~Titles~~ Title 16.1, 20 or 63.1, all documents and indices  
99 shall be retained until the last juvenile involved, if any, has reached nineteen years of age and ten years  
100 have elapsed from either dismissal or termination of the case by court order or by operation of law.  
101 Financial records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

102 4. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents  
103 pertaining thereto shall be transferred to circuit court;

104 5. All dockets in family court cases, except those specified in subdivision C 1, shall be governed by  
105 the provisions of § 16.1-306 ~~GF~~;

106 6. Section 16.1-306.1 shall govern all documents and indices referred to in that section.

107 § 16.1-306. Expungement of court records.

108 A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations  
109 district court shall, on January 2 of each year or on a date designated by the court, destroy its files,  
110 papers and records connected with any proceeding concerning a juvenile in such court, if such juvenile  
111 has attained the age of nineteen years and five years have elapsed since the date of the last hearing in  
112 any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of a  
113 delinquent act which would be a felony if committed by an adult, or an offense for which the clerk is  
114 required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be  
115 destroyed when the juvenile has attained the age of twenty-nine. *If the juvenile was found guilty of a*  
116 *delinquent act which would be a felony if committed by an adult, the records shall be retained.*

117 B. In all files in which the court records concerning a juvenile contain a finding of guilty of a  
118 delinquent act which would be a felony if committed by an adult or an offense for which the clerk is  
119 required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings  
120 of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained  
121 and available for inspection as provided in § 16.1-305.

C. Except in cases where a juvenile fourteen years of age or older at the time of the offense was found guilty of a delinquent act which would be a felony if committed by an adult, a person who has been the subject of a delinquency or traffic proceeding and whose records fall within the provisions of subsection B hereof may, after ten years since the date of the last hearing in any case of the juvenile which is subject to this section, file a motion requesting the destruction of all records pertaining to his case. Notice of such motion shall be given to the attorney for the Commonwealth. After a hearing on the matter, if the court grants the motion, copies of the order shall be sent to offices or agencies that are repositories of such records, and all such offices and agencies shall comply with the order.

D. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

ED. Each person shall be notified of his rights under subsections A, and C and D of this section at the time of his dispositional hearing.

FE. Upon destruction of the records of a proceeding as provided in subsections A, B, and C and D, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

GF. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.

§ 16.1-306. (Delayed effective date) Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55 and except for adoption records governed by § 63.1-235, the clerk of the family court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of nineteen years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of twenty-nine. *If the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be retained.*

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. Except in cases where a juvenile fourteen years of age or older at the time of the offense was found guilty of a delinquent act which would be a felony if committed by an adult, a person who has been the subject of a delinquency or traffic proceeding and whose records fall within the provisions of subsection B hereof may, after ten years since the date of the last hearing in any case of the juvenile which is subject to this section, file a motion requesting the destruction of all records pertaining to his case. Notice of such motion shall be given to the attorney for the Commonwealth. After a hearing on the matter, if the court grants the motion, copies of the order shall be sent to offices or agencies that are repositories of such records, and all such offices and agencies shall comply with the order.

D. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

ED. Each person shall be notified of his rights under subsections A, and C and D of this section at the time of his dispositional hearing.

FE. Upon destruction of the records of a proceeding as provided in subsections A, B, and C and D, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

GF. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the

183 docket sheet.

184 § 16.1-307. Confidentiality of circuit court records.

185 In proceedings against a child in the circuit court in which the circuit court deals with the child in  
186 the same manner as a case in the juvenile court, the clerk of the court shall preserve all records  
187 connected with the proceedings in files separate from other files and records of the court as provided in  
188 § 16.1-302. Except as provided in §§ 19.2-389.1 and 19.2-390, such records shall be open for inspection  
189 only in accordance with the provisions of § 16.1-305 and shall be subject to the expungement provisions  
190 of § 16.1-306.

191 § 16.1-307. (Delayed effective date) Confidentiality of circuit court records.

192 In proceedings against a child in the circuit court in which the circuit court deals with the child in  
193 the same manner as a case in the family court, the clerk of the court shall preserve all records connected  
194 with the proceedings in files separate from other files and records of the court as provided in  
195 § 16.1-302. Except as provided in §§ 19.2-389.1 and 19.2-390, such records shall be open for inspection  
196 only in accordance with the provisions of § 16.1-305 and shall be subject to the expungement provisions  
197 of § 16.1-306.