

986790212

HOUSE BILL NO. 713

Offered January 23, 1998

A BILL to amend and reenact §§ 16.1-306, as it is currently effective and as it may become effective, 22.1-254, 22.1-255, 22.1-261, 22.1-262, as it is currently effective and as it may become effective, and 22.1-263 through 22.1-267 of the Code of Virginia, relating to compulsory school attendance; penalty.

Patron—Dillard

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-306, as it is currently effective and as it may become effective, 22.1-254, 22.1-255, 22.1-261, 22.1-262, as it is currently effective and as it may become effective, and 22.1-263 through 22.1-267 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-306. Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district 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 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.

However, if the juvenile was found guilty solely of a misdemeanor pursuant to the compulsory school attendance law, Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, the records of the juvenile shall be destroyed after one year has elapsed since the date of the last hearing in any case of a juvenile which is subject to this section.

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. 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.

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

E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, 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.

F. 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 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.

INTRODUCED

HB713

60 *However, if the juvenile was found guilty solely of a misdemeanor pursuant to the compulsory school*
61 *attendance law, Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, the records of the juvenile*
62 *shall be destroyed after one year has elapsed since the date of the last hearing in any case of a juvenile*
63 *which is subject to this section.*

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

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

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

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

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

84 § 22.1-254. Ages of children required to attend.

85 A. Every parent, guardian, or other person in the Commonwealth having control or charge of any
86 child who will have reached the fifth birthday on or before September 30 of any school year and who
87 has not passed the eighteenth birthday *shall comply with the provisions of this article. To so comply,*
88 *every parent, guardian, or other person having control or charge of any child of the ages specified*
89 *herein shall, during the period of each year the public schools are in session and for the same number*
90 *of days and hours per day as the public schools, send such child to a public school or to a private,*
91 *denominational or parochial school or have such child taught by a tutor or teacher of qualifications*
92 *prescribed by the Board of Education and approved by the division superintendent or provide for home*
93 *instruction of such child as described in § 22.1-254.1.*

94 *Every child of the ages specified in this subsection shall attend school when so sent by his parent,*
95 *guardian, or other person having control or charge of him or shall otherwise comply with this article.*

96 As prescribed in the regulations of the Board of Education, the requirements of this section may also
97 be satisfied by sending a child to an alternative program of study or work/study offered by a public,
98 private, denominational or parochial school or by a public or private degree - granting institution of
99 higher education. Further, in the case of any five-year-old child who is subject to the provisions of this
100 subsection, the requirements of this section may be alternatively satisfied by sending the child to any
101 public educational pre-kindergarten program, including a Head Start program, or in a private,
102 denominational or parochial educational pre-kindergarten program.

103 B. Instruction in the home of a child or children by the parent, guardian or other person having
104 control or charge of such child or children shall not be classified or defined as a private, denominational
105 or parochial school.

106 C. The requirements of this section shall not apply to any child who has obtained a high school
107 diploma, its equivalent, or a certificate of completion, or has otherwise complied with compulsory
108 school attendance requirements as set forth in this article.

109 D. The requirements of this section shall apply to any child in the custody of the Department of
110 Juvenile Justice, or any child who may have been adjudicated as an adult, and who has not passed his
111 eighteenth birthday.

112 E. The requirements of this section shall apply to any child whom the division superintendent has
113 required to take a special program of prevention, intervention, or remediation, as provided in subsection
114 C of § 22.1-253.13:1 and in § 22.1-254.01.

115 F. Within one calendar month of the opening of school, each school board shall send to the parents
116 or guardian of each student enrolled in the division a copy of the compulsory school attendance law and
117 the enforcement procedures and policies established by the school board.

118 § 22.1-255. Nonresident children.

119 Any person who has residing with him for a period of sixty days or more any child within the ages
120 prescribed in § 22.1-254 whose parents or guardians reside in another state or the District of Columbia
121 shall be subject to the provisions of § 22.1-254 and shall pay or cause to be paid any tuition charges for

such child that may be required pursuant to § 22.1-5 or shall return such child to the home of his parents or legal guardians. *Each such child shall attend school or otherwise comply with the requirements of this article as required by § 22.1-254 and this section.*

§ 22.1-261. Attendance officer to make list of children not enrolled; duties of attendance officer.

The attendance officer or the division superintendent shall check the reports submitted pursuant to § 22.1-260 with the last school census and with reports from the State Registrar of Vital Records and Health Statistics. From these reports and from any other reliable source, the attendance officer or the division superintendent shall, within five days after receiving all reports submitted pursuant to § 22.1-260, make a list of the names of children who are not enrolled in any school and who are not exempt from school attendance. It shall be the duty of the attendance officer, on behalf of the local school board, to investigate all cases of nonenrollment and, when no valid reason is found therefor, to notify the parent, guardian or other person having control of the child ~~to require~~ *and, if possible the child, that the attendance of such child at the school within three days from the date of such notice shall be required.*

§ 22.1-262. Complaint to court when parent fails to comply with law.

A list of persons so notified shall be sent by the attendance officer to the appropriate school principal. If the parent, guardian, or other person having control of the child fails to comply with the law within the time specified in the notice, it shall be the duty of the attendance officer, with the knowledge and approval of the division superintendent, to make complaint in the name of the Commonwealth before the juvenile and domestic relations district court. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 *or charged with a misdemeanor pursuant to provisions of the compulsory school attendance law, Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1.*

§ 22.1-262. (Delayed effective date) Complaint to court when parent fails to comply with law.

A list of persons so notified shall be sent by the attendance officer to the appropriate school principal. If the parent, guardian, or other person having control of the child fails to comply with the law within the time specified in the notice, it shall be the duty of the attendance officer, with the knowledge and approval of the division superintendent, to make complaint in the name of the Commonwealth before the family court. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 *or charged with a misdemeanor pursuant to provisions of the compulsory school attendance law, Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1.*

§ 22.1-263. Violation constitutes misdemeanor.

A. Any person, *including any child under the age of eighteen*, violating the provisions of either § 22.1-254, except for subsection E, § 22.1-255, or § 22.1-267 shall be guilty of a Class 3 misdemeanor. Upon a finding that a person knowingly and willfully violated any provision of § 22.1-254, except for subsection E, or any provision of § 22.1-255 or § 22.1-267 and that such person has been convicted previously of a violation of any provision of § 22.1-254, except for subsection E, or any provision of § 22.1-255 or § 22.1-267, such person, *including any child under the age of eighteen*, shall be guilty of a Class 2 misdemeanor. *A child under the age of eighteen may also be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.*

B. *Notwithstanding the provisions of §§ 18.2-11 through 18.2-15, no child under the age of eighteen who is charged with a misdemeanor pursuant to this section shall be confined to jail; such child may, however, upon being found not innocent of any such violation, be detained in a local or regional juvenile facility at the discretion of the court. For any child found not innocent of violations of this article, the court may also order any of the remedies provided for a child in need of services or a child in need of supervision.*

§ 22.1-264. Misdemeanor to make false statements as to age.

Any person, *including any child under the age of eighteen*, who makes a false statement concerning the age of a child between the ages set forth in § 22.1-254 for the purpose of evading the provisions of this article shall be guilty of a Class 4 misdemeanor.

§ 22.1-265. Inducing children to absent themselves.

A. Any person, *including any child under the age of eighteen*, who induces or attempts to induce any child to be absent unlawfully from school or who knowingly employs or harbors, while school is in session, any child absent unlawfully shall be guilty of a Class 3 misdemeanor and may be subject to the penalties provided by subdivision 5 a of subsection B of § 16.1-278.5 or § 18.2-371. Upon a finding that a person knowingly and willfully violated the provisions of this section and that such person has been convicted previously of a violation of this section, such person, *including any child under the age of eighteen*, shall be guilty of a Class 2 misdemeanor.

§ 22.1-266. Law-enforcement officers and truant children.

183 Notwithstanding the provisions of § 16.1-246, any law-enforcement officer as defined in § 9-169 or
184 any attendance officer may pick up any child who is reported to be truant from school by a school
185 principal or division superintendent or who the law-enforcement officer or attendance officer reasonably
186 determines, by reason of the child's age and circumstances, is truant from school and may deliver such
187 child to the appropriate school and personnel thereof without charging the parent or guardian *or other*
188 *person having control and charge* of such child with a violation of any provision of law *or may deliver*
189 *such child to the appropriate school and personnel and may charge the child with a violation of this*
190 *article.*

191 *B. Notwithstanding the provisions of §§ 18.2-11 through 18.2-15, no child under the age of eighteen*
192 *who is charged with a misdemeanor pursuant to this section shall be confined to jail; such child may,*
193 *however, upon being found not innocent of any such violation, be detained in a local or regional*
194 *juvenile facility at the discretion of the court. For any child found not innocent of violations of this*
195 *article, the court may also order any of the remedies provided for a child in need of services or a child*
196 *in need of supervision.*

197 § 22.1-267. Proceedings against habitually absent child.

198 A. Any child permitted by any parent, guardian, or other person having control thereof to be
199 habitually absent from school contrary to the provisions of this article may be proceeded against as a
200 child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 *or may be*
201 *charged with a misdemeanor as provided in §§ 22.1-263 and 22.1-264.*

202 *B. Notwithstanding the provisions of §§ 18.2-11 through 18.2-15, no child under the age of eighteen*
203 *who is charged with a misdemeanor pursuant to this section shall be confined to jail; such child may,*
204 *however, upon being found not innocent of any such violation, be detained in a local or regional*
205 *juvenile facility at the discretion of the court. For any child found not innocent of violations of this*
206 *article, the court may also order any of the remedies provided for a child in need of services or a child*
207 *in need of supervision.*