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SENATE BILL NO. 298

Offered January 20, 1998

A BILL to amend and reenact §§ 16.1-302 and 16.1-309 of the Code of Virginia, as they are currently effective and as they may become effective, relating to access to juvenile court proceedings.

Patron—Reynolds

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-302 and 16.1-309 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted as follows:

§ 16.1-302. Dockets, indices and order books; when hearings and records private; right to public hearing; presence of juvenile in court.

A. Every juvenile court shall keep a separate docket of cases arising under this law.

B. Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the juvenile court except: (i) cases involving support pursuant to § 20-61 or subdivisions A 3, F or L of § 16.1-241; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.1. Such cases shall be docketed on the appropriate docket, and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit court.

C. The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper. However, proceedings in cases involving an adult charged with a crime and hearings held on a petition or warrant alleging that a juvenile fourteen years of age or older committed an offense which would be a felony if committed by an adult shall be open. *Following a preliminary hearing at which it is determined that probable cause exists, the clerk shall make available the name of any juvenile fourteen or older alleged to have committed an offense which would be a felony if committed by an adult and the date and time of any further proceedings to be held with regard to the juvenile and the felony charge or any ancillary charge.*

Subject to the provisions of subsection D for good cause shown, the court may, sua sponte or on motion of the accused or the attorney for the Commonwealth, close the proceedings. If the proceedings are closed, the court shall state in writing its reasons, and the statement shall be made a part of the public record.

D. In any hearing held for the purpose of adjudicating an alleged violation of any criminal law, or law defining a traffic infraction, the juvenile or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such juvenile in court may be waived by the judge at any stage thereof.

§ 16.1-302. (Delayed effective date) Dockets, indices and order books; hearings and records private; right to public hearing; presence of juvenile in court.

A. Every family court shall keep a separate docket of cases arising under this law.

B. Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the family court except: (i) cases involving support pursuant to § 20-61; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.1. Such cases shall be docketed on the appropriate docket, and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit

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C. The general public shall be excluded from all family court hearings and only such persons admitted as the judge shall deem proper, except that (i) this provision shall not apply to cases for divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, change of name, amendment of a birth certificate, or judicial review of school board actions or of hearing officer decisions; and (ii) in any hearing held for the purpose of adjudicating the alleged violation of any criminal law or law defining a traffic infraction, the child or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person.

D. All family court hearings (i) in cases involving an adult charged with a crime or (ii) held on a petition or warrant alleging that a juvenile fourteen years of age or older committed an offense which would be a felony if committed by an adult shall be open. *Following a preliminary hearing at which it is determined that probable cause exists, the clerk shall make available the name of any juvenile fourteen or older alleged to have committed an offense which would be a felony if committed by an adult and the date and time of any further proceedings to be held with regard to the juvenile and the felony charge or any ancillary charge.* Subject to the provisions of clause (ii) of subsection C, for good cause shown, the court may, sua sponte or on motion of the juvenile or the attorney for the Commonwealth, close the proceedings. If the proceedings are closed, the court shall state in writing its reasons, and the statement shall be made a part of the public record.

E. In all other cases, the public shall be excluded and only such persons admitted as the court deems proper.

The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such juvenile in court may be waived by the judge at any stage thereof.

§ 16.1-309. Penalty.

A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, *subsection C of § 16.1-302*, 16.1-305 and 16.1-307, any person who (i) files a petition, (ii) receives a petition or has access to court records in an official capacity, (iii) participates in the investigation of allegations which form the basis of a petition, (iv) is interviewed concerning such allegations and whose information is derived solely from such interview or (v) is present during any court proceeding, who discloses or makes use of or knowingly permits the use of identifying information not otherwise available to the public 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 Juvenile Justice, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Juvenile Justice 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, *subsection D of § 16.1-302*, 16.1-305 and 16.1-307, any person who (i) files a petition, (ii) receives a petition or has access to court records in an official capacity, (iii) participates in the investigation of allegations which form the basis of a petition, (iv) is interviewed concerning such allegations and whose information is derived solely from such interview or (v) is present during any court proceeding, who discloses or makes use of or knowingly

permits the use of identifying information not otherwise available to the public 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 Juvenile Justice, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Juvenile Justice 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.