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SENATE BILL NO. 364

Offered January 22, 1998

A BILL to amend and reenact § 16.1-305 of the Code of Virginia, as it is currently effective and as it may become effective, relating to access to court records involving juveniles.

Patrons—Gartlan, Forbes and Stolle; Delegate: Almand

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-305 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court; however, for the purposes of preparation of a presentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, shall have access to an accused's or inmate's records in juvenile court and for the purpose of preparing the discretionary sentencing guidelines worksheets as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and the probation officer shall have access to the defendant's records in juvenile court.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines or preparing a background report for the court or the Department of Corrections. The copies shall remain confidential, but reports may be prepared utilizing the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

B1. If a juvenile fourteen years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B of this section.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a

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60 criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the
61 victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a
62 written request, the Department of Juvenile Justice shall provide advance notice of such juvenile
63 offender's anticipated date of release from commitment.

64 § 16.1-305. (Delayed effective date) Confidentiality of court records.

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66 inquiries, predisposition studies and supervision records, of neglected and abused children, children in
67 need of services, children in need of supervision and delinquent children shall be filed with the other
68 papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and
69 records of the court and shall be open for inspection only to the following:

70 1. The judge, probation officers and professional staff assigned to serve the family courts;

71 2. Representatives of a public or private agency or department providing supervision or having legal
72 custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

73 3. The attorney for any party, including the attorney for the Commonwealth;

74 4. Any other person, agency or institution, by order of the court, having a legitimate interest in the
75 case or in the work of the court; however, for the purposes of preparation of a presentence report upon
76 a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board,
77 adult probation and parole officers, including United States Probation and Pretrial Services Officers,
78 shall have access to an accused's or inmate's records in family court and for the purpose of preparing the
79 discretionary sentencing guidelines worksheets as directed by the court pursuant to subsection C of
80 § 19.2-298.01, the attorney for the Commonwealth and the probation officer shall have access to the
81 defendant's records in juvenile court.

82 *A copy of the court order of disposition in a delinquency case shall be provided to a probation*
83 *officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing*
84 *guidelines or preparing a background report for the court or the Department of Corrections. The copies*
85 *shall remain confidential, but reports may be prepared utilizing the information contained therein as*
86 *provided in §§ 19.2-298.01 and 19.2-299.*

87 B. All or any part of the records enumerated in subsection A, or information secured from such
88 records, which is presented to the judge in court or otherwise in a proceeding under this law shall also
89 be made available to the parties to the proceedings and their attorneys.

90 B1. If a juvenile fourteen years of age or older at the time of the offense is adjudicated delinquent
91 on the basis of an act which would be a felony if committed by an adult, all court records regarding that
92 adjudication and any subsequent adjudication of delinquency, other than those records specified in
93 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that
94 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile
95 victim or juvenile witness.

96 C. All other juvenile records, including the docket, petitions, motions and other papers filed with a
97 case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by
98 those persons and agencies designated in subsections A and B of this section.

99 D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for
100 which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles,
101 which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney
102 shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney
103 that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding
104 and that such papers will be only used for such evidentiary purpose.

105 E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to
106 the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an
107 award to the victim of a crime, and such information shall not be disseminated or used by the
108 Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

109 F. Section 20-124 shall govern the confidentiality of court records in cases involving divorce,
110 annulment or affirmation of marriage, separate maintenance and equitable distribution based on a foreign
111 decree. Sections 63.1-235 and 63.1-236 shall govern the confidentiality of adoption cases.

112 G. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the
113 disposition in a case involving a juvenile who is committed to state care after being adjudicated for a
114 criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the
115 victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a
116 written request, the Department of Juvenile Justice shall provide advance notice of such juvenile
117 offender's anticipated date of release from commitment.