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SENATE BILL NO. 57

Offered January 10, 1996

A BILL to amend and reenact §§ 9-169, 16.1-301, 16.1-303, 16.1-305.1, 16.1-308, 19.2-388, 19.2-389, 19.2-390 and 19.2-392.01 of the Code of Virginia; to amend and reenact §§ 16.2-228, 16.1-299, 16.1-302, 16.1-305, 16.1-307 and 16.1-309 of the Code of Virginia, as they are currently effective and as they may become effective; to amend the Code of Virginia by adding a section numbered 16.1-299.1; and to repeal §§ 16.1-309.1 and 19.2-389.1 of the Code of Virginia, relating to juvenile criminal records.

Patron—Stolle

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-169, 16.1-301, 16.1-303, 16.1-305.1, 16.1-308, 19.2-388, 19.2-389, 19.2-390 and 19.2-392.01 of the Code of Virginia and §§ 16.2-228, 16.1-299, 16.1-302, 16.1-305, 16.1-307 and 16.1-309 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 16.1-299.1 as follows:

§ 9-169. Definitions.

The following words, whenever used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall have the following meanings, unless the context otherwise requires:

1. "Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

2. "Board" means the Criminal Justice Services Board.

3. "Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so and (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities employs officers appointed under § 15.1-144, or special conservators of the peace or special policemen appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers, special conservators or special policemen to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9-184 et seq.) of Chapter 27 of Title 9 but only to the extent that the private corporation or agency so designated as a "criminal justice agency" performs criminal justice activities.

4. "Criminal history record information" means records and data collected by criminal justice agencies on ~~adult~~ individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include ~~juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1,~~ criminal justice intelligence information, criminal justice investigative information, or correctional status information.

5. "Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

6. "Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

7. "Department" means the Department of Criminal Justice Services.

8. "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

9. "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the

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60 penal, traffic or highway laws of this Commonwealth, and shall include any special agent of the
61 Department of Alcoholic Beverage Control, any police agent appointed under the provisions of § 56-353,
62 any officer of the Virginia Marine Patrol, any game warden who is a full-time sworn member of the
63 enforcement division of the Department of Game and Inland Fisheries, any agent, investigator, or
64 inspector appointed under § 56-334 or any investigator who is a full-time sworn member of the security
65 division of the State Lottery Department. Part-time employees are compensated officers who are not
66 full-time employees as defined by the employing police department or sheriff's office. Full-time sworn
67 members of the enforcement division of the Department of Motor Vehicles meeting the Department of
68 Criminal Justice Services qualifications shall be deemed to be "law-enforcement officers" when fulfilling
69 their duties pursuant to § 46.2-217.

70 10. "Conviction data" means information in the custody of any criminal justice agency relating to a
71 judgment of conviction, and the consequences arising therefrom, in any court.

72 § 16.1-228. Definitions.

73 When used in this chapter, unless the context otherwise requires:

74 "Abused or neglected child" means any child:

75 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or
76 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than
77 accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental
78 functions;

79 2. Whose parents or other person responsible for his care neglects or refuses to provide care
80 necessary for his health; however, no child who in good faith is under treatment solely by spiritual
81 means through prayer in accordance with the tenets and practices of a recognized church or religious
82 denomination shall for that reason alone be considered to be an abused or neglected child;

83 3. Whose parents or other person responsible for his care abandons such child;

84 4. Whose parents or other person responsible for his care commits or allows to be committed any
85 sexual act upon a child in violation of the law; or

86 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or
87 physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco
88 parentis.

89 "Adoptive home" means the place of residence of any natural person in which a child resides as a
90 member of the household and in which he has been placed for the purposes of adoption or in which he
91 has been legally adopted by another member of the household.

92 "Adult" means a person eighteen years of age or older.

93 "*Ancillary crime*" means any delinquent act alleged to have been committed by a juvenile as a part
94 of the same act or transaction as, or in two or more acts or transactions that are connected with or
95 constitute parts of, a common scheme or plan with a violent offender crime, a chronic offender crime or
96 a delinquent act which would be a felony if committed by an adult.

97 "Child," "juvenile" or "minor" means a person less than eighteen years of age.

98 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster
99 home as defined in § 63.1-195.

100 "Child in need of services" means a child whose behavior, conduct or condition presents or results in
101 a serious threat to the well-being and physical safety of the child; however, no child who in good faith
102 is under treatment solely by spiritual means through prayer in accordance with the tenets and practices
103 of a recognized church or religious denomination shall for that reason alone be considered to be a child
104 in need of services, nor shall any child who habitually remains away from or habitually deserts or
105 abandons his family as a result of what the court or the local child protective services unit determines to
106 be incidents of physical, emotional or sexual abuse in the home be considered a child in need of
107 services for that reason alone.

108 However, to find that a child falls within these provisions, (i) the conduct complained of must
109 present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need
110 of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court
111 is essential to provide the treatment, rehabilitation or services needed by the child or his family.

112 "Child in need of supervision" means:

113 1. A child who, while subject to compulsory school attendance, is habitually and without justification
114 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
115 any and all educational services and programs that are required to be provided by law and which meet
116 the child's particular educational needs, and (ii) the school system from which the child is absent or
117 other appropriate agency has made a reasonable effort to effect the child's regular attendance without
118 success; or

119 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or
120 placement authority, remains away from or habitually deserts or abandons his family or lawful custodian
121 or escapes or remains away without proper authority from a residential care facility in which he has

been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and domestic relations district court of each county or city.

"Chronic offender" means a juvenile who is charged with or convicted of a delinquent act which would be a felony after attaining the age of fourteen years, and who has previously been convicted or adjudicated delinquent under the laws of this Commonwealth, any other state, the United States, any of its territories or the District of Columbia of three or more separate felonies or acts which would have been felonies if committed by an adult, provided that the felony offenses were not part of a common act, transaction or scheme and that the juvenile was at liberty as defined in § 53.1-151 between each such conviction or adjudication.

"Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § 18.2-308.7 or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. *The term includes predicate offenses used to determine whether a juvenile is a chronic offender or a violent juvenile offender.* For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

"Department" means the Department of Youth and Family Services and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren who reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district court of each county or city.

"This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in this chapter.

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education

and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Secure facility" or "detention home" means a local or regional public or private locked residential facility which has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"State Board" means the State Board of Youth and Family Services.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

"Violent juvenile offender" means a juvenile who is charged with or convicted of a felony enumerated in § 19.2-297.1 committed after attaining the age of fourteen years.

§ 16.1-228. (Delayed effective date) Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person eighteen years of age or older.

"Ancillary crime" means any delinquent act alleged to have been committed by a juvenile as a part of the same act or transaction as, or in two or more acts or transactions that are connected with or constitute parts of, a common scheme or plan with a violent offender crime, a chronic offender crime or a delinquent act which would be a felony if committed by an adult.

"Child," "juvenile" or "minor" means a person less than eighteen years of age.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

"Child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need

of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, and (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success; or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or habitually deserts or abandons his family or lawful custodian or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"The court" or the "family court" means the family court of each county or city.

"Chronic offender" means a juvenile who is charged with or convicted of a delinquent act which would be a felony after attaining the age of fourteen years, and who has previously been convicted or adjudicated delinquent under the laws of this Commonwealth, any other state, the United States, any of its territories or the District of Columbia of three or more separate felonies or acts which would have been felonies if committed by an adult, provided that the felony offenses were not part of a common act, transaction or scheme and that the juvenile was at liberty as defined in § 53.1-151 between each such conviction or adjudication.

"Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § 18.2-308.7 or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. *The term includes predicate offenses used to determine whether a juvenile is a chronic offender or violent juvenile offender.* For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the family court has been terminated under the provisions of § 16.1-269.6.

"Department" means the Department of Youth and Family Services and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren who reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them residing in the same home with the person.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

"Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this chapter.

306 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional
307 facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding
308 cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the
309 transfer of a child to a juvenile facility.

310 "The judge" means the judge or the substitute judge of the family court of each county or city.

311 "This law" or "the law" means the Family Court Law embraced in this chapter.

312 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to
313 have physical custody of the child, to determine and redetermine where and with whom he shall live,
314 the right and duty to protect, train and discipline him and to provide him with food, shelter, education
315 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal
316 status created by court order of joint custody as defined in § 20-107.2.

317 "Permanent foster care placement" means the place of residence in which a child resides and in
318 which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation
319 and agreement between the placing agency and the place of permanent foster care that the child shall
320 remain in the placement until he reaches the age of majority unless modified by court order or unless
321 removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of
322 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term
323 basis.

324 "Secure facility" or "detention home" means a local or regional public or private locked residential
325 facility which has construction fixtures designed to prevent escape and to restrict the movement and
326 activities of children held in lawful custody.

327 "Shelter care" means the temporary care of children in physically unrestricting facilities.

328 "State Board" means the State Board of Youth and Family Services.

329 "Status offender" means a child who commits an act prohibited by law which would not be criminal
330 if committed by an adult.

331 "Status offense" means an act prohibited by law which would not be an offense if committed by an
332 adult.

333 "Residual parental rights and responsibilities" means all rights and responsibilities remaining with the
334 parent after the transfer of legal custody or guardianship of the person, including but not limited to the
335 right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility
336 for support.

337 *"Violent juvenile offender" means a juvenile who is charged with or convicted of a felony*
338 *enumerated in § 19.2-297.1 committed after attaining the age of fourteen years.*

339 § 16.1-299. Fingerprints and photographs of juveniles.

340 A. Fingerprints of a juvenile fourteen years of age or older who is charged with a delinquent act
341 which would be a felony if committed by an adult shall be taken and filed with the juvenile court by
342 law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs
343 may also be taken and filed by local law-enforcement officers. Fingerprints of a juvenile thirteen years
344 of age or older who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a
345 firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided in
346 § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61, forcible sodomy
347 as provided in § 18.2-67.1, inanimate object sexual penetration as provided in § 18.2-67.2, grand larceny
348 as provided in § 18.2-95, burglary as provided in §§ 18.2-89 through 18.2-91, arson and related crimes
349 as provided in §§ 18.2-77 through 18.2-88 or murder, or any attempt to commit the above mentioned
350 felonies as provided in § 18.2-25 or § 18.2-26 shall be taken and filed with the juvenile court by
351 law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs
352 may also be taken and filed by local law-enforcement officers.

353 B. A juvenile may be fingerprinted and photographed regardless of age or offense if he has been
354 taken into custody for and charged with a violation of law, and a law-enforcement officer has
355 determined that there is probable cause to believe that latent fingerprints found during the investigation
356 of an offense are those of such juvenile.

357 C. The fingerprints and photographs authorized in subsections A and B shall be retained or disposed
358 of as follows:

359 1. If a petition is not filed against a juvenile whose fingerprints or photographs have been taken in
360 connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all
361 photographs shall be destroyed sixty days after fingerprints were taken.

362 2. If the juvenile court or the circuit court, pursuant to a transfer, waiver or appeal, finds a juvenile
363 not guilty of a charge of delinquency, the fingerprint card, all copies of the fingerprints and all
364 photographs shall be destroyed within sixty days of such finding. However, all fingerprints and
365 photographs of a juvenile who is less than thirteen years of age and who is found guilty of a delinquent
366 act shall also be destroyed.

367 3. If the court finds that a juvenile thirteen years of age or older has committed a delinquent act, the

fingerprints and photographs may be retained in a local file pursuant to § 16.1-301 and the fingerprints may be entered into any police department's computer system by identification number or by any other method which insures the confidentiality of the juvenile's name: *All duly constituted police authorities having the power of arrest may take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange pursuant to subsection A of § 19.2-390. Whenever fingerprints are taken, they shall be filed with the juvenile court on forms provided by the Central Criminal Records Exchange.*

4. If a juvenile fourteen years of age or older is (i) ~~certified to tried in the circuit court pursuant to Article 7 (§ 16.1-269.1 et seq.) of this chapter and is adjudicated delinquent or~~ and is found guilty as an adult of the ~~of an offense charged for which a report to the Central Criminal Records Exchange is required by subsection C of § 19.2-390 or~~ (ii) if a juvenile of any age is adjudicated delinquent or found guilty in juvenile court of any offense which would be a felony if committed by an adult or any other offense for which a report to the Central Criminal Records Exchange is required by subsection C of § 19.2-390 if the offense were committed by an adult, or if a juvenile thirteen years of age or older is found guilty of any of the offenses specified in subsection A of this section or an attempt to commit any such offense in a juvenile court and is adjudicated delinquent, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

§ 16.1-299. (Delayed effective date) Fingerprints and photographs of juveniles.

A. Fingerprints of a juvenile fourteen years of age or older who is charged with a delinquent act which would be a felony if committed by an adult shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers. Fingerprints of a juvenile thirteen years of age or older who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided in § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61, forcible sodomy as provided in § 18.2-67.1, inanimate object sexual penetration as provided in § 18.2-67.2, grand larceny as provided in § 18.2-95, burglary as provided in §§ 18.2-89 through 18.2-91, arson and related crimes as provided in §§ 18.2-77 through 18.2-88 or murder, or any attempt to commit the above mentioned felonies as provided in § 18.2-25 or § 18.2-26 shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers.

B. A juvenile may be fingerprinted and photographed regardless of age or offense if he has been taken into custody for and charged with a violation of law, and a law-enforcement officer has determined that there is probable cause to believe that latent fingerprints found during the investigation of an offense are those of such juvenile.

C. The fingerprints and photographs authorized in subsections A and B shall be retained or disposed of as follows:

1. If a petition is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed sixty days after fingerprints were taken.

2. If the family court or the circuit court, pursuant to a transfer, waiver or appeal, finds a juvenile not guilty of a charge of delinquency, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed within sixty days of such finding. However, all fingerprints and photographs of a juvenile who is less than thirteen years of age and who is found guilty of a delinquent act shall also be destroyed.

3. If the court finds that a juvenile thirteen years of age or older has committed a delinquent act, the fingerprints and photographs may be retained in a local file pursuant to § 16.1-301 and the fingerprints may be entered into any police department's computer system by identification number or by any other method which insures the confidentiality of the juvenile's name: *All duly constituted police authorities having the power of arrest may take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange pursuant to subsection A of § 19.2-390. Whenever fingerprints are taken, they shall be filed with the juvenile court on forms provided by the Central Criminal Records Exchange.*

4. If a juvenile fourteen years of age or older is (i) ~~certified to tried in the circuit court pursuant to Article 7 (§ 16.1-269.1 et seq.) of this chapter and is adjudicated delinquent or~~ and is found guilty as an adult of the ~~an offense charged for which a report to the Central Criminal Records Exchange is required by subsection C of § 19.2-390 or~~ (ii) if a juvenile of any age is adjudicated delinquent or found guilty in family court of any offense which would be a felony if committed by an adult or adult

any other offense for which a report to the Central Criminal Records Exchange is required by subsection C of § 19.2-390 if the offense were committed by an adult, or if a juvenile thirteen years of age or older is found guilty of any of the offenses specified in subsection A of this section or an attempt to commit any such offense in a juvenile court and is adjudicated delinquent, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

§ 16.1-299.1. Blood sample required for DNA analysis upon conviction or adjudication of felony.

A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood taken for DNA analysis. The provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all blood samples taken as required by this section, mutadis mutandis.

§ 16.1-301. Confidentiality of law-enforcement records.

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Unless a charge of delinquency is transferred for criminal prosecution in the circuit court or the court otherwise orders disclosure in the interests of the juvenile or of national security, such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public.

B. Inspection of such records shall be permitted only by the following:

1. A court having the juvenile currently before it in any proceeding;

2. The officers of public and nongovernmental institutions or agencies to which the juvenile is currently committed, and those responsible for his supervision after release;

3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;

4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;

5. The probation and other professional staff of a court in which the juvenile is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

6. The juvenile, parent, guardian or other custodian and counsel for the juvenile by order of the court; and

7. As provided in §§ 19.2-389.1 and 19.2-390.

C. The police department of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, current information on juvenile arrests. The information exchanged shall be limited to name, address, physical description, date of arrest, and the charge for which the arrest was made. The information exchanged shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

D. Nothing in this section shall prohibit the exchange of law-enforcement or other criminal investigative or intelligence information among law-enforcement agencies.

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

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

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.

All juvenile court hearings held for the purpose of adjudicating any alleged violation of the criminal law or any law defining a traffic infraction shall be open to the public and the child or adult charged shall have the right to be present. However, with the consent of the accused, the court, on its own motion or on motion of the Commonwealth's attorney, may close the proceedings to the general public if it finds it appropriate to do so in order to protect the interest of a victim or a witness. 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.

The general public shall be excluded from all other juvenile court hearings and only such persons shall be admitted as the judge shall deem proper, except that 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.

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 child 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 child in court.

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

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 court.

All family court hearings held for the purpose of adjudicating any alleged violation of the criminal law or any law defining a traffic infraction shall be open to the public and the child or adult charged shall have the right to be present. However, with the consent of the accused, the court on its own motion or on motion of the Commonwealth's attorney, may close the proceedings to the general public if it finds it appropriate to do so in order to protect the interest of a victim or a witness. 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.

The general public shall be excluded from all *other* family court hearings and only such persons shall be admitted as the judge shall deem proper, except that (4) 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.

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 child in court may be waived by the judge at any stage thereof.

§ 16.1-303. Reports of court officials and employees when privileged.

All information obtained in discharge of official duties by any official or by any employee of the court shall be privileged, and shall not be disclosed to anyone other than the judge unless and until otherwise ordered by the judge or by the judge of a circuit court; provided, however, that in any case when such information shall disclose that an offense has been committed which would be a felony if committed by an adult, it shall be the duty of the official or employee of the court obtaining such

information to report the same promptly to the attorney for the Commonwealth or the police in the county, city or town where the offense occurred. *It shall not be deemed a violation of this section if the disclosed information is otherwise available to the public.*

§ 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 and , delinquent children, *chronic offenders and violent juvenile offenders* 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;

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.

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.

C. All ~~other juvenile~~ court records relating to a juvenile, other than those specified in subsection A, in cases where a juvenile is alleged to be delinquent or a chronic or violent juvenile offender, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to public inspection. *In other cases, the court records 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 criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Youth and Family Services shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

§ 16.1-305. (Delayed effective date) 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, *chronic offenders, violent juvenile offenders* 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 family 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;

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 family court.

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.

C. All ~~other juvenile~~ court records relating to a juvenile, other than those specified in subsection A,

in cases where a juvenile is alleged to be delinquent or a chronic or violent juvenile offender, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to public inspection. In other cases, the court records 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. Section 20-124 shall govern the confidentiality of court records in cases involving divorce, annulment or affirmation of marriage, separate maintenance and equitable distribution based on a foreign decree. Sections 63.1-235 and 63.1-236 shall govern the confidentiality of adoption cases.

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

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

Upon disposition of a proceeding in a court of competent jurisdiction in which a juvenile is adjudicated delinquent or convicted 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, 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.

§ 16.1-307. Circuit court records regarding juveniles.

In proceedings against a ~~child juvenile~~ in the circuit court in which the ~~circuit court~~ deals with the ~~child~~ in the same manner as a case in the juvenile court, the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § 16.1-302. Except as provided in §§ 19.2-389.1 and 19.2-390, such records shall be open for inspection only in accordance with the provisions of § 16.1-305 and shall be subject to the expungement provisions of ~~§ 16.1-306 juvenile is alleged to have committed an act which would be a crime if committed by an adult, the court records shall be available and shall be treated in the same manner as adult criminal records.~~

§ 16.1-307. (Delayed effective date) Circuit court records regarding juveniles.

In proceedings against a ~~child juvenile~~ in the circuit court in which the ~~circuit court~~ deals with the ~~child~~ in the same manner as a case in the family court, the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § 16.1-302. Except as provided in §§ 19.2-389.1 and 19.2-390, such records shall be open for inspection only in accordance with the provisions of § 16.1-305 and shall be subject to the expungement provisions of ~~§ 16.1-306 juvenile is alleged to have committed an act which would be a crime if committed by an adult, the court records shall be available and shall be treated in the same manner as adult criminal records.~~

§ 16.1-308. Effect of adjudication on status of child.

A Except as otherwise provided by law for juveniles whose cases are disposed of by the circuit courts in the same manner as an adult criminal case, a finding of guilty on a petition charging

delinquency under the provisions of this law shall not operate to impose any of the *civil* disabilities ordinarily imposed by conviction for a crime, nor shall any such finding operate to disqualify the child for employment by any state or local governmental agency.

§ 16.1-309. Penalty.

A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, 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 Youth and Family Services, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Youth and Family Services 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, 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 Youth and Family Services, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Youth and Family Services 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.

§ 19.2-388. Duties and authority of Exchange.

A. It shall be the duty of the Central Criminal Records Exchange to receive, classify and file criminal history record information as defined in § 9-169 and other records required to be reported to it by §§ 16.2-299 and 19.2-390. The Exchange is authorized to prepare and furnish to all state and local law-enforcement officials and agencies; to clerks of circuit courts, general district courts, and juvenile and domestic relations district courts; and to corrections and penal officials, forms which shall be used for the making of such reports.

B. Juvenile records received pursuant to § 16.1-299 shall be maintained separately from adult records and shall be destroyed when the juvenile has attained the age of twenty-nine, unless he was convicted of an offense reportable to the Central Criminal Records Exchange committed when he was between the ages of eighteen and twenty-nine.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information filed with the Central Criminal Records Exchange shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9-169, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and

dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government which are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9-169 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) as a court-appointed special advocate, or (iv) with the Volunteer Emergency Families for Children;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.);

15. Licensed nursing homes and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01 and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed

798 adult day-care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F;

799 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
800 § 4.1-103.1;

801 18. The State Board of Elections and authorized officers and employees thereof in the course of
802 conducting necessary investigations with respect to registered voters, limited to any record of felony
803 convictions;

804 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse
805 Services for those individuals who are committed to the custody of the Commissioner pursuant to
806 §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for
807 the purpose of placement, evaluation, and treatment planning; and

808 20. Other entities as otherwise provided by law.

809 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
810 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
811 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
812 designated in the order on whom a report has been made under the provisions of this chapter.

813 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
814 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange or the
815 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
816 copy of conviction data covering the person named in the request to the person making the request;
817 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
818 making of such request. A person receiving a copy of his own conviction data may utilize or further
819 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
820 subject, the person making the request shall be furnished at his cost a certification to that effect.

821 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
822 section shall be limited to the purposes for which it was given and may not be disseminated further.

823 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
824 history record information for employment or licensing inquiries except as provided by law.

825 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
826 Exchange prior to dissemination of any criminal history record information on offenses required to be
827 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
828 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
829 where time is of the essence and the normal response time of the Exchange would exceed the necessary
830 time period. A criminal justice agency to whom a request has been made for the dissemination of
831 criminal history record information that is required to be reported to the Central Criminal Records
832 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
833 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
834 made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

835 E. Criminal history information provided to licensed nursing homes and to home care organizations
836 pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any
837 offense specified in §§ 32.1-126.01 and 32.1-162.9:1.

838 F. Criminal history information provided to licensed adult care residences, licensed district homes for
839 adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the
840 convictions on file with the Exchange for any offense specified in §§ 63.1-173.2, 63.1-189.1 or
841 § 63.1-194.13.

842 § 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and
843 clerks of court to State Police; material submitted by other agencies.

844 A. Every state official or agency having the power to arrest, the sheriffs of counties, the police
845 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
846 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange,
847 on forms provided by it, of any arrest on any of the following charges:

848 1. Treason;

849 2. Any felony;

850 3. Any offense punishable as a misdemeanor under Title 54.1; or

851 4. Any misdemeanor punishable by confinement in jail under Title 18.2 or 19.2, except an arrest for
852 a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, for violation of Article 2
853 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or § 18.2-119 or any similar ordinance of any county,
854 city or town.

855 The reports shall contain such information as is required by the Exchange and shall be accompanied
856 by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for
857 inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the
858 appropriate bureau.

859 For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not

be required until (i) after a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) after a verdict of acquittal by reason of insanity pursuant to § 19.2-182.2. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following his conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within seventy-two hours following the receipt of a warrant or capias for the arrest of any person on a charge of a felony, the law-enforcement agency which received the charge shall enter the accused's name and other appropriate information required by the Department of State Police into the "information system", known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The report shall include the person's name, date of birth, social security number and such other known information which the State Police may require. Any unexecuted criminal process which has been entered into the VCIN system shall be removed forthwith by the entering law-enforcement agency when the criminal process has been ordered destroyed pursuant to § 19.2-76.1.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency, nolle prosequi, acquittal, or conviction of, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A of this section and (ii) any adjudication of delinquency based upon an act which ~~would be a felony~~, if committed by an adult, ~~provided fingerprints and photographs of the juvenile were required~~ *would require fingerprints to be taken* ~~filed~~ pursuant to subsection A of ~~§ 16.1-299~~. In the case of offenses not required to be reported to the Exchange by subsection A of this section, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.1-135.1. Upon conviction of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, including juveniles tried and convicted in the circuit courts pursuant to ~~§ 16.1-269~~ *16.1-269.1*, whether sentenced as adults or juveniles, the clerk shall also submit a report to the Sex Offender Registry. The report to the Sex Offender Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials responsible for maintaining correctional status information, as required by the rules and regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange.

F. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Sex Offender Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than thirty days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

921 G. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records
922 Exchange shall notify all criminal justice agencies known to have previously received the information.

923 As used in this section, the term "chief law-enforcement officer" means the chief of police of cities
924 and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief
925 law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall
926 be controlling.

927 § 19.2-392.01. Judges may require taking of fingerprints and photographs in certain misdemeanor
928 cases.

929 The judge of a ~~general~~ district court may, in his discretion, on motion of the attorney for the
930 Commonwealth, require the duly constituted police officers of the county, city or town within the
931 territorial jurisdiction of the court to take the fingerprints and photograph of any person who has been
932 arrested and charged with a misdemeanor other than a misdemeanor which is a violation of any
933 provision of Title 46.2.

934 **2. That §§ 16.1-309.1 and 19.2-389.1 of the Code of Virginia are repealed.**