

SENATE BILL NO. 482

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Aird)

A BILL to amend and reenact §§ 16.1-305 and 16.1-306 of the Code of Virginia, relating to expungement of juvenile court records.

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

**1. That §§ 16.1-305 and 16.1-306 of the Code of Virginia are 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 an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence 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

27 Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or  
28 operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local  
29 community-based probation services agency established or operated pursuant to the Comprehensive  
30 Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an  
31 accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the  
32 discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the  
33 court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial  
34 services or probation officer shall have access to the defendant's records in juvenile court without a court  
35 order;

36 5. Any attorney for the Commonwealth and any local pretrial services or community-based  
37 probation officer or state adult probation or parole officer shall have direct access to the defendant's  
38 juvenile court delinquency records maintained in an electronic format by the court for the strictly limited  
39 purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any  
40 presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment  
41 instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

42 ~~A-Unless a juvenile has attained the age of 18 and three years have elapsed since the date of the~~  
43 ~~final disposition in any case of a juvenile who is subject to this section, a copy of the court order of~~  
44 ~~disposition in a delinquency case shall be provided to a probation officer or attorney for the~~  
45 ~~Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall~~  
46 ~~remain confidential, but reports may be prepared using the information contained therein as provided in~~  
47 ~~§§ 19.2-298.01 and 19.2-299.~~

48 6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and  
49 for purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

50 A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions  
51 A 1 through 4 shall be authorized to have copies made of such records, subject to any restrictions,  
52 conditions, or prohibitions that the court may impose.

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

56 ~~B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the~~  
57 ~~basis of an act which would be a felony if committed by an adult, all court records regarding that~~  
58 ~~adjudication and any subsequent adjudication of delinquency, other than those records specified in~~  
59 ~~subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that~~  
60 ~~certain records or portions thereof remain confidential to the extent necessary to protect any juvenile~~  
61 ~~victim or juvenile witness.~~

62 C. All other juvenile records, including the docket, petitions, motions and other papers filed with  
63 a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by  
64 those persons and agencies designated in subsections A and B. However, a licensed bail bondsman shall  
65 be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-  
66 258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his  
67 principal's juvenile court records.

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

74 D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act  
75 that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the  
76 attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the  
77 Commonwealth upon his certification that such papers are needed as evidence in a pending criminal  
78 prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary  
79 purpose.

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

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

90 G. Any record in a juvenile case file which is open for inspection by the professional staff of the  
91 Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the  
92 court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted  
93 shall be subject to the provisions of § 16.1-300.

94 H. Notwithstanding any other provision of law, once a juvenile has attained the age of 18 and three  
95 years have elapsed since the date of final disposition in any case of a juvenile who is subject to this section,  
96 no arrest, charge, conviction, or adjudication of delinquency shall be (i) considered in any hearing on the  
97 issue of bail, release, or detention of a juvenile or adult defendant; (ii) disclosed in any pretrial risk  
98 assessment, pretrial investigation report, presentence report, or postsentence report or in the preparation  
99 of any discretionary sentencing guidelines pursuant to § 19.2-298.01; or (iii) considered when ascertaining  
100 the punishment of a juvenile or adult defendant. However, nothing in this subsection shall prevent an  
101 attorney for the Commonwealth from accessing a court record for purposes of investigating or prosecuting  
102 a violation of § 18.2-308.2, 18.2-308.2:2, or 18.2-472.1.

103 **§ 16.1-306. Expungement of court records.**

104 A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations  
105 district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers  
106 and records, including electronic records, connected with any proceeding concerning a juvenile in such

107 court, if such juvenile has attained the age of ~~19~~ 18 years and ~~five~~ three years have elapsed since the date  
108 of ~~the last hearing~~ final disposition in any case of the juvenile ~~which~~ who is subject to this section.  
109 However, if the juvenile was found guilty of an offense for which the clerk is required by § 46.2-383 to  
110 furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile  
111 has attained the age of 29. If the juvenile was found guilty of a delinquent act which would be a felony if  
112 committed by an adult, the records shall be retained.

113 B. However, in all files in which the court records concerning a juvenile contain a finding of guilty  
114 of any offense ancillary to (i) a delinquent act that would be a felony if committed by an adult or (ii) any  
115 offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor  
116 Vehicles, the records of any such ancillary offense shall also be retained for the time specified for the  
117 felony or the offense reported to the Department of Motor Vehicles as specified in subsection A, and all  
118 such records shall be available for inspection as provided in § 16.1-305.

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

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

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

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

133 #