

24103246D

SENATE BILL NO. 482

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 16.1-305 and 16.1-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-306.1, relating to expungement and sealing of juvenile court records.

Patron—Aird

Referred to Committee for Courts of Justice

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 and that the Code of Virginia is amended by adding a section numbered 16.1-306.1 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 Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. ~~Any~~ Unless the records have been expunged in accordance with § 16.1-306 or sealed in accordance with § 16.1-306.1, any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

~~A~~ Except if the record has been expunged or sealed, a copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

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

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

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

~~B1.~~ If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and

59 any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open  
 60 to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof  
 61 remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

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

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

74 D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act that  
 75 would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney  
 76 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 to the  
 81 Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award  
 82 to the victim of a crime, and such information shall not be disseminated or used by the Commission for any  
 83 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 criminal  
 86 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  
 87 of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the  
 88 Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of  
 89 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 **§ 16.1-306. Expungement of court records.**

95 A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district  
 96 court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and  
 97 records, including electronic records, connected with any proceeding concerning a juvenile in such court, if  
 98 such juvenile has attained the age of 19 18 years and five three years have elapsed since the date of the last  
 99 hearing in any case of the juvenile which who is subject to this section. However, if the juvenile was found  
 100 guilty of an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of  
 101 Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of 29. If the juvenile  
 102 was found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be  
 103 retained maintained in accordance with § 16.1-306.1.

104 B. However, in all files in which the court records concerning a juvenile contain a finding of guilty of any  
 105 offense ancillary to (i) a delinquent act that would be a felony if committed by an adult or (ii) any offense for  
 106 which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the  
 107 records of any such ancillary offense shall also be retained for the time specified for the felony or the offense  
 108 reported to the Department of Motor Vehicles as specified in subsection A or in accordance with § 16.1-  
 109 306.1, and all such records shall be available for inspection as provided in § 16.1-305.

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

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

118 E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the violation of  
 119 law shall be treated as if it never occurred. All index references shall be deleted and the court and law-

120 enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists  
121 with respect to such person.

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

124 **§ 16.1-306.1. Sealing of court records.**

125 *A. If a juvenile was found guilty of a delinquent act that would be a felony if committed by an adult, the*  
126 *records and any ancillary records shall be sealed by the clerk of the juvenile and domestic relations district*  
127 *court if such juvenile has attained the age of 18 years and three years have elapsed since the date of the last*  
128 *hearing in any case of the juvenile who is subject to this section. When the record of the felony adjudication*  
129 *is sealed, the clerk shall not seal any records for which the clerk is required by § 46.2-383 to furnish an*  
130 *abstract to the Department of Motor Vehicles.*

131 *B. Any arrest, charge, or conviction sealed pursuant to this section shall not be (i) considered in any*  
132 *hearing on the issue of bail, release, or detention of a juvenile or adult defendant; (ii) disclosed in any*  
133 *pretrial risk assessment, pretrial investigation report, presentence report, postsentence report or in the*  
134 *preparation of any discretionary sentencing guidelines pursuant to § 19.2-298.01; or (iii) considered when*  
135 *ascertaining the punishment of a juvenile or adult defendant.*

136 *C. Sealing of a felony adjudication pursuant to this section shall not affect a person's ability to possess a*  
137 *firearm. Nothing in this section shall prevent an attorney for the Commonwealth from accessing a court*  
138 *record for purposes of investigating or prosecuting a violation of § 18.2-308.2. Access to such records by the*  
139 *attorney for the Commonwealth shall be maintained in accordance with subsection D1 of § 16.1-305.*

INTRODUCED

SB482