

SENATE BILL NO. 70
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Senator Favola)

A BILL to amend and reenact § 16.1-306 of the Code of Virginia and to amend the Code of Virginia by adding in Article 8 of Chapter 11 of Title 16.1 a section numbered 16.1-277.3, relating to delinquency petition; referral to court service unit.

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-306 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 8 of Chapter 11 of Title 16.1 a section numbered 16.1-277.3 as follows:

§ 16.1-277.3. Referral to court service unit.

At any point prior to the commencement of an adjudication hearing on a petition alleging that a child is delinquent, the court, upon request of the child with consent of the attorney for the Commonwealth, if a party to the case, may refer the delinquency charge back to the court service unit in writing and the intake officer shall proceed informally pursuant to subsection B of § 16.1-260. Upon such referral, the court shall dismiss the petition and order that the court records pertaining to the petition be expunged pursuant to subdivision C 2 of § 16.1-306.

§ 16.1-306. Expungement of court records.

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

B. However, in all files in which the court records concerning a juvenile contain a finding of guilty of any offense ancillary to (i) a delinquent act that would be a felony if committed by an adult or (ii) any offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records of any such ancillary offense shall also be retained for the time specified for the felony or the offense

reported to the Department of Motor Vehicles as specified in subsection A, and all such records shall be available for inspection as provided in § 16.1-305.

C. 1. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to such charge. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

2. *Upon the referral of a delinquency charge to the court service unit, prior to the commencement of the adjudication hearing, pursuant to § 16.1-277.3, the court shall enter an order of destruction of all court records pertaining to such petition with notice of entry of the order given to the attorney for the Commonwealth, and shall send copies of the order to all officers or agencies that are repositories of such court records, and all such officers and agencies shall comply with the order. Nothing in this subdivision shall be construed to require the destruction of records created or maintained by a court service unit in the course of informal intake or diversion pursuant to § 16.1-260.*

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

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

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