

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 466

An Act to amend and reenact § 16.1-300 of the Code of Virginia, relating to confidentiality of juvenile records; exceptions.

[S 1206]

Approved March 31, 2021

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-300 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-300. Confidentiality of Department records.

A. The social, medical, psychiatric, and psychological reports and records of children who are or have been (i) before the court, (ii) under supervision, ~~or~~ (iii) *referred to a court service unit*, or (iv) receiving services from a court service unit or who are committed to the Department of Juvenile Justice shall be confidential and shall be open for inspection only to the following:

1. The judge, prosecuting attorney, probation officers and professional staff assigned to serve a court having the child currently before it in any proceeding;

2. Any public agency, child welfare agency, private organization, facility or person who is treating or providing services to the child pursuant to a contract with the Department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.);

3. The child's parent, guardian, legal custodian or other person standing in loco parentis and the child's attorney;

4. Any person who has reached the age of majority and requests access to his own records or reports;

5. Any state agency providing funds to the Department of Juvenile Justice and required by the federal government to monitor or audit the effectiveness of programs for the benefit of juveniles which are financed in whole or in part by federal funds;

6. *The Department of Social Services or any local department of social services that is providing services or care for, or has accepted a referral for family assessment or investigation and the provision of services in accordance with subsection A of § 16.1-277.02 regarding, a juvenile who is the subject of the record and the Department of Behavioral Health and Developmental Services or any local community services board that is providing treatment, services, or care for a juvenile who is the subject of the record for a purpose relevant to the provision of the treatment, services, or care when these local agencies have entered into a formal agreement with the Department of Juvenile Justice to provide coordinated services to juveniles who are the subject of the records. Prior to making any report or record open for inspection, the court service unit or Department of Juvenile Justice shall determine which reports or records are relevant to the treatment, services, or care of such juvenile and shall limit such inspection to such relevant reports or records. Any local department of social services or local community services board that inspects any social, medical, psychiatric, and psychological reports and records of juveniles in accordance with this subdivision shall not disseminate any information received from such inspection unless such dissemination is expressly required by law;*

~~6.~~ 7. Any other person, agency or institution, including any law-enforcement agency, school administration, or probation office by order of the court, having a legitimate interest in the case, the juvenile, or in the work of the court;

~~7.~~ 8. Any person, agency, or institution, in any state, having a legitimate interest (i) when release of the confidential information is for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information, (ii) when the requesting party has custody or is providing supervision for a juvenile and the release of the confidential information is in the interest of maintaining security in a secure facility, as defined by § 16.1-228 if the facility is located in Virginia, or as similarly defined by the law of the state in which such facility is located if it is not located in Virginia, or (iii) when release of the confidential information is for consideration of admission to any group home, residential facility, or postdispositional facility, and copies of the records in the custody of such home or facility shall be destroyed if the child is not admitted to the home or facility;

~~8.~~ 9. Any attorney for the Commonwealth, any pretrial services officer, local community-based probation officer and adult probation and parole officer for the purpose of preparing pretrial investigation, including risk assessment instruments, presentence reports, including those provided in § 19.2-299, discretionary sentencing guidelines worksheets, including related risk assessment instruments, as directed by the court pursuant to subsection C of § 19.2-298.01 or any court-ordered post-sentence investigation report;

~~9.~~ 10. Any person, agency, organization or institution outside the Department that, at the Department's request, is conducting research or evaluation on the work of the Department or any of its

divisions; or any state criminal justice agency that is conducting research, provided that the agency agrees that all information received shall be kept confidential, or released or published only in aggregate form;

~~10.~~ 11. With the exception of medical, psychiatric, and psychological records and reports, any full-time or part-time employee of the Department of State Police or of a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth, is entitled to any information related to a criminal street gang, including that a person is a member of a criminal street gang as defined in § 18.2-46.1. Information shall be provided by the Department to law enforcement without their request to aid in initiating an investigation or assist in an ongoing investigation of a criminal street gang as defined in § 18.2-46.1. This information may also be disclosed, at the Department's discretion, to a gang task force, provided that the membership (i) consists of only representatives of state or local government or (ii) includes a law-enforcement officer who is present at the time of the disclosure of the information. The Department shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. No person who obtains information pursuant to this subdivision shall divulge such information except in connection with gang-activity intervention and prevention, a criminal investigation regarding a criminal street gang as defined in § 18.2-46.1 that is authorized by the Attorney General or by the attorney for the Commonwealth, or in connection with a prosecution or proceeding in court;

~~11.~~ 12. The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as permitted under subsection B of § 66-3.2;

~~12.~~ 13. Any state or local correctional facility as defined in § 53.1-1 when such facility has custody of or is providing supervision for a person convicted as an adult who is the subject of the reports and records. The reports and records shall remain confidential and shall be open for inspection only in accordance with this section; and

~~13.~~ 14. 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.

A designated individual treating or responsible for the treatment of a person may inspect such reports and records as are kept by the Department on such person or receive copies thereof, when the person who is the subject of the reports and records or his parent, guardian, legal custodian or other person standing in loco parentis if the person is under the age of 18, provides written authorization to the Department prior to the release of such reports and records for inspection or copying to the designated individual.

B. The Department may withhold from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis that portion of the records referred to in subsection A, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child or to a third party, provided that the juvenile and domestic relations district court (i) having jurisdiction over the facility where the child is currently placed or (ii) that last had jurisdiction over the child if such child is no longer in the custody or under the supervision of the Department shall concur in such determination.

If any person authorized under subsection A to inspect Department records requests to inspect the reports and records and if the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall ~~(i)~~ (a) inform the individual making the request of the action taken to withhold any information and the reasons for such action; ~~(ii)~~ (b) provide such individual with as much information as is deemed appropriate under the circumstances; and ~~(iii)~~ (c) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court ~~(a)~~ (1) having jurisdiction over the facility where the child is currently placed or ~~(b)~~ (2) that had jurisdiction over the original proceeding or over an appeal of the juvenile and domestic relations district court final order of disposition concerning the child if such child is no longer in the custody or under the supervision of the Department shall have jurisdiction over petitions filed for review of the Department's decision to withhold reports or records as provided herein.

2. That the Virginia Commission on Youth shall convene a work group to include representatives from the Department of Juvenile Justice, the Department of Social Services, the Department of Behavioral Health and Developmental Services, the Department of Education, youth and families with lived experience in the juvenile justice and child welfare systems, representatives of Virginia juvenile justice advocacy groups, representatives of local public defender offices, and representatives from other relevant state or local entities. The work group shall review current data and record sharing provisions with regard to youth served by the juvenile justice and child welfare systems and make recommendations on best practices for the sharing, collection, and use of such data and records while respecting the privacy interests of youth and families. The work group shall report its findings and recommendations to the Governor and the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by November 1, 2021.