



Juvenile Records (SJR 24)

September 23, 2014

Overview



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Study Authorization



- SJR 24 was introduced during the 2014 General Assembly Session by Senator Barbara Favola, which directed the Crime Commission to examine juvenile records, more specifically:
 - (i) Laws related to confidentiality and retention of juvenile court records;
 - (ii) By whom juvenile record information can be accessed;

Study Authorization



- (iii) Whether existing confidentiality and destruction of records laws are being complied with;
- (iv) Impact on youthful offenders of having a juvenile record; and,
- (v) Make recommendations regarding improvements in the laws that would assist juvenile offenders while allowing law enforcement to maintain the safety of the citizens of the Commonwealth.

Confidentiality



- While the general rule regarding the records of juvenile adjudications is that they are to remain confidential, there are exceptions.
 - These exceptions allow agencies to share information with other agencies involved with the juvenile and to protect the public.

Confidentiality



- The Virginia State Police, under Virginia Code § 19.2-389.1, is permitted to share juvenile criminal records in specific and limited circumstances, primarily for law enforcement purposes, for the following:
 - Information required for firearms purchases and permits;
 - Aid in the preparation of pretrial, post trial, and pre-sentence reports;
 - Community-based probation services agencies;
 - Fingerprint comparisons using AFIS;

Confidentiality



- Va. Code § 19.2-389.1, continued:
 - Va. Department of Forensic Science to determine if it can maintain a juvenile's DNA sample;
 - Va. Office of the Attorney General for all criminal justice activities;
 - Va. Criminal Sentencing Commission for research purposes;
 - Threat assessment teams at public institutions of higher learning; and,
 - Law enforcement employment screening.

Confidentiality



- Courts are permitted to share juvenile court records with specifically enumerated individuals or agencies (Va. Code § 16.1-305):
 - Judges, probation officers, and professional staff assigned to JDR courts;
 - Public or private agencies that have custody of the child or for furnishing treatment or evaluation;
 - Commonwealth's Attorneys or attorneys for the juvenile;
 - Persons, agencies, or institutions, under court order, with legitimate interests;

Confidentiality



- Va. Code § 16.1-305, continued:
 - Aid in the preparation of pretrial, post trial, and presentence reports;
 - Community-based probation service agencies;
 - Background for Parole Board;
 - Va. Office of the Attorney General for all criminal justice activities;
 - Va. DMV for abstracts pursuant to Va. Code § 46.2-383; and,
 - Va. Workers Compensation Board, to determine compensation for a victim of a crime.

Confidentiality



- Additionally, courts are required to maintain juvenile files separately from adult files.
- However, 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,” the records are open, unless otherwise ordered by the judge.

Confidentiality



- The Va. Department of Juvenile Justice (DJJ), pursuant to Va. Code § 16.1-300, must keep the records of juveniles in their custody, under supervision of court services units, or before a court, confidential, but may open the records to the following:
 - Judges, prosecuting attorneys, probation officers and professional staff assigned to the juvenile's case;
 - Agencies treating or providing services to a juvenile;
 - Parents, legal guardians, or those standing in *loco parentis* to the juvenile;

Confidentiality



- Va. Code § 16.1-300, continued:
 - The juvenile himself upon reaching majority;
 - Any person, by order of the court, having a legitimate interest in the juvenile, case, or work of the court;
 - Any person, agency, or institution, having a legitimate interest in the treatment of the juvenile;
 - Commonwealth's Attorneys, pretrial services, probation services for pretrial and post trial activities;

Confidentiality



- Va. Code § 16.1-300, continued:
 - Persons, agencies, institutions outside of DJJ doing research for DJJ;
 - Law enforcement for criminal street gang information purposes;
 - Va. Office of the Attorney General for all criminal justice activities; and,
 - The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth for use in identifying criminal street gang members.

Confidentiality



- The Virginia Department of Motor Vehicles (DMV) is permitted by statute to obtain adjudication and conviction records in order to effectuate the suspension of a juvenile's license.
 - Under Va. Code § 46.2-383, DMV can obtain abstracts of the convictions of specific offenses. The Code only refers to convictions, not adjudications.

Confidentiality



- Under Va. Code § 46.2-383, DMV receives:
 - Any traffic violation, including local ordinances;
 - Motor vehicle theft;
 - Manslaughter or any other felony in the commission of which a motor vehicle was used; and,
 - Court ordered driver's education or alcohol treatment/rehabilitation program.

Confidentiality



- It is not clear if DMV has the authority to include adjudications on a juvenile's public driving record.
 - Under Va. Code § 16.1-278.8(9), an abstract of a court order that identifies the juvenile and the conditions of which he has a restricted license is sent to DMV.
 - Under Va. Code § 16.1-278.9(C), the court reports orders of adjudications involving certain offenses to DMV.
 - Under Va. Code § 16.1-306(A) it is implied that the J&DR court does furnish abstracts of all juvenile adjudications for offenses that come under Va. Code § 46.2-383.

Confidentiality



- Under Va. Code § 16.1-278.9, a judge shall deny or suspend the driver's license of a juvenile for the following offenses:
 - DUI or refusal;
 - Marijuana or controlled substances possession or distribution;
 - Unlawful purchase, possession or consumption of alcohol;
 - Public intoxication;
 - Possession of a handgun or “street sweeper;”
 - Threats to bomb or damage a building; and,
 - Truancy.
- Additionally, under Va. Code § 16.1-278.8(A)(9), a judge may order the suspension of a license for juveniles found delinquent of any offense.

Confidentiality



- Under Va. Code § 16.1-301, law enforcement agencies are required to keep juvenile criminal records separate.
 - However, records for any violent juvenile felony offense under Va. Code § 16.1-269.1 (B) & (C), any arson offense, or any violation of a law involving any weapon listed in Va. Code § 18.2-308(A), may be disclosed to school principals for the safety of other students.
 - This information may also be shared with local school division threat assessment teams.

Expungement of Records in Virginia



- Juvenile and Domestic Relations courts are required by Va. Code § 16.1-306 to expunge delinquency records.
 - The courts are directed to purge these records once a year, for all juveniles who have reached 19 years of age, provided there have been 5 years since the adjudication of delinquency.
 - The courts expunge records each year, and are provided training on a regular basis concerning expungement; however, the number of records expunged is not currently tracked.

Expungement of Records in Virginia



- This provision does not apply to juveniles:
 - Tried as adults; or,
 - Found guilty of a delinquent act which would be a felony if committed by an adult.
- If DMV receives an abstract under Va. Code § 46.2-383, the record shall be expunged by the court at age 29.

Expungement of Records in Virginia



- If a juvenile is not covered by automatic expungement, there is a provision under Va. Code § 19.2-392.2 to obtain expungement of the record, but only if:
 - They are acquitted; or,
 - The charge is subject to *nolle prosequi*; and,
 - If the court finds that the continued existence and possible dissemination of the record constitutes “a manifest injustice to the petitioner.”

Expungement of Records in Virginia



- Conviction records are to be destroyed by the DMV after 3 years; 5 years for forfeitures related to speeding and reckless driving.
- Convictions stay on driving records as follows:
 - 5 years for insurance companies;
 - 7 years for employers;
 - 11 years for personal use; and,
 - 12 years for law enforcement.

Collateral Effects of a Juvenile Record



- There are significant ramifications to a criminal record:
 - Loss of civil rights, such as voting;
 - Limited employment;
 - Denial of insurance;
 - Educational difficulties related to staying in school and obtaining a secondary education;
 - Denial of public benefits; and,
 - Ability to serve in the military.

Collateral Effects of a Juvenile Record



- If a juvenile's record is subject to automatic expungement:
 - As an adjudication the juvenile is not required to answer that he was “convicted” of a crime “nor shall any such finding operate to disqualify the child for employment by any state or local governmental agency” per Va. Code § 16.1-308.
 - However, the VSP and local law enforcement may consider the “nature and gravity of the offense, the time since adjudication, the time since completion of any sentence, and the nature of the job.”

Collateral Effects of a Juvenile Record



- Educational institutions or employers are not permitted to inquire about records that have been expunged per Va. Code § 19.2-392.4.
- State agencies and local governments can not require an “applicant for a license, permit, registration, or governmental service” to disclose an expunged record under Va. Code § 19.2-392.4.

Collateral Effects of a Juvenile Record



- If the juvenile was found delinquent of an act which would be a felony if committed by an adult, then the records are not subject to expungement.
- Employment:
 - Employers may ask for permission to request a criminal records check through the VSP; and,
 - Court records are open to the public, unless a judge has ordered the record to remain confidential.

Collateral Effects of a Juvenile Record



- Education:
 - School superintendents are notified when a juvenile is charged with a serious crime, which can result in the student's suspension, or expulsion, or required attendance at an alternative education program. Va. Code § 22.1-277.2:1 and § 16.1-260(G).
 - Some colleges and universities require the disclosure of convictions.

Collateral Effects of a Juvenile Record



- Public Benefits:
 - Loss of drivers license for committing certain offenses, listed in Va. Code § § 46.2-383, 16.1-278.8(A)(9), and, § 16.1-278.9;
 - Prevented from adopting or being a foster parent per Va. Code § 63.2-1721; and,
 - Possessing and owning firearms if found delinquent of murder, kidnapping, robbery, rape. [Va. Code § 18.2-308.2].

Collateral Effects of a Juvenile Record



- Registration on the Sex Offender and Crimes Against Minors Registry is also possible under Va. Code § 9.1-902(G).
- Likewise, fingerprints and photographs submitted to the CCRE are not expunged. [Va. Code § 19.2-299].

2011 Review



- In 2011, the Crime Commission reviewed whether there were unauthorized disclosures of juvenile records.
 - Based on a 2011 Commission of Youth study on juvenile re-entry that indicated that there were improper disclosures of juvenile records
- At the time of the presentation, there was little evidence, other than anecdotal stories, to support the conjecture that unauthorized disclosures were occurring.

2011 Review



- After the meeting, however, it was discovered that a juvenile did have a petit larceny conviction improperly included on his driving record.
- After contacting both the Virginia Supreme Court and DMV, the problem was identified as a specific data entry error, due to a new computer program used to transmit the abstracts from the JDR courts to DMV in accordance with Va. Code § 46.2-383.

2011 Review



- In some cases, petit larceny adjudications were included in the abstract, with DMV then adding the adjudication information onto the driving record, in reliance on the court providing the information accurately and lawfully.
 - It is doubtful, based on the overall confidential nature of juvenile records, that DMV had the authority to list the actual offense of petit larceny on the driving record.

2011 Review



- Both the Court and DMV worked closely together to identify the affected records and removed improperly disclosed delinquencies.
 - Overall, there were nearly 7,000 cases reviewed and close to 3,500 records corrected.

Summary



- Overall, juvenile records are to remain confidential, although there are exceptions.
- VSP, DJJ, the courts, and DMV all share juvenile records to assist with handling of cases and for public safety purposes.
- The records of juveniles who are tried as adults or juveniles that are 14 or older and found delinquent on the basis of an act which would be a felony if committed by an adult are open, and are not treated as confidential.

Summary



- Juveniles who are adjudicated delinquent of misdemeanors and status offenses can have the records automatically expunged by age 19 or at age 29 for some offenses on DMV records.
- However, juveniles who are found delinquent of a felony, or who are tried as an adult, do not have their records expunged.
- Juveniles subject to automatic expungement are not required to answer in the affirmative on applications about criminal history.

Summary



- Juveniles tried as adults must disclose convictions on applications.
- There are numerous collateral effects for delinquencies/convictions that cannot be expunged.

Policy Options



- To what extent should DMV be putting any information concerning juvenile adjudications on a public driving record?

Policy Options



- Should the courts be required to record and report the number of cases expunged annually?



Discussion
