



Juvenile Records

September 20, 2011

Overview



- Study Authorization
- Alleged Disclosures
- Virginia Statutory Restrictions on Juvenile Records
- Other Disclosures Permitted
- Agency Meetings
- Conclusions

Study Authorization



- The Commission on Youth sent a letter to the Crime Commission requesting a study of the unauthorized disclosure of juvenile criminal records.
- Specifically, the request was to review the protection and purging of records after a juvenile's adjudication.

Alleged Disclosures



- There have been anecdotal stories about juveniles denied employment or college admission, presumably from an unauthorized disclosure of their criminal records. The problems with the stories are:
 - Not specific about status of crime (delinquent or guilty);
 - Limited information regarding names or identifying information to cross-check; and,
 - Some of the crimes committed were serious and likely not handled in a delinquency proceeding.

Statutory Restrictions on Juvenile Records



- The Virginia State Police (VSP), under Va. Code § 19.2-389.1, are permitted to share juvenile criminal records, but in very limited circumstances:
 - information required for firearms purchases and permits (§§ 18.2-308.2 and 308.2:2);
 - aid in the preparation of pretrial, post trial, and pre-sentence reports;
 - community-based probation services agencies;
 - fingerprint comparisons using AFIS;
 - Commonwealth's Attorneys and law enforcement for legitimate criminal justice activities;

Statutory Restrictions on Juvenile Records



- Va. Code § 19.2-389.1, con't:
 - Va. Department of Forensic Science to determine if it can maintain a juvenile's DNA sample;
 - Va. Office of the Attorney General for "criminal justice" activities;
 - Va. Criminal Sentencing Commission, for research purposes;
 - "threat assessment" teams at public institutions of higher learning;" and,
 - law enforcement employment screening.

Statutory Restrictions on Juvenile Records



- All courts are required to maintain juvenile files separately from adult files (Va. Code § 16.1-305) and only allow the following to review or inspect the files:
 - judges, probation officers, and professional staff assigned to JDR courts;
 - public or private agencies that have custody of the child or furnishing treatment or evaluation;
 - Commonwealth's Attorneys or attorneys for the juvenile;
 - persons, agencies, or institutions, under court order, with legitimate interests;

Statutory Restrictions on Juvenile Records



- Va. Code § 16.1-305, con't:
 - aid in the preparation of pretrial, post trial, and presentence reports;
 - community-based probation services agencies;
 - background for Parole Board;
 - Va. Office of the Attorney General for “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.

Statutory Restrictions on Juvenile Records



- Va. Code § 16.1-305, con't:
 - 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.

Statutory Restrictions on Juvenile Records



- The DMV is permitted, for certain violations (Va. Code § 46.2-383), to include the convictions on an individual's driving record. The convictions and other information are forwarded as abstracts to DMV from the courts, and include:
 - any traffic violation, including local ordinances;
 - motor vehicle theft;
 - operating a water craft while intoxicated;
 - manslaughter or any other felony in the commission of which a motor vehicle was used;
 - driving while intoxicated;

Statutory Restrictions on Juvenile Records



- Va. Code § 46.2-383, con't:
 - failure to pay fines, costs, forfeiture, restitution or penalty, or any installment, related to traffic cases;
 - forfeiture of bail or collateral, related to charges;
 - court ordered driver's education or alcohol treatment/rehabilitation program; and,
 - forfeiture of license for driving while intoxicated.

Statutory Restrictions on Juvenile Records



- Under Va. Code § 16.1-278.9, a judge shall deny or suspend 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.

Statutory Restrictions on Juvenile Records

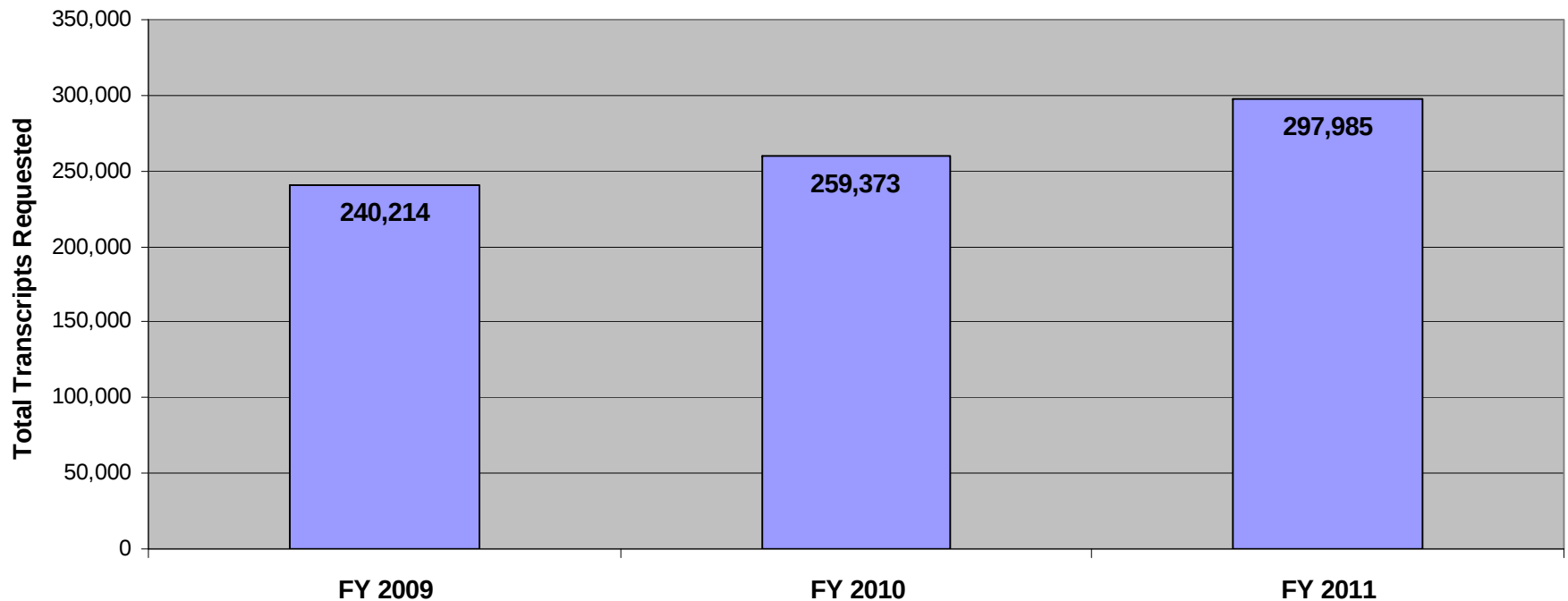


- Conviction records can be destroyed by the DMV after 3 years; 5 years for forfeitures related to speeding and reckless driving.
- Convictions stay on driving records as follows:
 - 5 years for insurance companies;
 - 7 years for employers;
 - 11 years for personal use; and
 - 12 years for law enforcement.

Employer Requests for DMV Driving Records



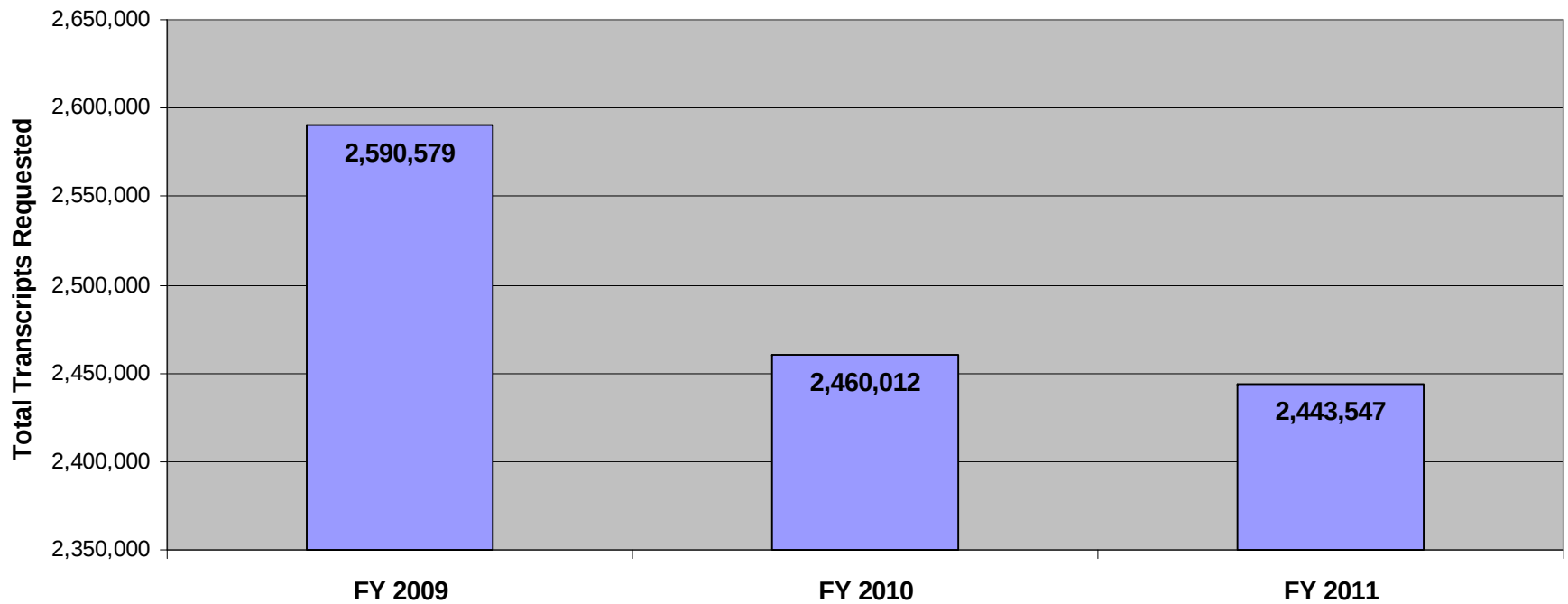
Total Va. Interactive Employment Transcripts Requested, FY 2009- FY 2011



Insurance Company Requests for DMV Driving Records



Total Va. Interactive Insurance Transcripts Requested, FY 2009- FY 2011



Statutory Restrictions on Juvenile Records



- The Va. Department of Juvenile Justice (DJJ) (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, and may open them to the following:
 - judge, prosecuting attorney, probation officers and professional staff, assigned to juvenile's case;
 - agencies treating or providing services to a juvenile;
 - parents, legal guardians, or those standing in *loco parentis* to the juvenile;

Statutory Restrictions on Juvenile Records



- Va. Code § 16.1-300, con't:
 - person 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 Attorney, pretrial services, probation services for pretrial and post trial activities;

Statutory Restrictions on Juvenile Records



- Va. Code § 16.1-300, con't:
 - person, agencies, institutions outside DJJ doing research for them;
 - law enforcement for criminal street gang information purposes;
 - Va. Office of the Attorney General for “criminal justice” activities; and,
 - The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, for use in identifying criminal street gang members.

Other Disclosures Permitted



- As allowed in Va. Code § 16.1-302, courts are required to make separate dockets for juvenile cases, but judges have discretion whether to open JDR court to the public.
 - Additionally, dockets are treated differently throughout the Commonwealth, in terms of whether the dockets are posted publicly.
- Under Va. Code § 16.1-301, law enforcement agencies are required to keep juvenile criminal records separate.
 - However, records for felony offenses under Va. Code § 16.1-269.1 (B) & (C), burning a dwelling house, or violations involving a concealed weapon, can be disclosed to principals for the safety of other students.

Other Disclosures Permitted



- Additionally, under Va. Code § 16.1-301, law enforcement records can be shared with the following:
 - the court the juvenile is before;
 - entities that the juvenile is committed to;
 - by order of the court, for persons or entities having a legitimate interest in the case;
 - law enforcement agencies, by order of the court;

Other Disclosures Permitted



- Va. Code § 16.1-301, con't:
 - probation or other court officials to aid in the preparation of pre-sentence report or other dispositional proceedings;
 - juvenile, parent, guardian, or counsel, by order of the court;
 - other law enforcement agencies for use in current investigations; and,
 - Va. Workers Compensation Board, to determine compensation for a victim of a crime.

Agency Meetings



- Crime Commission staff met with representatives from the following agencies concerning juvenile records: VSP, DJJ, DMV, and the Va. Supreme Court.
 - A common theme from each discussion was that each agency is often accused of inappropriately distributing records.
 - All agencies stressed that they take great care protecting these records, as required by law.
 - VSP maintains an entirely separate database for juvenile criminal records.
 - Courts do not provide online access to the JDR case management system.
 - DMV's agreement with insurers does not permit them to sell any information obtained from driving records.

Conclusions



- Based on a review of applicable Code sections and discussions with agencies:
 - There appears to be no systemic problem or “gap” in the Code, that would allow illegal disclosures;
 - There is a perception by the general public that juvenile records are completely confidential;
 - The public does not always distinguish between a conviction and a delinquency adjudication;
 - Juveniles and parents may be unaware of the availability of felony delinquency records. This information can be obtained by employers or schools and is open for inspection at the courthouse;

Conclusions



- The sharing of information on social media or the internet could permit employers to find out information concerning criminal records or pending criminal cases;
- Release of information through traditional media;
- Community reputation could also affect local employers' hiring decisions;

Conclusions



- If a person requests their own DMV record for employment or school, it is possible they could request the wrong transcript, and provide more information than required;
- There was a suggestion that data mining, through Westlaw or LexisNexis, could be responsible for the electronic disclosure of records allowed by law; and,
- Many Virginia colleges and universities' admissions applications ask whether the applicant has ever been adjudicated delinquent.



Discussion