

Virginia State Crime Commission

Disclosure of Juvenile Records

2011

Disclosure of Juvenile Records

Executive Summary

During 2011, the Commission on Youth (COY) reviewed juvenile reentry. As part of this study, COY determined that some juvenile adjudications of delinquency were being obtained by potential employers, insurers, and the military. The COY sent a letter to the Crime Commission, requesting a review of juvenile records to determine if these records were being improperly disclosed, possibly through the Virginia Department of Motor Vehicles (DMV).

Crime Commission staff reviewed the statutory framework in Virginia that allows for specific agencies to obtain and disclose juvenile adjudications. The Virginia State Police (VSP), juvenile and domestic relations (JDR) district courts, DMV, and the Department of Juvenile Justice (DJJ) are permitted, by the Code of Virginia, to disclose juvenile adjudications to specified agencies or entities. In particular, the DMV is authorized, based on abstracts of court records, to include certain specific adjudications on a juvenile's driving record.

While most complaints about a juvenile's record being improperly disclosed appear to have dubious merit, Crime Commission staff became aware of a specific instance where a juvenile had an adjudication for petit larceny, improperly included on his DMV driving record, without statutory authorization for such disclosure. After reviewing a random selection of driving records from DMV, Crime Commission staff discovered that there were additional driving records that included adjudications for petit larceny, without any apparent statutory authority for such disclosures. Crime Commission staff met independently with representatives from the Supreme Court of Virginia, as well as DMV; it was determined that a data entry error had resulted in unauthorized adjudications being included in abstracts to DMV. The data entry error is being addressed by the Supreme Court of Virginia through training. The Supreme Court of Virginia and DMV are working on identifying and correcting the improper disclosures locality by locality throughout the state.

Background

The COY 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 of delinquency. The COY's review of juvenile reentry, which included reviewing the disclosure of juvenile records, made a determination that juvenile adjudications of delinquency, otherwise kept confidential, were apparently being obtained by potential employers, insurers, and the military. Also, COY suggested that DMV might be responsible for the unauthorized disclosure of juvenile delinquency records.¹

Disclosures Allowed Under the Virginia Code

The general rule with juvenile adjudications is that these records must be kept confidential.² There are, however, several exceptions located throughout the Virginia Code which permit the disclosure of juvenile adjudications, in very specific circumstances. In particular, there are exceptions for VSP, courts, DJJ, and DMV to share information on juvenile adjudications.

VIRGINIA STATE POLICE

The VSP, under Virginia Code § 19.2-389.1, is permitted to share juvenile criminal records in the following, limited circumstances:³

- 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;
- 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;
- public institutions of higher learning; and,
- law enforcement employment screening.

VIRGINIA JUDICIAL SYSTEM

Under Va. Code § 16.1-305, the courts are permitted to share juvenile court records with specifically enumerated individuals or agencies. The general rule is that these records are to remain confidential, only to be shared with individuals or entities that are specifically listed.⁴ All courts are required to maintain juvenile files separately from adult files and only allow the following individuals or agencies to review or inspect the files:⁵

- judges, probation officers, and professional staff assigned to JDR courts;
- public or private agencies that have custody of the child or are furnishing treatment or evaluation;
- Commonwealth’s Attorneys or attorneys for the juvenile;
- persons, agencies, or institutions, under court order, with legitimate interests;
- 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.

Juvenile and domestic relations district courts are required by statute to expunge delinquency records.⁶ The courts are directed to purge these records once a year, for all juveniles who have reached 19 years of age, provided there has been five years since the adjudication of delinquency.⁷ If the record is one that DMV can include on a juvenile's driving record pursuant to Va. Code § 46.2-383, the record will be expunged at age 29.⁸ However, if the juvenile was "found guilty of a delinquent act which would be a felony if committed by an adult," the record is retained.⁹

DEPARTMENT OF JUVENILE JUSTICE

The Department of Juvenile Justice must keep the records of juveniles in their custody, under supervision of court service units, or before a court, confidential.¹⁰ The Department of Juvenile Justice may open the records to the following:¹¹

- judge, prosecuting attorney, probation officers and professional staff, assigned to a juvenile's case;
- agencies treating or providing services to a juvenile;
- parents, legal guardians, or those standing in *loco parentis* to the juvenile;
- 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;
- 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,
- Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, for use in identifying criminal street gang members.

VIRGINIA DEPARTMENT OF MOTOR VEHICLES

The Department of Motor Vehicles is statutorily permitted to obtain juvenile adjudication records in order to effectuate the suspension of a juvenile's license. Specifically, under Va. Code § 16.1-305(D), DMV receives abstracts of juvenile adjudications from Virginia courts. Under Va. Code § 46.2-383, DMV is permitted to obtain abstracts of the convictions and adjudications for the following offenses:

- 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;
- 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.

According to DMV, the authority to include conviction information on DMV driving records, including those of juveniles, is derived from Va. Code § 46.2-383. Because the statute refers to "persons," which includes juveniles, and is referenced in Va. Code §16.1-305(D), DMV is permitted to include this information, even if it pertains to juveniles, in a driving record. It should be noted that the offenses and other related information listed in the statute are limited to driving offenses, DUI's, and other motor vehicle-related crimes.

There are also two statutes where judges may revoke or suspend a juvenile's license. Judges, under Va. Code § 16.1-278.9, 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.

While judges are required to take action on the license, there is no explicit authority for DMV to include this conviction information on the juvenile's driving record. 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. Again, there is no explicit authority in this statute for DMV to include the adjudication on the driving record, nor is there a cross reference in Va. Code § 46.2-383. There is also a general grant of authority for DMV to suspend or revoke licenses for failure or refusal to pay fines or court costs for criminal convictions under Va. Code § 46.2-395, but there is no explicit authority in this statute either, to include information about juvenile convictions on the DMV driving record.

Conviction records may be destroyed by DMV after three years, five years for forfeitures related to speeding or reckless driving. Convictions stay on driving records for various lengths of time, depending upon the person or entity that has requested the record: 5 years for insurance companies; 7 years for employers; 11 years for personal use; and, 12 years for law enforcement.

Review of Unauthorized Disclosures

There have been many anecdotal stories about juveniles who are denied employment, college admission, entry into the military, and even insurance coverage, presumably

because of an unauthorized disclosure of their delinquency records. The difficulty with these stories is, generally, the allegations lack specific details about how the crime was handled (whether through a delinquency proceeding, or tried as an adult and found guilty); and there is limited information regarding names or identifying information to verify the story. Some of the crimes committed by the juveniles in these anecdotes are serious and likely were not handled in a delinquency proceeding. In order to determine if there was any possibility that the agencies tasked with the responsibility of safeguarding juvenile records breached any of the requirements for confidentiality, Crime Commission staff met independently with representatives from the following agencies concerning the records: VSP, DJJ, DMV, and the Supreme Court of Virginia. A common theme from each discussion was that each agency felt that they were often accused of inappropriately distributing records. All of the agencies stressed that they take great care protecting these records, as required by law. Some specific measures taken by these agencies include:

- The Virginia State Police maintains an entirely separate database for juvenile criminal records.
- The Supreme Court of Virginia does not provide online, public access to the JDR case management system.
- DMV's agreement with insurers does not permit them to sell any information obtained from driving records.
- DJJ limits access to juvenile delinquency/criminal records to one specific individual, who may only access the records in a closed room.

When staff presented this information to Crime Commission members at the September 2011, meeting, there was no solid proof that any agency had improperly disclosed juvenile criminal or delinquency records. Based on a review of applicable Virginia Code sections and discussions with agencies, Crime Commission staff developed conclusions concerning the perception of improper disclosure of juvenile records:

- There appeared to be no systemic problem or "gap" in the Va. 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 public felony delinquency records. This information can be obtained by employers or schools and is open for inspection by the public at the courthouse;

- The sharing of information on social media or the Internet could permit employers to discover information concerning criminal records or pending criminal cases;
- Sometimes juvenile criminal information is available through traditional media sources, (i.e. news stories);
- Community reputation could be responsible for local employers' hiring decisions;
- If a person requests their own DMV record for employment or school, it is possible they could request a more detailed transcript, and provide more information than required;
- There was a suggestion that data mining, through search engines such as Westlaw or LexisNexis, could be responsible for the electronic disclosure of records allowed by law; and,
- Many Virginia college and university admissions applications ask whether the applicant has ever been adjudicated delinquent.

While all of the conclusions reached remain valid, Crime Commission staff received, after the September 2011 meeting, a letter from an attorney whose client had an adjudication for petit larceny¹² that was included on an official DMV driving record. A copy of the juvenile's DMV record was reviewed by Crime Commission staff and clearly indicated what appeared to be an improper disclosure of his record. The authorization for including the adjudication on the record was stated as "Va. Code § 46.2-390.1." It is not clear how Va. Code § 46.2-390.1 provides the authority for including the juvenile adjudication for petit larceny on the driving record. (Under this statute, a juvenile's license may be revoked for violating drug offenses, which has nothing to do with petit larceny). Based on this instance of an improper disclosure, Crime Commission staff reviewed a random sample of juvenile driving records from DMV. After the review, it was determined that several records contained adjudications for petit larceny.

Crime Commission staff made an effort to determine why the petit larceny convictions were appearing on DMV records, when there is no statutory authority for DMV to include these adjudications. After discussions with representatives of the Supreme Court of Virginia and DMV, the problem was identified as a specific data entry error that was prone to occur with a new computer program that is being used, among other things, to transmit the abstracts of criminal proceedings from the JDR courts to DMV in accordance with Va. Code § 46.2-383. In some cases, petit larceny adjudications were included in the abstract, with DMV then adding the adjudication to the driving record, in reliance on the court providing the information accurately and lawfully. The Supreme Court of Virginia and DMV are currently working on identifying each record that contains an improper disclosure and correcting the driving record. Additionally, the Supreme Court of Virginia is training court clerks on the new system, to avoid the inclusion of unauthorized delinquencies in the court abstracts to DMV.

Conclusion

While the general rule in Virginia is to maintain the confidentiality of juvenile adjudications, the Code of Virginia grants very specific exceptions to a limited number of agencies, for official use. The agencies permitted to disclose juvenile records take the responsibility of maintaining the confidentiality of the records very seriously. While there is no weakness or “hole” in the statutory exceptions to the confidentiality of juvenile records that employers, insurers or other unauthorized entities may use to obtain juvenile records, Crime Commission staff did uncover a data entry error that led to the unauthorized inclusion of juvenile adjudications on DMV driving records. This data entry error has been brought to the attention of the Supreme Court of Virginia, and both the courts and DMV are now working to correct the erroneous inclusion of certain adjudications on driving records.

¹ R.D. 179, STUDY OF JUVENILE OFFENDER REENTRY IN THE COMMONWEALTH, Virginia Commission on Youth, *available at* <http://leg2.state.va.us/dls/h&sdocs.nsf/4d54200d7e28716385256ec1004f3130/2aa3342132c11b2f85257903005a63f6?OpenDocument>.

² VA. CODE ANN § 16.1-305 (2011).

³ VA. CODE ANN § 19.2-389.1 (2011).

⁴ 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.

⁵ VA. CODE ANN. § 16.1-305 (2011).

⁶ VA. CODE ANN. § 16.1-306 (2011).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ VA. CODE ANN. § 16.2-300 (2011).

¹¹ *Id.* Additionally, under Va. Code § 16.1-309.1, a judge may share information on a juvenile in the “consideration of public interest.” Essentially, this information may be shared in situations where the juvenile has been adjudicated of a serious offense and is a fugitive.

¹² VA. CODE ANN. § 18.2-96 (2011).