

## Chapter 13 - Confidentiality of Records

### In General

Confidentiality of the records pertaining to a juvenile court case must be maintained at all times. Juvenile courts are not allowed to disclose juvenile case information over the telephone. All information obtained in discharge of official duties by any official or by any employee of the court shall be privileged, and shall not be disclosed to anyone other than the judge unless and until otherwise ordered by the judge or by the judge of a circuit court; provided, however, that in any case when such information shall disclose that an offense has been committed which would be a felony if committed by an adult, it shall be the duty of the official or employee of the court obtaining such information to report the same promptly to the attorney for the Commonwealth or the police in the county, city or town where the offense occurred. It shall not be deemed a violation of this section if the disclosed information is otherwise available to the public. [Va. Code § 16.1-303](#).

- Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required to furnish an abstract to the [Department of Motor Vehicles](#), which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to the Commonwealth's Attorney upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding and that such papers will be only used for such evidentiary purpose.
- Attested copies of papers which show the charge, finding, disposition, name of the attorney for the juvenile or waiver of attorney by the juvenile filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult shall be furnished to the Commonwealth's Attorney upon certification that the papers are needed as evidence in a pending criminal prosecution for a violation of [Va. Code § 18.2-308.2](#) and that such papers will only be used for such evidentiary purpose.
- The sentencing judge must advise the delinquent juvenile of records expungement rights at the disposition hearing.
- Pursuant to [Va. Code § 16.1-309.1 \(A\)](#) the judge, where required by considerations of public interest, shall make available the juvenile's name, address and the nature of the offense for which the juvenile was adjudicated delinquent where:
  - For an act which would be a Class 1, 2, or 3 felony, if committed by an adult, forcible rape, or robbery or burglary or a related offense as set out in [Va. Code §§ 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-94](#), or
  - In cases where a juvenile is sentenced as an adult in circuit court.
- At any time prior to disposition, if a juvenile charged with a delinquent act that would be a felony, if committed by an adult, or held in custody by a law enforcement officer or in a

secure facility becomes a fugitive from justice, upon petition the court may, or if the court is not in session, the Commonwealth's attorney, the [Department of Juvenile Justice](#) or a locally operated court services unit, after notice to the juvenile's attorney and the Commonwealth's Attorney, may authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought and any other information which may expedite his apprehension. [Va. Code § 16.1-309.1 \(B\)](#).

- At any time prior to disposition, if a juvenile charged with a misdemeanor held in custody by a law enforcement officer or in a secure facility becomes a fugitive from justice, upon petition the court may, or if the court is not in session, the Commonwealth's Attorney after notice to the juvenile's attorney of record, may authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought and any other information which may expedite his apprehension. [Va. Code § 16.1-309.1 \(B\)](#).
- A juvenile's name and address may be made available to the public where a juvenile, who is fourteen years of age or older, is charged with mob violence under Article 2 of Chapter 4 of Title 18.2 [§§ 18.2-38](#) et seq.), a felony involving a weapon, a felony drug offense or an "act of violence", as defined in [Va. Code § 19.2-297.1 \(A\)](#) and consideration of the public interest requires the disclosure. [Va. Code § 16.1-309.1 \(C\)](#).
- Upon request of a victim of a delinquent act which would be a felony if committed by an adult, the court may order that such victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. [Va. Code § 16.1-309.1 \(D\)](#).
- Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to [Va. Code § 16.1-333](#) has been entered, provided that the order is not being appealed, has not been terminated, or that there has not been a judicial determination that the order is void *ab initio*. (Void from the moment entered.) [Va. Code § 16.1-309.1 \(E\)](#).
- A copy of any court order that imposes a curfew or other restriction on a juvenile may be provided to the chief law enforcement officer of the county or city wherein the juvenile resides. The information shall only be disclosed by the chief law enforcement office to other law enforcement officers in the conduct of official duties. [Va. Code § 16.1-309.1 \(F\)](#)

### **Confidentiality of Department of Juvenile Justice Records (Including the Court Services Unit)**

The records and reports in the records of children who are or have been before the court, under the supervision or receiving services from the court services unit or who are committed to the [Department of Corrections](#) shall be confidential and shall be open to inspection only to those specific person as set out in [Va. Code § 16.1-300](#).

## Confidentiality of Law Enforcement Records

The court shall require all law enforcement agencies to take special precautions to ensure their files and records concerning a juvenile are protected against disclosure.

The law enforcement agencies shall keep separate records as to violations of law committed by juveniles except violation of the motor vehicle laws. Such records or files shall not be open to public inspection except in the case of a juvenile fourteen years of age or older who is charged with a “violent juvenile felony.”

Such records and files may be inspected only by those person or agencies as set out in [Va. Code § 16.1-301](#).

## Dockets Hearings and Records Public Trial Presence in Court

Each juvenile and domestic relations district court shall keep a separate docket of cases. The Juvenile Case Management System (JCMS) is where clerks record case information from the paperwork received for cases appearing on the docket.

The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper. Hearings in proceedings where an adult is charged with a crime, or a juvenile 14 years of age or older has been charged with what would be a felony if committed by an adult are open, but may be closed by the court for good cause. If the proceedings are closed, the court shall state in writing its reasons and the statement shall be made a part of the public record. [Va. Code § 16.1-302 \(C\)](#).

In adult cases, any investigation report, including a presentence investigation report, prepared by a local probation officer, is confidential. Such reports shall be filed as a part of the case record, and shall be made available only by court order and shall be sealed upon final order by the court, exceptions are set out in [Va. Code § 9.1-177.1](#). The clerk receiving these reports should use the DC-392, SEALED DOCUMENTS ENVELOPE when sealing these reports, noting the date sealed and the initials of the clerk/deputy clerk who sealed them. Whether the documents are sealed by final order or placed in the file awaiting final order, they are only available by court order.

Any report on the progress of an offender under the supervision or of a local community based probation agency, and any information relative to the identity of an accused, including inference of personal characteristics, demographic information, psychiatric or psychological records or information and other sensitive information is also confidential. However, such information may be disseminated to criminal justice agencies as defined in [§ 9.1-101](#), in the discretion of the custodian of these records.

[§ 9.1-101](#) "Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 ([§ 19.2-387](#) et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 ([§ 19.2-12](#) et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 ([§ 9.1-126](#) et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act ([§ 37.2-900](#) et seq.). "Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to [§ 18.2-271.2](#).

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

In a hearing on violation of a criminal law, or law defining a traffic infraction, the juvenile or adult so charged shall have a right to be present and a right to a public hearing unless expressly waived. [Va. Code § 16.1-302 \(D\)](#).

In custody matters, the judge may waive the presence of a child of tender years. [Va. Code § 16.1-302 \(D\)](#).

In cases pertaining to the determination of child or spousal support pursuant to [Va. Code § 20-108.1](#), the court, may upon motion of any party, allow one expert witness for each party to remain in the courtroom throughout the hearing. [Va. Code § 8.01-375](#).

## Confidentiality of Juvenile Court Records

### [Va. Code § 16.1-305](#)

Social, medical, psychiatric or psychological records, including all reports or preliminary inquiries, predisposition studies and supervision records of all children shall be filed with the other papers in the juvenile's file. All juvenile case files shall be filed separately from adult files and records of the court and juvenile records **may be inspected only by:**

- The judge, probation officers and professional staff assigned to serve the court.

- Agencies providing supervision or having legal custody of the child or furnishing treatment of a child ordered or requested by the court.
- The attorney for any party to the case, including the Commonwealth Attorney.
- Adult probation and parole officers, including United States Probation and Pretrial Services Officers, or local pre-trial agencies and local community-based probation programs for the purposes of preparation of pretrial investigation reports, presentence reports or a presentence or postsentence report upon a finding of guilty, or a background report for the Parole Board.
- Any person or agency by order of court, having a legitimate interest in the case or in the work of the court.

Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A 1 through A 4 shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

A copy of the court order of disposition in a delinquency case must be provided to a probation officer or a Commonwealth's Attorney, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein.

The Commonwealth's Attorney and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct electronic access to a defendant's delinquency records for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A licensed bail bondsman is entitled to determine the status of a bond they have posted or provided surety on for a juvenile. This does not authorize access to or the right to inspect any other portion of the juvenile's court records.

All of the records enumerated above or information secured from such records, which are presented to the judge in court or otherwise presented in a proceeding under the juvenile and domestic relations district court law, shall also be made available to the parties to the proceeding and their attorneys. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees, shall be open to inspection only by those persons and agencies name above.

However, if a juvenile fourteen years or older is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records relating to that adjudication and any subsequent adjudication of delinquency shall be open to the public, other than those

records specified in section A of [Va. Code § 16.1-305](#) (social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records). If the court closed the hearing in the proceeding, the records or portions of the records may be kept confidential in order to protect a juvenile victim or juvenile witness.

In certain instances, disposition of delinquency cases shall be reported by the clerk of the court to the superintendent of the school division in which the child is enrolled at the time of disposition or was enrolled at the time of the offense. [Va. Code § 16.1-305.1](#).

Attested copies of the papers filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult, which show the charge, finding, disposition, name of attorney for the juvenile or waiver of attorney by the juvenile, shall be furnished to the Commonwealth's Attorney upon certification that such papers are needed as evidence in a pending criminal prosecution for a violation of Va. Code § 18.2-308.2 and that such papers will be used only for such evidentiary purpose.

Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission, solely for the purpose of determining whether to make an award to the victim of a crime.

Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by Va. Code § 46.2-383 to furnish an abstract to the Department of Motor Vehicles shall be furnished to a Commonwealth's Attorney upon certification that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding and will be used only for such evidentiary purpose.

The court service unit or the Commonwealth's Attorney shall provide notice of the disposition of any case involving a juvenile committed to state care after adjudication for a sexual assault (as specified in Va. Code § 18.2-61 et seq.) to the victim or parent of a minor victim. Va. Code § 16.1-305 (F).

### **Confidentiality of Child Support and Spousal Support Court Records**

All child support and spousal support case files, whether physical or digital, shall be open for inspection only to the following:

- The judge, court officials, and clerk or deputy clerk assigned to serve the court in which the case is pending or to which the case is transferred pursuant to court order;
- Any party to the case;
- Any attorney of record to the case; and
- The Department of Social Services and the Division of Child Support Enforcement.
- Any other person, agency, or institution having a legitimate interest in such case files or the work of the court, by order of the court, may inspect the files.

## Confidentiality of Circuit Court Records

In proceedings against a child in circuit court, where the court deals with the child as a juvenile, the clerk thereof shall preserve all records connected with the proceeding in files separate from other files, such files shall be open for inspection pursuant to the provisions of [Va. Code § 16.1-305](#), except as provided in the procedures for dissemination of CCRE information. [Va. Code § 16.1-307](#).

In other cases, such as divorce remands, if an addendum is filed in circuit court, it should be placed in an envelope prior to the remand. If the paperwork received included an addendum that is not in an envelope, it is suggested that the JDR clerk should place it in an envelope to ensure confidentiality.

## Disclosure of Vital Records

The judge may order disclosure of information in vital records pursuant to [Va. Code § 32.1-271](#).

## Request for Confidentiality: Traffic and Criminal Cases

### Traffic and Criminal Cases

Upon request of any witness in a criminal prosecution under [Va. Code §§ 18.2-46.2](#) or [18.2-46.3](#), or any crime victim, a court nor any employee of the court, and others as set out by statute may not disclose, except among themselves, the residential address, telephone number or place of employment of the witness or victim or a member of the witness's or victim's family, except as allowed by statute.

The party wishing to have their information protected should fill out and file a DC-301, [REQUEST FOR CONFIDENTIALITY BY CRIME VICTIM](#). Once the request is received, whether with a warrant from the magistrate, or separately, all documents containing the protected information must be sealed in a manila envelope, or in the DC-329, SEALED DOCUMENTS-TRAFFIC/CRIMINAL CASES.

The following endorsement should be stamped on the face of the envelope if not using the DC-392, SEALED DOCUMENT – TRAFFIC/CRIMINAL CASES.

**“CONFIDENTIAL –Pursuant to Va. Code § 19.2-11.2, the information contained herein is not subject to disclosure and you are therefore forbidden to inspect the contents contained herein. Date/Time/Signature.”**

Procedure to be used for individual requesting access to sealed documents containing protected information.

Once information that is to be sealed pursuant to statute has been filed with the clerk, any person requesting access to documents containing protected information may file a request for release of information with the clerk of the court who acted upon the request and sealed the documents. Only a court order will allow such information to be released or inspected.

In most cases in the juvenile and domestic relations district courts, a request for information is not indexed. If a hearing on the request is necessary, it will be docketed as a hearing in the underlying case. No civil fees should be assessed for the filing of the case. Disposition of the request may be appealed pursuant to [Va. Code § 16.1-132](#).

The clerk of the court wherein the request for information is filed should issue a district court form DC-512, NOTICE OF HEARING to the victim who filed the district court form DC-301, [REQUEST FOR CONFIDENTIALITY](#).

### Civil Cases, Including Protective Orders

A district court form DC-618, [REQUEST FOR CONFIDENTIALITY – CIVIL](#) is completed when a party involved in a custody or support proceeding wishes to request the court not to release any information regarding the party. The party must meet the requirement as listed on the district court form DC-618, [REQUEST FOR CONFIDENTIALITY – CIVIL](#) under which a person may request that their identifying information be kept confidential.

Once the request is received, all documents containing the protected information must be kept sealed in a manila envelope in the case file and will be kept confidential.

A district court form DC-621, [NON-DISCLOSURE ADDENDUM](#) is used in all protective orders to collect the address(es) and telephone number(s) of the person(s) to be protected. It will also be used in custody and support cases where the party has completed a district court form DC-618, [REQUEST FOR CONFIDENTIALITY - CIVIL](#). Prepare as many copies as will be needed for service and for a file copy to be placed in the district court form DC-622, SEALED DOCUMENTS ENVELOPE.

A copy of the district court form DC-621, [NON-DISCLOSURE ADDENDUM](#) is used by the local law enforcement agency to provide service. It should be stressed that this form should be destroyed following service. If the clerk receives the district court form DC-621, [NON-DISCLOSURE ADDENDUM](#) with returned documents, the clerk should destroy as soon as it is received.

The district court form DC-622, SEALED DOCUMENTS ENVELOPE should be used by the Clerk to seal all required documents. The clerk should indicate which documents are contained in the envelope, including the date that documents were sealed and the clerk of deputy clerk's initials that placed the document in the envelope.