

**REPORT OF THE
SECRETARY OF HEALTH AND
HUMAN RESOURCES ON**

**The Impact of Laws Protecting
Client Confidentiality on
Cooperative Relationships
of Agencies Working to
Address Problems of
Children and Families**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Report on the Impact of Laws Protecting Client
Confidentiality on Cooperative Relationships of Agencies
Working to Address Problems of Children and Families**

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Report on the Impact of Laws Protecting Client Confidentiality on Cooperative Relationships of Agencies Working to Address Problems of Children and Families

I. Introduction

The 1990 General Assembly passed House Joint Resolution 121 (HJR 121, 1990), which directed the Secretary of Health and Human Resources to conduct a study of the impact of laws protecting client confidentiality on the cooperative relationships of agencies which are working to address the problems of children and their families. The General Assembly requested that the study identify legal, administrative and parental barriers to sharing information. Additionally, the study called for recommendations to provide protection for the privacy of children and their families while allowing for the exchange of information between state and local government agencies when such information is reasonably necessary for the provision of services.

House Joint Resolution 121 recognized that the problems experienced by troubled children and dysfunctional families often require the involvement of a number of local agencies, including the courts, schools, mental health, health and social services agencies. The resolution addresses the desirability of addressing these problems through arrangements that bring the various agencies together to provide information and services to these children and families in one place.

Initial concerns that led to the introduction of HJR 121 (1990) include the following:

- Service agencies often do not know if other agencies simultaneously are serving the same client or family members. Under confidentiality requirements, agencies cannot share the names of clients being served.
- Completion of forms for each agency to release information is time consuming and impedes the flow of needed information, resulting in delays in service delivery.
- Many agencies request the same basic client information at admission. Rather than sharing this information, each agency serving the same child or family must obtain this data and conduct necessary verifications.
- Sanctions for the inappropriate sharing of confidential information must be established and enforced.
- Some service agencies appear to “hide” behind confidentiality provisions, preventing other service providers from accessing needed information because of perceptions about potential liability, uncertainty as to the flexibility of existing statutory provisions, or long-standing difficulties in interagency relationships.

II. Study Methodology

In May, 1990, the Office of the Secretary of Health and Human Resources established an interagency workgroup to respond to the requirements outlined in House Joint Resolution 121 (1990). This workgroup included representatives from the Secretary's Office and the Plan of Cooperation Development Committee (POCDC), an interagency group comprised of the following human service agencies and the Board for Rights of Virginians with Disabilities:

- Department for the Aging
- Department for Children
- Department for the Deaf and Hard of Hearing
- Department of Education
- Department of Health
- Department of Housing and Community Development
- Department of Medical Assistance Services
- Department of Mental Health, Mental Retardation and Substance Abuse Services
- Department of Rehabilitative Services
- Department for Rights of Virginians with Disabilities
- Department of Social Services
- Department for the Visually Handicapped.

Representatives from the POCDC were included on the workgroup because the committee had completed an assessment of issues involved in sharing client information among local service agencies in 1989.

On July 16, 1990, the workgroup participated in a meeting with public and private human service agencies, schools and criminal justice agencies serving the Tidewater area. Concerns raised in this region regarding confidentiality requirements had prompted the introduction of the resolution. This meeting, convened by the Honorable Robert P. Frank, Newport News Juvenile and Domestic Relations Court, focused on a wide array of barriers to the effective sharing of client information among multiple agencies serving children and families.

In addition, contacts were made with the Office of the Attorney General, the Department of Youth and Family Services, and the Council on Community Services for Youth and Families to determine the extent to which they had addressed confidentiality issues.

In October, 1990, the Secretary of Health and Human Resources surveyed the Juvenile and Domestic Relations judges in Virginia to ascertain:

- the approximate proportion of clients seen by the court who required services from multiple agencies in FY 90;
- the nature of specific barriers to effective sharing of information experienced by the court and the extent to which these barriers have restricted the exchange of information among service agencies;
- procedures used by courts and local agencies to gain access to information; and
- recommendations for improving the sharing of client information necessary for cooperative relationships between agencies serving children.

A similar survey was distributed by the Department of Youth and Family Services to detention facilities, detention outreach programs, group homes, and crisis runaway emergency programs. Survey results provided the basis for the report recommendations.

III. Recent Activities Addressing Client Confidentiality

A. Plan of Cooperation Development Committee Confidentiality Study

In 1988, at the request of Secretary of Health and Human Resources Eva S. Teig, the Plan of Cooperation Development Committee established a joint state-local work group to examine issues involving the sharing of client related information. In this examination, priority attention was given to:

1. assessing the nature and extent of issues surrounding interagency sharing of client information;
2. identifying specific barriers to information sharing; and
3. providing recommendations for improved sharing of client information within federal, state and local statutes and regulations.

Membership of the state-local work group included representatives from state and local agencies that provide services to persons with physical and mental disabilities. Participating state agencies included the:

- Department for the Aging
- Department of Education
- Department of Health
- Department of Mental Health, Mental Retardation and Substance Abuse Services
- Department of Rehabilitative Services
- Department of Social Services
- Department for the Visually Handicapped

In addition, the following statewide associations of local service agencies nominated a member agency to serve on the group:

- Virginia Association of Area Agencies on Aging
- Virginia Council of Administrators of Special Education
- Local Health Departments
- Virginia Association of Community Services Boards
- Department of Rehabilitative Services Administrative Advisory Committee
- Virginia League of Social Services Executives
- Regional Office of the Department for the Visually Handicapped.

The workgroup conducted an extensive survey of local human service agencies to obtain information from agency directors and direct service staff on the extent to which state and local client confidentiality policies, procedures and practices present barriers to providing fair, efficient and timely services to clients. The survey was distributed to 25 area agencies on aging, 40 community services boards, 135 local school divisions, 124 local social services agencies, 134 local health departments, 140 community rehabilitative services counselors and 6 visually handicapped regional offices as well as the Rehabilitation Center for the Blind.

Information was requested on the frequency and types of difficulties experienced with other local agencies in either requesting or responding to requests for client information. Recommendations were sought for state or local agency actions to improve the appropriate sharing of information at the program level.

The majority of the 562 respondents to the survey reported few difficulties in accessing needed client information from other local agencies. Where difficulties

were noted, the following key issues were raised by local service administrators, clinicians, and other service providers:

- time delays in responding to requests for client information;
- state or federal policies or procedures prohibited sharing client information;
- the client or guardian had not signed a consent form to share information;
- local agency or program either lacked or had confusing policies regarding sharing of client information;
- state policies and procedures for sharing client information were lacking, confusing or inconsistent;
- the requesting agency either did not know or did not follow agency policies and procedures for accessing information; and
- long standing difficulty in relationship between the requesting and responding agency staff.

The final report, Issues Involved in Sharing Client Information Among Local Service Agencies (1989), contained a number of recommendations, including:

- Develop and implement a multi-agency release of information form for use by local service agencies. Specifically, this form should incorporate the recommendations contained in this report and should:
 - ▶ specify basic types of information that could be shared under the form and purposes for which such information could be shared;
 - ▶ set forth requirements related to the use of the form that must be complied with by the participating agencies (i.e., recordkeeping, sharing of procedures between agencies);
 - ▶ have an agency “check-off” format to allow clients to specify those agencies that would (and would not) be able to receive this information.
- Request that the Office of the Attorney General conduct regional seminars on the sharing of client information for local service agencies.
- Request that state human service agencies designate staff who would have expertise in state and federal confidentiality and release of information and that local service agencies designate someone within their agency to serve as a “locus of responsibility” for addressing problems related to the implementation of procedures for assuring appropriate confidentiality and sharing of information (e.g. timeliness of responses).

In response to these recommendations, the Office of the Attorney General, in cooperation with the Plan of Cooperation agency heads, have worked to develop a uniform multi-agency release of information form.

B. Council for Community Services for Youth and Families

In 1990, the Secretaries of Health and Human Resources, Education and Public Safety convened the Virginia Council on Community Services for Youth and Families to increase and enhance community-based services for both children who are in residential facilities or who are at risk of out-of-home placement, and their families. Currently, two work groups of the Council are addressing issues related to confidentiality. One work group is creating a small interagency database to track residential care expenditures. Through the development of this project, the tracking

group is determining how to gather demographic, placement and cost information on children in residential care, with the goal of merging this data across agencies to provide unduplicated information on children.

The second work group is establishing a state-level process to review selected residential placements and to provide technical assistance to communities on the appropriateness of care for individual children. Two interagency positions have been hired and are housed in the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform these functions. Both consultants must have access to individual case files or child-specific information in various local agencies in order to effectively perform their duties. As these activities progress, the Council will review and seek administrative or legal clarification on associated confidentiality provisions.

C. Report of the Joint Subcommittee Studying the Creating of a Clearinghouse for Juvenile "Criminal" Records (1988)

In 1988, a legislative study was conducted to focus specifically on the collection, accuracy and confidentiality of information on the criminal history of juveniles. The study committee, established pursuant to House Joint Resolution 320 (1987), examined the feasibility and desirability of creating a central clearinghouse for criminal history records concerning juveniles. During the course of the study, the joint subcommittee analyzed the methods available "for obtaining prompt, accurate and complete information on a juvenile's previous contact with the court system and the feasibility and desirability of maintaining a confidential record of those contacts."

The subcommittee offered recommendations, including:

- the creation of a centralized, automated system to maintain background information on juveniles who come into the criminal justice system to ensure proper evaluation and disposition;
- the establishment of appropriate safeguards, by statute and regulation, to ensure the security of the system and the confidentiality of the data; and
- continuation and expansion of efforts to improve criminal justice information systems in the Commonwealth, particularly those that affect juveniles, to facility proper evaluation of criminal justice policies.

The Department of Youth and Family Services is in the process of developing an automated tracking system that will contain data on juveniles who are involved in the court services and youth and family services systems. This database will incorporate both client and financial information, including:

- client history, type of offense, services received, facility location; and
- service costs.

This system is expected to be operational by 1993.

IV. Findings

A. Responses from Juvenile and Domestic Relations Court Judges:

To augment the survey information collected from local service agencies by the Plan of Cooperation Development Committee, the Office of the Secretary of Health and Human Resources conducted a survey of the 77 Juvenile and Domestic Relations (JDR) judges in the Commonwealth. Twenty-nine or 37% of the JDR judges responded to the survey. The number of responses by region follow:

**Table 1
Responses by Region**

Region	Number Responses	Region	Number Responses
Central Virginia	4	Southside Virginia	3
Eastern Virginia	7	Southwest Virginia	7
Northern Virginia	5	Valley Virginia	3

In general, almost all of the judges who responded to the survey (92.6%) felt that their local service agencies generally worked well together in serving juveniles in the criminal justice system who require services from multiple agencies.

The JDR judges were asked the extent of difficulties they experienced in FY 1990 in accessing client information from local service agencies, including schools, community services boards, local social service agencies, local health departments and local rehabilitative service agencies. Most judges reported infrequent or no difficulty in accessing client information from agencies. Table 2 provides, by local service agency, a summary of the extent of difficulty in accessing information:

**Table 2
Extent of Difficulties Experienced in Accessing Agencies' Client Information**

Agency	Number Responses	Never Have Difficulty	Infrequently Have Difficulty	Frequently Have Difficulty	Always Have Difficulty
Schools	26	6 (23.1%)	19 (73.1%)	1 (3.8%)	--
CSBs					
Mental Health	28	3 (10.7%)	15 (53.6%)	6 (21.4%)	4 (14.3%)
Substance Abuse	26	6 (23.1%)	16 (61.5%)	3 (11.5%)	1 (3.8%)
Local Social Svs.	28	5 (17.9%)	17 (60.7%)	6 (21.4%)	--
Local Health	23	8 (34.8%)	12 (52.2%)	3 (13.0%)	--
Local Rehab. Svs.	24	9 (37.5%)	14 (58.3%)	1 (4.2%)	--
Other Agencies	20	3 (15.0%)	13 (65.0%)	2 (10.0%)	2 (10.0%)

More difficulties were noted with the community services boards (mental health and substance abuse) and local social service agencies than other agencies; however, even for these agencies, over 60% of the judges who responded stated that they had experienced no or infrequent difficulty in accessing information.

The JDR judges were asked to identify the extent to which the following eleven issues related to confidentiality served as barriers to their court and local service agencies in addressing the needs of children whose cases were before the court. Table 3 provides a listing, in priority order, of the most frequently identified barriers:

Table 3
Extent of Difficulties Experienced in Accessing Agencies' Client Information

Barriers to Sharing Client Information in the Provision of Services to Children and Their Families	Number Responses	Always/ Frequently Barrier	Infrequently/ Never Barrier
1. Delays in providing services by agencies who must physically contact clients' parents or guardians for a release of information form	27	51.9%	48.1%
2. Lack of awareness by one agency that other agencies are serving the client and family	28	46.4%	53.6%
3. Delays in providing services by agencies who must duplicate intake information and verifications	28	37.0%	62.9%
4. General time delays in agencies' responses to requests to share information	28	35.7%	64.2%
5. Difficulty in negotiating another agency's confidentiality procedures	27	33.3%	66.7%
6. Unwillingness of agencies to share information due to potential litigation/liability concerns	28	32.2%	67.8%
7. Lack of knowledge/training as to other agencies' confidentiality and release of information procedures	28	32.2%	77.9%
8. Agencies seem to use confidentiality requirements as an excuse for not sharing information	28	14.3%	85.7%
9. Physical inaccessibility of client records (nights/weekends) because other agency offices are closed	27	11.1%	88.8%
10. Unwillingness or incapacity of parents/guardians to consent to releasing information about their child to other agencies	27	3.7%	96.3%
11. Inappropriate sharing of confidential information by other agency staff	27	3.7%	96.3%

Responding JDR judges focused on delays and inefficiencies resulting from current procedural requirements for release of information (obtaining required signatures, verifications). They also highlighted the lack of awareness that another agency was serving the client and concerns with agencies' difficulties in negotiating agency confidentiality procedures.

The JDR judges were requested to identify barriers or issues that have caused their courts to be reluctant to share information with other local agencies. Among the more frequently mentioned responses were:

- concern that control of confidential information would be lost and that there would be inappropriate sharing and use of this information;
- concern that the information would be used to label and stigmatize the child;
- restrictions on sharing information in state and federal statutes and regulations;
- failure to provide a signed release form; and
- concern with the liability for releasing information.

The survey requested information on procedures used by JDR courts and local agencies in accessing client related information.

Written Agreements: Only one of the 27 judges who responded to this question stated that his local service agencies did not have in place written procedures for accessing client information. One-third, however, did not know if written agreements were in place. Among the agencies known to judges to have written agreements, the most frequently mentioned were: local social services, schools and community services boards. Just over half of the judges (52.4%) felt that these agreements reduced time delays and other barriers to sharing information.

Interagency Teams: All 27 judges who responded stated that their local service agencies had established interagency teams serving juveniles in the criminal justice system. Fifteen (55.6%) of the judges indicated that these teams were using a uniform release of information form and thirteen felt that the teams' use of the form reduced delays and other barriers to sharing information.

Court Orders to Access Information: Eight (29.6%) of the 27 judges who responded stated that they often have to issue a court order for agencies to access client information from other agencies.

Finally, the JDR judges were asked to identify actions that they believed would improve the sharing of client information necessary for cooperative relationships. Following is a summary of the highest ranked recommendations:

- Review confidentiality requirements in Title 16.1 and consider the feasibility of consolidating the various agency provisions into a single statute.
- Develop and implement a multi-agency uniform or standardized release of client information form for certain "need to know" information.
- Develop and implement a common intake form where basic information and income verification is done once and shared with other agencies.
- Have the Office of the Attorney General conduct regional sessions for local service agencies and others on current confidentiality requirements.

Other recommendations included the establishment, as agency practice, of signature requirements, annual conferences of local agencies, and additional forums for the exchange of information.

B. Responses from Youth and Family Services Programs:

The Department of Youth and Family Services (DYFS) surveyed its 17 secure detention facilities, 3 less secure detention programs, 12 detention outreach programs, 9 crisis runaway emergency programs, 4 state operated group homes, 28 group homes and 8 family group homes. The number of responses by program follow:

**Table 4
Responses by Type of Program**

Type of Program	Number Responses	Type of Program	Number Responses
Secure Detention	14 (82%)	State Operated Group Homes	4 (100%)
Less Secure Detention	2 (66%)	Group Homes	22 (78%)
Detention Outreach	7 (58%)	Family Group Homes	7 (87%)
Crisis Runaway Emergency	7 (77%)	TOTAL RESPONSES	63 (77%)

Of these responding programs, 81% felt that local service agencies in their area generally worked well together in serving juveniles in the criminal justice system who require services from multiple agencies.

The DYFS programs were asked the extent of difficulties they experienced in FY 1990 in accessing client information from various local service agencies, including schools, community services boards, local social service agencies, local health departments and local rehabilitative service agencies. As with the survey of JDR judges, most respondents reported infrequent or no difficulty in accessing client information from agencies. Table 5 provides, by local service agency, a summary of the extent of difficulty in accessing information:

**Table 5
Extent of Difficulties Experienced in Accessing Agencies' Client Information**

Agency	Number Responses	Never Have Difficulty	Infrequently Have Difficulty	Frequently Have Difficulty	Always Have Difficulty
Schools	60	14 (23%)	36 (60%)	5 (8%)	5 (8%)
CSBs					
Mental Health	57	7 (12%)	33 (57%)	17 (29%)	--
Substance Abuse	52	9 (17%)	29 (55%)	13 (25%)	1 (1%)
Local Social Svs.	59	14 (23%)	25 (42%)	17 (28%)	3 (5%)
Local Health	48	12 (25%)	26 (54%)	8 (16%)	2 (4%)
Local Rehab. Svs.	27	7 (25%)	18 (66%)	1 (3%)	1 (3%)
Other Agencies	32	6 (18%)	17 (53%)	7 (21%)	2 (6%)

Again, more difficulties were noted with the community services boards (mental health and substance abuse) and local social service agencies than other agencies. Among the most frequently mentioned "other" agencies were court service units and state mental health facilities.

DYFS programs were asked to identify the extent to which the following eleven issues related to confidentiality served as barriers to addressing the needs of children with which they were involved. Table 6 provides a listing, in priority order, of the most frequently identified barriers:

Table 6
Extent of Difficulties Experience in Accessing Agency Client Information

Barriers to Sharing Client Information in the Provision of Services to Children and Their Families	Number Responses	Always/ Frequently Barrier	Infrequently/ Never Barrier
1. General time delays in agencies' responses to requests to share information	56	46%	53%
2. Lack of awareness by one agency that other agencies are serving the client and family	62	40%	59%
3. Lack of knowledge/training as to other agencies' confidentiality and release of information procedures	59	32%	67%
4. Difficulty in negotiating another agency's confidentiality procedures	63	26%	73%
5. Restrictions in agency confidentiality statutes	55	25%	74%
6. Delays in providing services by agencies who must duplicate intake information and verifications	58	20%	79%
7. Delays in providing services by agencies who must physically contact clients' parents or guardians for a release of information form	58	18%	81%
8. Unwillingness of agencies to share information due to potential litigation/liability concerns	58	18%	81%
9. Physical inaccessibility of client records (nights/weekends) because other agency offices are closed	52	15%	84%
10. Unwillingness or incapacity of parents/guardians to consent to releasing information about their child to other agencies	54	11%	88%
11. Inappropriate sharing of confidential information by other agency staff	51	7%	92%

From the perspective of the responding DYFS agencies, the most frequently noted barriers include general time delays, lack of awareness that another agency was serving the client, and lack of knowledge/training about other agencies' provisions regarding confidentiality and the release of client information.

The survey requested information on procedures used by DYFS and other local agencies in accessing client related information.

Written Agreements: Twenty-three or 38% of programs that responded stated that their agency did not have written procedures for accessing client information from other agencies. Of the 35 respondents who said that their agency had written agreements, 30 indicated that these agreements reduced time delays and other barriers to sharing information.

Interagency Teams: Almost three-fourths (72%) of the responding agencies stated that they participated in interagency teams serving juveniles in the criminal justice system. Almost half of these agencies indicated that the teams were using a uniform release of information form. Of the 24 respondents whose teams were using uniform release forms, 20 felt that the form reduced delays and other barriers to sharing information.

Court Orders to Access Information: Seven (13%) of the 52 agencies that responded stated that they often have to request a court order to access client information from other agencies.

Finally, DYFS agencies were asked to identify actions that they believed would improve the sharing of client information necessary for cooperative relationships. Following is a summary of the highest ranked recommendations:

- Develop and implement a multi-agency uniform or standardized release of client information form for certain "need to know" information.
- Review confidentiality requirements in Title 16.1 and consider the feasibility of consolidating the various agency provisions into a single statute.
- Have the Office of the Attorney General conduct regional sessions for local service agencies and others on current confidentiality requirements.
- Develop and implement a common intake form where basic "need to know" information and income verification is done once and shared with other service agencies.

V. Recommendations

Over the past three years, extensive surveys of local human service, education and criminal justice agencies have been conducted to obtain information on the extent to which state and local client confidentiality requirements and practices present barriers to providing fair, efficient and timely services to clients. The initial survey, conducted by the Plan of Cooperation Development Committee in 1988, was distributed to:

- 25 area agencies on aging,
- 40 community services boards,
- 135 local school divisions,
- 124 local social services agencies,
- 134 local health departments,
- 140 community rehabilitative services counselors, and
- 6 visually handicapped regional offices as well as the Rehabilitation Center for the Blind.

Two additional surveys, conducted in 1990 in response to this resolution, were distributed to the 77 JDR judges and all DYFS programs, including:

- 17 secure detention facilities,
- 3 less secure detention programs,
- 12 detention outreach programs,
- 9 crisis runaway emergency programs,
- 4 state operated group homes,
- 28 group homes, and
- 8 family group homes.

Results from these surveys confirmed that the majority of responding human service, education and criminal justice agencies and over 90% of the responding JDR judges believed that local agencies generally worked well together in responding to the needs of clients who required coordinated services from multiple agencies. Most respondents cited infrequent or no difficulties in accessing needed client information from other local human service agencies.

Survey respondents, however, did identify a number of procedural and training issues related to current release of information requirements and practices that have resulted in service delays, duplication of administrative activities and other inefficiencies. In response to these issues, several recommendations are proposed:

1. A multi-agency uniform release of information form (see Appendix III) should be implemented for use by local human resource, education and criminal justice agencies serving children and families.
2. A series of regional seminars for local service agency administrators and clinical staff on state and federal statutory requirements for the sharing of client information should be developed and implemented. These sessions should include:
 - a review of case studies on release of information practices and procedures,

- an orientation on the appropriate use of the multi-agency release of information form, and
 - discussions on specific issues such as: potential liability for good faith disclosures and third party use of information and enforcement of sanctions for violation of confidentiality requirements.
3. Local human service agencies should include a component that describes both their agency's and other local service agencies' confidentiality requirements and release of information procedures as part of their employee orientation and in-service training programs.
 4. An inter-secretarial and interagency memorandum of understanding between the Secretaries of Health and Human Resources, Education, and Public Safety, and appropriate agencies should be developed to clarify appropriate roles and relationships among agencies that serve youth and their families.
 5. The interviews and surveys conducted during the course of this study raised concerns about potentially duplicative and conflicting confidentiality provisions in the Code of Virginia. Accordingly, Juvenile and Domestic Relations judges may want to formally request that the Code Commission review the confidentiality requirements in Title 16.1, as well as other appropriate sections of the Code cited in this report, to determine the feasibility of consolidating and conforming state confidentiality provisions.

Appendix I
HJR 121 (1990)

1990 SESSION

LD4259452

HOUSE JOINT RESOLUTION NO. 121
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Rules
on February 11, 1990)
(Patron Prior to Substitute—Delegate Diamonstein)

Requesting the Secretary of Health and Human Resources, the Secretary of Education, the Department of Corrections, and the Department of Youth Services to study jointly the impact of laws protecting client confidentiality on the cooperative relationships of agencies which are working to address the problems of children and their families.

WHEREAS, the problems experienced by children and their families often require the cooperation of a number of local agencies, including the courts, the schools, and mental health and social services agencies; and

WHEREAS, it would be desirable to address these problems through programs which bring these various agencies together to provide information and services to children and families in one place; and

WHEREAS, state and federal confidentiality laws in some instances prohibit the appropriate flow of information between agencies that is needed for management of cases requiring interagency cooperation; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Secretary of Health and Human Resources, the Secretary of Education, the Department of Corrections, and the Department of Youth Services are requested to study jointly the impact of laws protecting client confidentiality on the cooperative relationships of agencies which are working to address the problems of children and their families. The Secretaries and the Departments shall develop recommendations which provide protection for the privacy of children and their families but which allow exchange of information between agencies when such is reasonably necessary for the provision of services by state or local government agencies. The Secretaries and the Departments shall consult with state and local agencies including but not limited to those providing educational, mental health, social, rehabilitative, and judicial services. Such agencies shall cooperate with the Secretaries and the Departments in the conduct of the study.

The Secretaries and the Departments shall complete their work in time to submit their findings and recommendations to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Official Use By Clerks	
Agreed to By	Agreed to By The Senate
The House of Delegates	
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
with amendment <input type="checkbox"/>	with amendment <input type="checkbox"/>
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Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

Appendix II
Relevant State and Federal Confidentiality Requirements
for Agencies Serving Children and Families

Relevant State Agency Statutory Provisions on Confidentiality

Department of Education

§ 22.1-287 - Records concerning a particular pupil shall not be released to anyone except under judicial process unless that person is the parent or guardian of such pupil or other school or law enforcement officer enumerated under the statute. The restrictions on release of information shall not apply to qualified situations involving research, United States military service, and employees of the local department of welfare or social services when determining the eligibility of the pupils family for assistance.

§ 22.1-287.1 - Notwithstanding §§ 22.1-287 and 22.1-288, directory information may be released in accordance with federal law and Board of Education regulations, including information on name, age, address, sex, etc. of the pupil.

§ 22.1-288 - Notwithstanding § 22.1-287, public school principals may furnish the names and addresses of present or past pupils to institutions of higher learning, potential employers, or the United States military for educational or career opportunities.

§ 22.1-289 - The cumulative record of a pupil shall be transferred to the school division to which a pupil transfers if a request for such cumulative record is received from that school division. The Board of Education may adopt regulations concerning the transfer of cumulative records from one school division to another.

20 U.S.C. § 1232g - Family Educational Rights and Privacy Act of 1974.

Institutions which receive federal funds cannot deny to parents the right to inspect the education records of their children. Educational agencies shall establish appropriate procedures for acquiring access to the records.

"Education records" include information directly related to a student and maintained by the institution. "Education records" do not include records of instructional, supervisory, and administrative personnel; medical records on a student who is eighteen years of age or older, or who is attending an institution of post secondary education, which are made or maintained by a medical professional or paraprofessional.

§ 1232g (a) (b) (1) - Certain school officials may have access to records without parental consent.

§ 1232g (a) (6) (b) (2) (A) - Written consent is required of parents when the institution intends to release information which may personally identify the student or the parents.

Department of Health

§ 32.1-40 - The Commissioner or any of his agents to examine the medical records in the possession of every practitioner of the healing arts and every person in charge of any medical care facility.

§ 32.1-41 - The Commissioner or his designee shall preserve the anonymity of each patient and practitioner of the healing arts.

§ 32.1-69 - Disclosure of results of screening are confidential records. This information shall be sent to the person tested, the attending physician, the

parents of minors (under 18). Results may be used for research and collective statistical purposes. The Commissioner or his agents may access the screening results of subjects. All other persons requesting screening results of persons must obtain explicit permission from the subject or his parent if he is a minor.

§ 32.1-69.2 - The Commissioner and all other persons who receive information pursuant to 32.1-69.1 shall keep such information confidential. Publication shall be made only in statistical or other studies which do not identify individuals.

§ 32.1-71 - Information supplied for publication of studies must be released in statistical form, keeping the information confidential.

§ 32.1-271 - It shall be unlawful for any person to permit inspection of or to disclose information contained in vital records except as authorized by regulations of the Board or when so ordered by a court of this Commonwealth. It may be disclosed for valid research.

§ 32.1-272 - In accordance with § 32.1-271 vital records may be released upon request provided the identity of the subjects are not released.

Other federal, state and local, private or public agencies in the conduct of their official duties may, upon request and payment of a reasonable fee, be furnished copies or other data from the system of vital records for statistical purposes or administrative purposes. Must use information for the purpose for which it was requested.

Department of Mental Health, Mental Retardation and Substance Abuse Services (Mental Health Generally)

Chapter 12 - Disclosure of patient information to third party payors by professionals

§ 37.226 - A patient who has requested that a professional submit a bill to a third party for payment under a contract or policy of insurance covering, such patient shall be deemed to have consented to the disclosure of a specific amount of information regarding this type of illness, treatment, status and other information to such third party.

§ 37.1-227 - Disclosure of additional information. May be required by third party doctor in order to settle a claim. All information must be kept confidential.

§ 37.1-228 - No third party payor shall disclose information about a patient without his consent unless adjusting rate costs, the third party participates in a coordination of benefits program, etc.

§ 37.1-229 - Form of Consent - Consent requires exposure of persons to whom disclosure is to be made, the nature of information, purposes of the information, and inclusive dates. Consent may be revoked any time before it is relied upon.

Department of Rehabilitative Services

§ 51.01-11 - Information contained in the registry maintained by the Department, including the identification of persons who sustain spinal cord injuries other than through disease and those sustaining brain damage if permanent disability is likely to result, is not subject to the Virginia Freedom of Information Act (§ 2.1-340 *et seq.*); it is confidential for purposes other than those endemic to the administration of State agencies or information needed

for research related to persons with disabilities, as long as the information is used solely for the purposes for which it was provided, that it is released only to persons connected with the study, and the final product does not identify any person who has not provided consent.

Department of Social Services

§ 63.1-1:1 - Authority of the Department to request and receive information from other agencies; the Department may request and receive information from the records of all departments, boards, bureaus and agencies of the state to carry out its purpose.

§ 63.1-52 - Local Boards shall furnish such reports as are necessary to the Department.

§ 63.1-53 - All records and statistical registries of the Department of Social Services are confidential and not subject to disclosure except to the Commissioner of Social Services and the Commissioner of the Department for the Visually Handicapped, and their authorized agents.

§ 63.1-54 reports of investigations to determine if individuals in need of protective services or other evidence or information obtained through the investigation is confidential and not subject to the FOIA; appropriate disclosure of non-identifying information may be made in accordance with regulations of the Department.

Department of Youth and Family Services

§ 16.1-300 - Social, medical, psychiatric and psychological reports and records of children committed to the Department of Youth and Family Services shall be confidential and available to specified persons, including court members and staff, public and private agencies providing treatment, the child's parent, legal guardian or person standing in loco parentis, the child's attorney, any state agency monitoring or auditing the use of federal funds and the program's effectiveness, anyone ordered by the court, and persons designated by the agency to evaluate its work.

Records may with withheld from parents, et. al., by the Department with concurrence from the local Juvenile and Domestic Relations Court when disclosure of the information may be harmful to the child.

Also outlines provisions for responding to parents' et. al., request for information when the agency determines that it shall be withheld.

§ 16.1-301 - Requires law enforcement personnel to take special precautions to ensure that law enforcement records concerning a child are protected against disclosure to any unauthorized person. Records should be available only to the courts, public and private institutions or agencies providing treatment, certain law enforcement officers and agencies, and other persons through court order.

§ 16.1-303 - Information gathered by court officials shall be privileged and withheld from anyone other than the judge, except as ordered by the court.

§ 16.1-305 - Juvenile court records, including descriptive reports about the children's cases (see § 16.1-300) shall be filed separately from adult records. Records shall be open to the judge and court staff, the representatives of the public or private agency providing supervision, having legal custody, or providing evaluation or treatment, the attorney for any party, and other persons with a legitimate interest as ordered by the court.

§ 16.1-307 - Circuit court records shall be subject to the same provisions as those for the juvenile and domestic relations court judges.

§ 16.1-309 - B. The provisions of this section shall not apply to any law enforcement officers and school employees who provide information concerning a juvenile who is suspected of committing or has committed a delinquent act within the jurisdiction of the juvenile court. Disclosure is restricted to school personnel, may only concern a delinquent act that has met certain criteria and is committed or alleged to have been committed on school property during a school sponsored activity or on the way to or from the activity, and is solely to enable school personnel to take appropriate disciplinary action.

Department for the Visually Handicapped

§ 63.1-71.1 - Information contained in the register required to be kept by the Department, including the names, condition, cause of blindness, etc. for visually handicapped persons, shall be confidential for purposes other than those related to the administration of the Department or other State agencies. Information needed for research purposes may be made available to those persons or organizations directly related to visually handicapped programs as long as the information is used only for the purposes for which it is provided; that it is released only to persons connected with the study, and the research product does not reveal the identity of any person who has not furnished consent for the information released.

Department for the Deaf and Hard of Hearing

§ 63.1-85.5 - Department of Health maintains a list of deaf people in the Commonwealth; the Department of Health shall make that information available to several agencies connected with the deaf or can make it available to individuals or organizations for research purposes if the information will only be used for those purposes.

Relevant Statutory Provisions

Virginia Freedom of Information Act	§ 2.1-340
Privacy Protection Act of 1976	§ 2.1-377
Federal Freedom of Information Action	5 U.S.C. § 552 <u>et seq.</u>
Privacy Act of 1974	5 U.S.C. § 552a
Family Educational and Privacy Rights Act of 1974	20 U.S.C. § 1332 (g)

Specific Agency Statutory Provisions

Department of Education	§ 22.1-287 § 22.1-287.1 § 22.1-288 § 22.1-289
Department of Health	§ 32.1-40 § 32.1-41 § 32.1-69 § 32.1-69.2 § 32.1-70 § 32.1-71 § 32.1-271 § 32.1-272
Department of Mental Health, Mental Retardation and Substance Abuse Services (Mental Health Generally)	§ 37.1-225 through § 37.1-233
Department of Rehabilitative Services	§ 51.01-11
Department of Social Services	§ 63.1-1.1:1 § 63.1-53 § 63.1-55.4
Department of Youth and Family Services	§ 16.1-300 § 16.1-301 § 16.1-303 § 16.1-305 § 16.1-307 § 16.1-309
Department for the Deaf and Hard of Hearing	§ 63.1-85.5 (c)
Department for the Visually Handicapped	§ 63.1-71.1

Examples of Relevant Federal Regulations

Department of Health and Human Services

- Confidentiality of Alcohol and Drug Abuse Patient Records 42 C.F.R. 2
- Medicaid Program - State Administration 42 C.F.R. 431
- Medicare Program 42 C.F.R. 401
- Protection of Identity of Research Subjects 42 C.F.R. 2a

Department of Education

- Privacy Rights of Parents and Students 34 C.F.R. 99
- Assistance to States for education of handicapped children 34 C.F.R. 300
- Student Rights in Research, Experimental Programs and Testing 34 C.F.R. 98
- Office of Specific Education and Rehabilitative Services 34 C.F.R. § 300.560

Committee for Purchase from the Blind and Other Severely Handicapped

- Privacy Act Rules - 41 C.F.R. § 51-8

Appendix III
Proposed Uniform Consent Form for Sharing Client Information Among
Service Agencies

Proposed Consent to Release Information Form

I, _____

(name and address)

understand that the following agencies provide services for which I may be eligible:

- Area Agency on Aging
- Local School System
- Community Services Board
- Local Department of Social Services
- Court Services Unit of the Department of Corrections
- Local Department of Rehabilitative Services Agency
- Local Health Department
- Local Social Services Agency
- Regional Office of the Department for the Visually Handicapped
- Other: _____
- Other: _____

I, _____, further understand that these agencies would be better able to determine my eligibility for services and to coordinate the delivery of such services to me if they were free to share information about me that might otherwise be considered confidential.

Accordingly, provided the following conditions are met, I hereby consent to the release, by any of the above agencies which I have checked to any of the other listed agencies which I have checked, of any information maintained about me, including information developed and placed in my records after this consent is given but before it expires:

1. Information regarding my diagnosis which is needed to establish my eligibility for an agency's services. I expressly do not consent to release any information about my treatment, or to release of any medical or mental records related to my treatment.
2. Any information which is shared among the agencies that have been checked above will be used only in deciding whether I am eligible to receive services and in deciding what services I should receive.
3. The information which is shared among the agencies checked above will be kept confidential by them and, except as authorized by law, will not be disclosed to any other person or agency without my express written consent.
4. All of the agencies seeking to share information which I have checked above have in place a system that provides a written record I can review on request which identifies any information disclosed to another agency, the agency to

which it was disclosed, the purpose of the disclosure and the date of the disclosure.

I understand that I am not required to sign this consent to release information in order to receive services for which I am otherwise eligible from any of the agencies listed above.

I further understand that I am free to revoke this consent at any time and that this consent will expire one year from the date of the signature below, if not sooner revoked.

Finally, I understand that by signing this consent form, I am waiving any right I may have to be informed each time a disclosure is made by one of the agencies checked above to another of the agencies checked above.

(Signature of Service Recipient)

By: _____
Parent, Authorized Representative or Other
Legal Guardian

Date: _____

Witness: _____

Name

Title

Agency