REPORT OF THE
VIRGINIA STATE CRIME COMMISSION ON

Release of Information on Juvenile Felons

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 22

COMMONWEALTH OF VIRGINIA
RICHMOND
1992

COMMONWEALTH of VIRGINIA

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

F. L. RUSSELL
EXECUTIVE DIRECTOR

VIRGINIA STATE CRIME COMMISSION

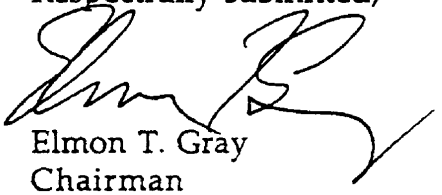
General Assembly Building

December 10, 1991

TO: The Honorable L. Douglas Wilder, Governor of Virginia, and Members of the General Assembly:

Senate Joint Resolution 212, adopted by the 1991 General Assembly, directed the Virginia State Crime Commission to "study the expansion of the existing authority to release identifying information about juveniles and the instances under which such release would be in the public interest." On December 10, 1991, the Virginia State Crime Commission adopted the report on the release of information concerning juveniles charged with certain felonies, approved it for publication and requests that the Governor and General Assembly adopt the recommendations therein. I have the honor of submitting herewith the Virginia State Crime Commission report in response to Senate Joint Resolution 212.

Respectfully submitted,



Elmon T. Gray
Chairman

ETG:dgs

Enclosure

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION 1991

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Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

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Robert F. Horan, Jr.
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Attorney General's Office:

H. Lane Kneedler

Drug Issues Subcommittee

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Delegate James F. Almand
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Study of the Release of Information Concerning Juveniles
Charged with Certain Felonies

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This project was supported in part by Grant No. 91-A7951 AD awarded by the Department of Criminal Justice Services. The opinions, findings and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Virginia Department of Criminal Justice Services or the U. S. Department of Justice.

Study of the Release of Information Concerning Juveniles Charged with Certain Felonies

I. Authority for Study

During the 1991 General Assembly session, Senator Elliot S. Schewel of Lynchburg successfully patroned Senate Joint Resolution 212, directing the Virginia State Crime Commission to study the release of information concerning juveniles charged with certain felonies. SJR 212 specifically requested that the Commission "study the expansion of the existing authority to release identifying information about juveniles and the instances under which such release would be in the public interest." (See Appendix A.)

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission "to study, report, and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in Section 9-125, and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of release of information concerning juveniles charged with certain felonies.

II. Members Appointed to Serve

At the April 16, 1991 meeting of the Crime Commission, Chairman Senator Elmon T. Gray of Sussex selected Delegate Raymond R. Guest, Jr. to serve as Chairman of the Drug Issues Subcommittee studying the release of information concerning juveniles charged with certain felonies. The following members of the Crime Commission were selected to serve on the subcommittee:

Delegate Raymond R. Guest, Jr., Front Royal
Delegate James F. Almand, Arlington
Mr. Robert C. Bobb, Richmond
Senator Elmon T. Gray, Sussex
Mr. H. Lane Kneedler, Attorney General's Office
Speaker A. L. Philpott, Bassett
Rev. George F. Ricketts, Sr., Richmond

III. Executive Summary

SJR 212 requested an examination of juvenile confidentiality laws to allow law enforcement agencies to release some information from confidential juvenile law enforcement records to the media without judicial approval. Law enforcement agencies have become frustrated by the local media's use of information on juvenile offenders, obtained from the public, when the police department could not officially release such information.

Through the course of the study, it was found that the local relationship among the media, the courts and law enforcement agencies is the determining factor in whether a problem exists concerning access to confidential juvenile information. Discussions with some juvenile court judges revealed the existence of local agreements with the media to attend juvenile court proceedings, on the condition that identifying information about the juvenile subject of the hearing would not be released publicly. However, juvenile public defenders in other locales reported concern over uncontrolled release or release without court permission of confidential juvenile information that caused irreparable damage for the juvenile and his or her family.

A review of Virginia law indicated that, on the narrow question posed in SJR 212, there is sufficient latitude in the present law to allow the release of some law enforcement and court record information to the media as concerns juveniles. Additionally, there does not appear to be a state-wide need at this time to relax juvenile confidentiality laws pertaining to release of information to benefit the media.

However, in "Pandora's box" fashion, this study has opened up questions on a much broader range of juvenile confidentiality issues. Most of the concerns heard by the Commission centered on the need for school officials to know more court and law enforcement information about young offenders who are in the schools. Additionally, school counselors who receive confidential information from students are not sure whether the right of the parents to know about their child is greater than the child's right to confide in a counselor.

Therefore, the recommendations from this study do not suggest changes in the law for the sake of providing more information to the media absent court approval. The major recommendation is further study by the Commission in 1992 of the "need to know" issue and the sharing between certain service agencies of confidential information concerning a juvenile offender.

SJR 212 recommendations:

Recommendation 1: The Virginia Press Association and the Virginia Broadcasters Association should provide information at annual association meetings to promote media understanding of juvenile confidentiality laws.

Recommendation 2: The Virginia Press Association and the Virginia Broadcasters Association should encourage the development of agreements between local media and juvenile court judges concerning media courtroom attendance and publication of identifying information from juvenile court proceedings.

Recommendation 3: Local sheriffs and police chiefs should meet with juvenile court judges within their jurisdictions to develop memoranda of agreement concerning the release of information pertaining to juvenile offenders.

Recommendation 4: The Virginia State Crime Commission, in conjunction with local law enforcement agencies, court service units, juvenile court judges, state and local education agencies and parent associations, should study juvenile confidentiality laws and the sharing of information concerning juvenile offenders among those agencies, and report to the Governor and General Assembly by December, 1992.

IV. Study Goals/Objectives

Based upon the requirements of SJR 212, the following issues and objectives were presented to the Subcommittee for consideration:

- Determine whether certain information contained in confidential juvenile records should be made available to certain agencies and the media;

- Determine whether present law in Virginia should be changed to allow for access to confidential juvenile records by appropriate agencies and the media;

The Commission pursued the following activities in furtherance of the above-mentioned objectives:

- Received testimony from interested agencies and associations including law enforcement, public schools, courts, media and the Virginia Parent/Teacher State Association in order to address concerns pertaining to the confidentiality of juvenile law enforcement and court records;

- Reviewed the relevant sections of the Code of Virginia to analyze present juvenile record confidentiality provisions, and considered developing recommendations for amending the Code to allow certain confidential information about a juvenile to be made available to the media and certain agencies;

- Developed administrative recommendations that encourage better working relationships between the media, courts and law enforcement agencies related to releasing information about juvenile offenders and delinquents.

V. Background

Senate Joint Resolution 212 directed the Commission to study the expansion of the existing authority to release identifying information about juveniles charged with certain felonies, and the instances under which such release of information would be in the public interest. Senator Schewel patroned this study resolution at the request of the Lynchburg Chief of Police, Joseph Seiffert. Chief Seiffert requested a review of Article 2, Chapter 2 of Title 16, Part I, of the Code of Virginia to determine those instances in which release of confidential information concerning a juvenile felon would be appropriate and in the public interest.

Chief Seiffert and Lynchburg Police Commander David Weeks, testifying before the Commission, requested an amendment to Code of Virginia §16.1-299 to allow law enforcement agencies to release the names of juveniles upon request to the media and other agencies. (Code of Virginia §16.1-299 outlines those crimes for which juveniles can be fingerprinted and photographed.)

Chief Seiffert testified that young offenders are too protected by juvenile confidentiality laws, and that the public has a right to know who has been accused of committing a heinous crime in Virginia. He indicated that, in Lynchburg, armed robberies and firearms violations by juveniles are on the increase, and that the public, as well as certain school personnel and private counselors, should have access to information about juveniles charged with serious crimes. (See Appendix B.) Chief Seiffert contended that juvenile confidentiality laws which were designed to protect young offenders from being permanently stigmatized are outmoded when used to protect juveniles who commit serious crimes.

Chief Seiffert listed the following reasons for releasing the names of some juvenile offenders:

- "Some parents may try and do a better job with our young people if they knew their names were going to be released to certain agencies or to the news

media;"

- "The schools definitely have a need to know if young people are arrested for carrying weapons or, in some cases, if they are arrested for drug violations;" and

- "Parents may need to know about certain children within their city that have been arrested for various crimes in order to protect their own children from running with or becoming victims of certain individuals."

On April 16, 1991, Commander David Weeks addressed the Virginia State Crime Commission about the changing nature of youth crime in today's society. Commander Weeks stressed that the current juvenile laws were designed for the protection of juveniles, with the assumption that children will commit foolish acts that may violate the law. The confidentiality provisions in the Code were designed to encourage the rehabilitation of a young offender and prevent adult criminal behavior. However, according to Commander Weeks, when schools are not informed about the activities of a child who has a record of violent or dangerous behavior, school personnel cannot best serve the needs of the child, or protect the interests of other children in the schools.

Commander Weeks testified that it may be in the public's best interest to know when a child who has a record of drug dealing, carrying weapons or a history of violent behavior has been released in the community. Potential employers are particularly concerned about hiring juveniles who have been arrested for criminal activities. He added that law enforcement agencies believe that they have an obligation and responsibility to inform the public about dangerous persons, whether juvenile or adult.

On August 14, 1991, the Virginia Association of Chiefs of Police, at its annual conference, unanimously adopted a resolution supporting the release of certain confidential juvenile record information without a court order. (See Appendix C.) The Association resolved that the "release of the names of juveniles, age 13 and older, arrested for crimes enumerated in Section 16.1-299, Code of Virginia, as well as arrests involving the use of firearms and the sale of illegal drugs is in the best interest of the Commonwealth." The Association based its resolution on its report of a 15.7 percent increase in juvenile arrests in Virginia for serious crimes from 1984 to 1990, and a concern that "early involvement in crime is a major factor in producing career criminals."

Concern was expressed by the Virginia Parent/Teacher State Association in public testimony before the Drug Issues Subcommittee on July 10, 1991 in Roanoke. Virginia PTSA Education Chairman Deloris Delaney testified that reducing the confidentiality provided in the juvenile code will have a negative impact on a juvenile's right to privacy, and deny parents the right to control what type of

information is made available to third parties about their children.

The Virginia Parent/Teacher State Association (Virginia Congress of Parents and Teachers) in 1991 adopted two position resolutions concerning the confidentiality of juvenile court and school records. (See Appendix D.) The resolutions reflect the concern of the Association that trends are developing toward more invasiveness and less privacy concerning juvenile records, and the growing willingness to remove the right of the parents as decision-makers in regard to information about their child. The Virginia PTSA resolutions discourage the weakening of childrens' privacy rights, and encourage the strengthening of the systems that protect the rights and promote the needs of children. The Association's position is that "confidentiality protects a youth's right to privacy, avoids stigmatization, and allows the process of education and rehabilitation to occur."

There are concerns that, if confidentiality provisions in the Code are lessened, parents and guardians will not be able to control what information is released to the public or third parties about their children. Persons who are responsible for the welfare of juveniles have a right to make decisions, including the release of confidential information, that affect the welfare of a child.

In 1974, the U. S. Congress adopted the Family Educational Right and Privacy Act (FERPA), 20 U.S.C. §1232g, to ensure that parents of students and students themselves (over the age of 18) would have the right to review and inspect student educational records. Before educational institutions can release confidential information about a juvenile, they must have uniform procedures in place to allow a third party to access records. FERPA does allow some school officials to have access to confidential juvenile school records without first receiving the permission of the child's parents. However, before the educational institution can release information from a child's records that could identify the child or his parents, the school must obtain the written permission of the parents.

Recently, the National School Safety Center, which was established by the Office of the President, recommended a revision in FERPA so that confidential information about juveniles could be shared between agencies that serve children. The Virginia Parent/Teacher State Association opposes the recommended changes that could abrogate the privacy rights of children and families. According to the Virginia PTSA, the efforts to keep a child's school records confidential parallel the Association's concern that other juvenile records, such as court and law enforcement records, also remain confidential.

Commission staff met with Virginia Beach City Public School guidance counselors to discuss the problems they face in dealing with children in the public schools who have been arrested and/or charged with serious crimes. Many of the guidance counselors reported that juvenile probation officers will not discuss a

child's case with the child's school counselors for fear that confidentiality laws will be violated. However, guidance counselors say that having access to some types of information about juvenile offenders would help them to design education programs for these children and better monitor their needs as students. This is an even greater concern for schools since the compulsory education law in Virginia now requires students to attend school until the age of 18. (Code of Virginia §22.1-254.)

The presence of potentially violent and criminally-involved juveniles in the public schools is of increasing concern to school administrators, particularly in the urban areas where youth-involved crime is prevalent. School administrators are concerned about protecting all of their students, and feel that they are best equipped to do so when they are well-informed on all aspects of a juvenile's behavior.

The role of the media in releasing the names of juvenile offenders is one of cooperation with law enforcement agencies and the courts. Many states have media guidelines under which newspapers and radio and television stations agree not to use the name of a juvenile offender unless it has been officially released. Commission staff met with media professionals, and scheduled public testimony on the role of the media in the public dissemination of information about juvenile felons. Mr. Alexander Wellford, counsel for the Virginia Press Association, testified that amendment of existing statutes could enhance public safety without significantly compromising the interests of juveniles. Mr. Wellford recommended that criminal histories should be released for all juveniles involved in gun-related offenses, and that the age for release of information in these cases should be reduced from fifteen to thirteen. According to Mr. Wellford, the seriousness of handgun possession by a juvenile suggests the need for consideration of such a requirement.

Information gathered by Commission staff from selected juvenile court judges in Virginia indicates that juvenile court judges have dealt with the issue of release of information and access to juvenile court in varying ways. Some judges have standing agreements with local print and broadcast journalists to allow them to attend certain juvenile court proceedings on the condition that identifying information about the juvenile subject of the case is not publicly released. Other judges allow the media to attend juvenile court proceedings on a case-by-case basis, depending on the degree of public interest in the case. When media is allowed to attend, the juvenile court judge may require that certain identifying information about the juvenile not be released publicly. Presently, when a media representative wants to access juvenile court and law enforcement record information, he must petition the court for such release, which can be authorized by the judge when the judge determines that such release is in the public interest.

VI. Discussion of Federal Law and Code of Virginia Sections

The federal Juvenile Delinquency and Prevention Act, 18 USCS §§ 5031 et seq., requires that records of juvenile delinquency proceedings in federal district courts be kept confidential. (See Appendix E for complete section.)

The following sections of the Code of Virginia address the confidentiality of juvenile law enforcement and court records: (See Appendix E for complete sections.)

- **§16.1-299**: Allows a law enforcement agency to fingerprint and photograph a juvenile age 15 or older who is charged with a delinquent act which would be a felony if committed by an adult. Juveniles age 13 and older may be fingerprinted and photographed by law enforcement agencies when charged with certain violent acts, including rape, arson, murder and robbery, among others. If a child is found not guilty or a petition is not filed, then all copies of the fingerprints and photographs taken by the law enforcement agency must be destroyed. Copies of the juvenile's fingerprints must be forwarded to the Central Criminal Records Exchange if the child is found guilty by a circuit court or adjudicated delinquent by the juvenile court for the above-described offenses. This section does not allow for the public release of the identity of juveniles charged with felonies, or charged with delinquent acts that would be felonies if committed by an adult.

- **§16.1-300**: Requires that Department of Youth and Family Services records of children be confidential, and released for inspection only to those agencies and persons specifically listed in the section. The Department maintains social, medical, psychiatric and psychological records of children committed to the Department. Absent a court order, only judges, prosecuting attorneys, probation officers, court professional staff, professional treatment specialists, the child's parents or legal guardian, the child's attorney, the child himself and any state agencies providing funds to the Department that are required by the federal government to monitor the Department's programs may inspect the Department's records on juveniles. However, if a person or agency can show a legitimate interest in the child's case, the judge may issue an order to allow the person or agency to have access to the child's records. The Department is authorized by law, when the court concurs, to withhold any portion of a child's records from inspection by the child's parents or guardian when the Department determines that "disclosure of such information would be detrimental to the child."

- **§16.1-301**: Requires that law enforcement records concerning children be kept confidential, and allows such records to be inspected only by the persons and agencies specifically listed in the section. Police chiefs and county sheriffs must keep juvenile delinquency records separate from adult criminal records. Law enforcement agencies may open their records to the courts, juvenile correctional

agencies and officers and to certain agencies that may supervise the child after his release. A law enforcement agency may release information from a juvenile's record to another law enforcement agency, the child's parents, guardian or attorney, or to an individual or agency with a legitimate interest in the child's case, but only by order of the court. However, a police chief or county sheriff may share limited juvenile arrest information (name, address, physical description, date of arrest and the charges) with each other or with state and federal law enforcement officials. The receiving agency only can use the information in the course of a current investigation, and cannot create new files or records on individual juveniles based on the information received from another agency.

• **§16.1-302**: Excludes the general public from all juvenile court hearings, admitting only such persons as the judge shall deem proper. The juvenile court judge may decide to allow the media to attend any juvenile court proceeding, but can condition attendance on the media's agreement not to reveal the identity of the child. A child has the right to be present and the right to a public hearing when the hearing is held for the purpose of adjudicating the alleged violation of any criminal law, or law defining a traffic infraction.

• **§16.1-303**: Any information collected on a juvenile by court officials and employees is confidential and may be shared only with the judge absent a court order. However, if the information received by the court official or employee is that a juvenile has committed a crime which would be a felony if committed by an adult, then that official or employee must report the information to the Commonwealth's attorney or the police in the county, city or town where the offense occurred.

• **§16.1-305**: Requires that court records of juvenile delinquents are confidential, and may be inspected only by the courts, parents or guardians, child's attorney and certain service agencies that supervise the child or have custody of the child. Juvenile court records, just like juvenile law enforcement records, must be kept separate from adult records. Persons who can show a legitimate interest in the child's case may inspect the court records upon order of the judge.

• **§16.1-307**: When a child is certified to circuit court on criminal charges, the child's circuit court records are open to public inspection only in accordance with the provisions of §16.1-305. The records of a child certified to circuit court must be kept separate from all other records and files of the circuit court.

• **§16.1-309**: Provides that an individual who, without authorization, discloses information from confidential juvenile records is guilty of a Class 3 misdemeanor. An exception is made for law enforcement officers and school employees who disclose identifying information about a juvenile who has committed a delinquent act on school property. This exception was created for the sole purpose of enabling school personnel to take appropriate disciplinary action

within the school setting against the juvenile.

• **§16.1-309.1**: Allows a judge to make the name, address and nature of the offense committed by a child to be made public when the judge determines that it is in the public's interest to release such information. The act committed by the child must have been one which would have been a Class 1, 2 or 3 felony, forcible rape or robbery if committed by an adult, or in any case where a child is sentenced as an adult in accordance with §16.1-284. If a child charged with a delinquent act that, for an adult, would be a Class 1, 2 or 3 felony, forcible rape or robbery, becomes a fugitive from justice, the Commonwealth's attorney may petition the court to release identifying information about the juvenile to expedite his apprehension. This information then can be made public by order of the court.

Under §16.1-209.1, a judge in his discretion may determine when the release of identifying information about a juvenile delinquent may be publicly released. The Code requires that the judge determine when such release is in the public's interest. The Code does not presently allow a police chief or sheriff to assess public interest and release confidential juvenile record information without the permission of a judge.

VII. Findings and Recommendations

Findings:

At the present time, based on information received from juvenile court judges and officials, there appears to be sufficient latitude in Virginia law for the media to access confidential court and law enforcement records concerning juvenile offenders and delinquents. The Code of Virginia vests all authority for the release of such information in the judge of the relevant juvenile or circuit court. Prior to release of such confidential information by a police chief or sheriff to the media or general public, an order must be obtained from the judge. The judge must weigh the need and interest of the public against the privacy interests of the juvenile offender or delinquent before determining that confidential juvenile record information should be released. Release of confidential juvenile record information purely for the benefit of the media and the public fails to take into account the irreparable damage to the juvenile and his family that can occur because of possible stigmatization and rejection by persons, agencies, businesses and schools.

The confidentiality provisions in the Code of Virginia pertaining to juvenile records share a common intent and goal: that the welfare of the child is of paramount concern to the Commonwealth, and that efforts should be made to rehabilitate a delinquent child to prevent the child from engaging in criminal activities as a adult. To this rehabilitative end, the confidentiality provisions in the juvenile laws were written to avoid stigmatizing a child at a young age for acts of a

criminal or delinquent nature. Release of information about a child who has violated the law can hamper efforts to rehabilitate and educate a child who still can become a productive, law-abiding citizen of the Commonwealth.

However, there are a small number of juveniles who commit heinous crimes that present a real threat to society as a whole. In such cases, judges may decide that public release of the juvenile's identity is more important to protect the public interest in prevention and prosecution of serious crimes than the child's right to confidential treatment by the courts and law enforcement agencies. It is important that judges, police chiefs and sheriffs and the media recognize the need to uphold the confidentiality provisions of the juvenile laws to protect the many children who make mistakes for which they should not be labeled for life. Cooperative working relationships among judges, law enforcement officials and media representatives who understand the remedial and protective purpose of juvenile confidentiality laws remains the best means for facilitating the release of confidential juvenile record information when it is appropriate and beneficial to the child and the general public.

Recommendation 1: The Virginia Press Association and the Virginia Broadcasters Association should provide information at annual association meetings to promote media understanding of juvenile confidentiality laws.

Recommendation 2: The Virginia Press Association and the Virginia Broadcasters Association should encourage the development of agreements between local media and juvenile court judges concerning media courtroom attendance and publication of identifying information from juvenile court proceedings.

Recommendation 3: Local sheriffs and police chiefs should meet with juvenile court judges within their jurisdictions to develop memoranda of agreement concerning the release of information pertaining to juvenile offenders.

Recommendation 4: The Virginia State Crime Commission, in conjunction with local law enforcement agencies, court service units, juvenile court judges, state and local education agencies and parent associations, should study juvenile confidentiality laws and the sharing of information concerning juvenile offenders among those agencies, and report to the Governor and General Assembly by December, 1992.

VIII. Acknowledgements

The members extend special thanks to the following agencies and individuals for their cooperation and valuable assistance to this study effort:

Senator Elliot Schewel, of Lynchburg

City of Lynchburg Police Department
Chief Joseph M. Seiffert
Commander David Weeks

Lynchburg Daily News and Advance
Billy Cline, Executive Editor

Roanoke City Juvenile and Domestic Relations Court
The Honorable Philip Trompeter, Chief Judge

Roanoke City Public Schools
Ann Harmon, Ombudsman
Dr. James Gallion, Division of Administration

Virginia Association of Chiefs of Police
Chief Larry G. Vardell, President

Virginia Beach City Public Schools
Dr. John Davis, Acting Superintendent
Mary H. Pace, Safe Schools Coordinator
I. K. Cashwell, School Liaison Officer

Virginia Department of Criminal Justice Services
Dr. Richard Kern, Criminal Justice Research Center

Virginia Department of Education
Office of Youth Risk Prevention-
Marla Coleman, Principal Specialist (now with Henrico County Public Schools)
Cynthia Barnes, Consultant
Arlene Cundiff, Associate Specialist
Cynthia Downing, Virginia Field Representative,
Southeast Regional Center for Drug-Free Schools and Communities
Marsha Hubbard, Associate Specialist
Rayna Turner, Associate Specialist
Betty Jo Yates, Grants Manager

Virginia Department of Youth and Family Services
Bruce Meador, Legislation and Media Special Assistant

Virginia Parent/Teachers Association:
Billy Hobbs, Juvenile Protection Chairman
Deloris Delaney, Education Chairman
Barbara Keller, Substance Abuse Chairman

Virginia Press Association
Alexander Wellford, Counsel

Virginia Youth Services Commission
Professor Robert E. Shepherd, Jr., Member
Nancy Ross, Executive Director

Appendix A

LD9077133

SENATE JOINT RESOLUTION NO. 212

Offered January 18, 1991

Requesting the State Crime Commission to study the release of information concerning juveniles charged with certain felonies.

Patron—Schewel

Referred to the Committee on Rules

WHEREAS, recent studies have shown that early involvement in crime is a major factor in producing career criminals; and

WHEREAS, there seems to be an increase in serious crimes perpetrated by juveniles in the Commonwealth and across the United States; and

WHEREAS, although, in general, a juvenile's criminal record is confidential, Virginia law provides for the release of identifying information about a juvenile who has committed certain felonies in situations where the juvenile is a fugitive from justice or where it is the public interest to release such information; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission is requested to study the expansion of the existing authority to release identifying information about juveniles and the instances under which such release would be in the public interest.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1992 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Official Use By Clerks	
Agreed to By The Senate	**Agreed to By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the Senate	Clerk of the House of Delegates

Appendix B

COMMENTS OF CHIEF JOSEPH M. SEIFFERT

LYNCHBURG, VIRGINIA POLICE DEPARTMENT

July 10, 1991

Roanoke Marriott

GOOD MORNING TO THE MEMBERS OF THE VIRGINIA CRIME COMMISSION

I APPRECIATE VERY MUCH THE OPPORTUNITY TO BE WITH YOU HERE THIS MORNING TO SPEAK ABOUT AN ISSUE THAT HAS CONCERNED ME FOR QUITE SOME TIME. I HAVE BEEN IN LAW ENFORCEMENT FOR OVER TWENTY-SEVEN YEARS, THE LAST FOUR BEING THE CHIEF OF THE LYNCHBURG POLICE DEPARTMENT. OVER THE YEARS, I HAVE SEEN OUR JUVENILE DETENTION FACILITIES GO FROM HOLDING RUN-AWAYS, INCORRIGIBLES, MISDEMEANANTS AND A FEW FELONS TO NEARLY ALL FELONS.

SOMETHING HAS GONE WRONG IN OUR SOCIETY, AND WHAT WE ARE SEEING IS YOUNGER PEOPLE COMMITTING MORE HEINOUS CRIMES. THOSE CRIMES ARE KNOWN AS PART I OFFENSES AS REPORTED TO THE UNIFORMED CRIME REPORTS OF THE VIRGINIA STATE POLICE.

THE NUMBER OF SERIOUS OFFENSES INCREASED FROM 3809 TO 4441 PER 100,000 IN VIRGINIA FROM 1984 TO 1990. THIS IS A 16.6% INCREASE. (SLIDE 1) AT THE SAME TIME, ARRESTS OF JUVENILES INCREASED FROM 11,776 IN 1984 TO 13,622 IN 1990, A 15.7% INCREASE. (SLIDE 2)

CRIME IN LYNCHBURG INCREASED ALSO. WE SAW AN INCREASE OF 10.6%, FROM 3487 IN 1984 TO 3858 IN 1990. (SLIDE 3) ARRESTS FOR

JUVENILES WENT FROM 167 TO 231 FOR THAT SAME PERIOD, A 38.3% INCREASE (SLIDE 4). DURING THIS SAME PERIOD, ARRESTS FOR ADULTS IN LYNCHBURG INCREASED FROM 640 TO 1067, A 66.7% INCREASE. (SLIDE 5)

I HAVE INCLUDED COPIES OF THESE SLIDES IN YOUR PACKET.

WE, IN LAW ENFORCEMENT, DEAL WITH VICTIMS OF CRIMES. WE SEE THE ILL-EFFECTS OF VIOLENT AND DISRUPTIVE CRIMES PERPETRATED AGAINST THE LAW-ABIDING, THE ELDERLY, THE DEFENSELESS. MY SYMPATHIES, QUITE FRANKLY, ARE WITH THE VICTIMS OF CRIME.

IN AN EARLIER TIME, IT WAS FELT PROPER, AND INDEED STILL IS, TO GIVE YOUNG PEOPLE A CHANCE TO SEE THE ERROR OF THEIR WAYS AND OBTAIN A LITTLE MATURITY AND GROW OUT OF THEIR CHILDISH AND PRANKISH ACTS; SUCH AS BUSTING UP MAILBOXES, STEALING HUBCAPS, PETTY SHOWLIFTING, AND OTHER MISDEMEANORS FOR WHICH AN INDIVIDUAL SHOULD NOT HAVE A RECORD FOR THE REST OF HIS LIFE. THUS, OUR LAWS GOVERNING THE CONDUCT OF JUVENILES WHO ARE ARRESTED NOT ONLY INCLUDED THE MISDEMEANANT, THE ONES WHO COMMITTED PETTY CRIMES, BUT ALSO THOSE WHO COMMITTED MORE SERIOUS CRIMES. AS WE HAVE SEEN, THE INCREASE OF THOSE ARRESTED FOR THESE SERIOUS CRIMES HAS GONE UP OVER THE YEARS, AND WE ARE ALSO SEEING JUVENILES ARRESTED FOR THESE HEINOUS CRIMES AT A YOUNGER AGE.

I ASK, WHAT IS THE PURPOSE SERVED OF KEEPING THE NAME OF A JUVENILE WHO WAS ARRESTED FOR A HEINOUS CRIME FROM THE PUBLIC? THERE MAY BE PARENTS IN THE COMMUNITY WHO HAVE ALLOWED THEIR

CHILD TO ASSOCIATE WITH THIS INDIVIDUAL. THERE ARE TEACHERS IN THE COMMUNITY THAT HAVE THAT INDIVIDUAL IN SCHOOL. EMPLOYERS, DOCTORS, NEWS REPORTERS AND THE PEOPLE SHOULD KNOW WHO THESE INDIVIDUALS ARE.

I READ AN INTERESTING ARTICLE IN THE DECEMBER, 1990 ISSUE OF READERS DIGEST THAT OUTLINES THE CAREER OF CHIEF RUBEN GREENBERG, A BLACK POLICE CHIEF OF CHARLESTON, SOUTH CAROLINA. THE ARTICLE STATES THAT "GREENBERG BECAME CONVINCED THAT PROGRESSIVE THINKERS AND ACADEMICS HAD TURNED THE CRIMINAL JUSTICE SYSTEM ON ITS HEAD. CROOKS HAD BECOME VICTIMS NO LONGER ACCOUNTABLE FOR THEIR ACTIONS. GREENBERG DID NOT BUY IT."

LEROY MARTIN, THE SUPERINTENDENT OF THE CHICAGO POLICE DEPARTMENT STATED IN THE APRIL 30 ISSUE OF THE LAW ENFORCEMENT NEWS, "LET ME TELL YOU WHAT'S WRONG WITH AMERICA. WE HAVE LOST THE CAPACITY TO DISCIPLINE OUR CHILDREN. THIS IS WHY POLICE HAVE SO MUCH WORK OUT THERE ON THE STREET." "SO I THINK WE OUGHT TO START HOLDING CERTAIN PEOPLE AND GROUPS ACCOUNTABLE, AND YOU WOULD BE SURPRISED AT WHAT RELIEF THE CRIMINAL JUSTICE SYSTEM WOULD BEGIN TO EXPERIENCE."

WHAT IS HAPPENING IS YOUNG PEOPLE ARE HIDING BEHIND THE ANONYMITY OF THE LAW. KEEPING THE NAMES SECRET OF OUR MOST HEINOUS CRIMINALS UNDER THE AGE OF EIGHTEEN SERVES NO ONE. IF THERE ARE ORGANIZATIONS OPPOSING THE RELEASE OF THE NAMES OF JUVENILES FOR THESE SERIOUS CRIMES, I ASK YOU, WHO ARE THEY TRYING TO PROTECT? WE ARE NOT TALKING ABOUT KIDS WHO DO FOOLISH PRANKS. WE ARE

TALKING ABOUT YOUNG PEOPLE WHO ARE USING GUNS IN THE COMMISSION OF THEIR CRIMES--SERIOUS CRIMES. (SLIDE 6 "GUN WIELDING CITY YOUTHS MIRROR TREND" 10-21-90)

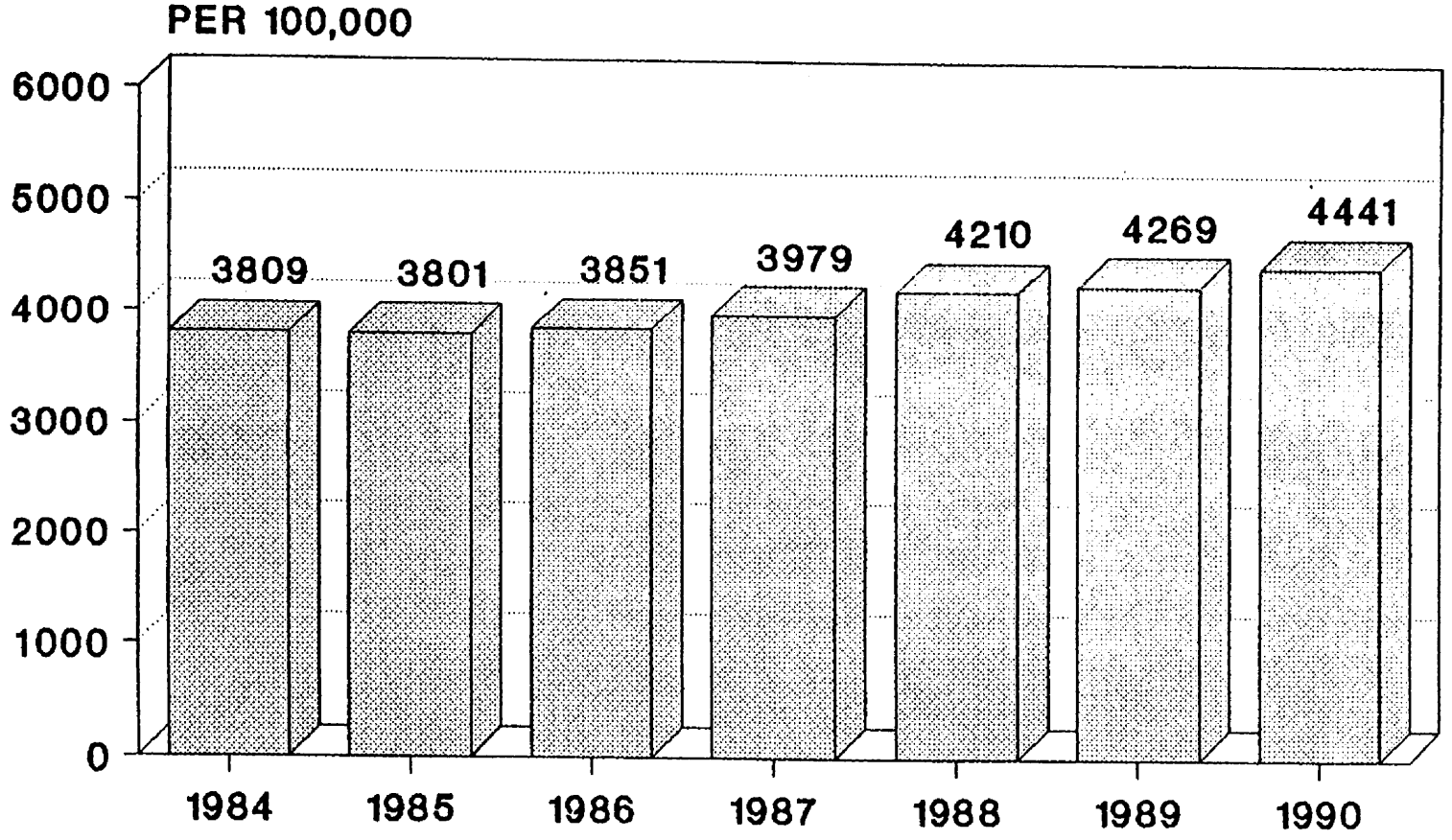
COMMANDER DAVE WEEKS FROM THE LYNCHBURG POLICE DEPARTMENT APPEARED BEFORE YOU IN APRIL OF THIS YEAR AND GAVE TO YOU COPIES OF ARTICLES FROM OUR LYNCHBURG NEWSPAPER, SOME OF WHICH INCLUDED "DEAR ABBY", IN WHICH ABBY VAN BUREN SAYS, "CHILDREN WHO ARE BIG ENOUGH TO COMMIT ADULT CRIMES SHOULD BE MADE TO FACE THE MUSIC PUBLICLY THE SAME AS ADULTS." I ASK THAT YOU LOOK AT TITLE 16.1-299 OF THE CODE OF VIRGINIA FOR CERTAIN CRIMES ARE LISTED FOR WHICH FINGERPRINTS AND PHOTOGRAPHS OF AN INDIVIDUAL THIRTEEN YEARS OF AGE OR OLDER CAN BE TAKEN WHEN CHARGED WITH SPECIFIC CRIMES. I ASK THAT YOU GIVE SERIOUS CONSIDERATION TO A RECOMMENDATION THAT THE POLICE RELEASE THE NAMES OF INDIVIDUALS CHARGED WITH THOSE TYPE OF VIOLENT, HEINOUS CRIMES LISTED UNDER 16.1-299. I WOULD FURTHER ASK THAT YOU ALLOW THE RELEASE OF NAMES OF JUVENILES WHO ARE ARRESTED FOR ANY TYPE OF FIREARMS VIOLATION, AND THOSE ARRESTED FOR THE DISTRIBUTION OF ANY CONTROLLED SUBSTANCE. I, AS A PARENT, WOULD CERTAINLY WANT TO KNOW IF ONE OF MY CHILD'S FRIENDS IS CARRYING A WEAPON AND HAS BEEN ARRESTED FOR SUCH A CHARGE.

I HAVE TAKEN THE LIBERTY OF INCLUDING IN YOUR PACKET NOT ONLY COPIES OF MY COMMENTS HERE THIS MORNING, BUT ALSO COPIES OF VARIOUS ARTICLES FROM THE NEWSPAPER THAT APPLY TO THIS SITUATION. (SLIDE 7 "KID CRIME: MORE VIOLENT, MORE OFTEN" 7-4-91)

AS A PARENT, A POLICE PROFESSIONAL AND ONE WHO IS DEEPLY CONCERNED FOR THE VICTIMS OF CRIMES, I ASK YOU FOR SOME ASSISTANCE IN HELPING TO TURN BACK THIS ERA OF PERMISSIVENESS AND PROTECTION THAT HAS PERSISTED OVER THE YEARS. UNLESS WE HOLD THESE PEOPLE ACCOUNTABLE FOR THEIR VICIOUS ACTS BY LETTING THE PUBLIC KNOW WHO THEY ARE, I AM AFRAID WE ARE GOING TO SEE THINGS GET MUCH WORSE. BUT I AM AN OPTIMIST. I SEE MANY PROFESSIONALS WORKING VERY HARD IN AN ATTEMPT TO REHABILITATE THESE YOUNGSTERS, MANY OF WHOM HAVE GROWN UP IN DISFUNCTIONAL FAMILIES. BUT IF THERE IS ONE THING WE NEED TO GET ACROSS TO THEM IT IS THAT THEY WILL BE HELD ACCOUNTABLE AND WILL BE HELD RESPONSIBLE FOR THEIR VICIOUS ACTS. (SLIDE 8 "EDITORIAL -- 'TAKE THE WRAPS OFF NAMES OF CRIMINAL YOUTH'", 5-9-91)

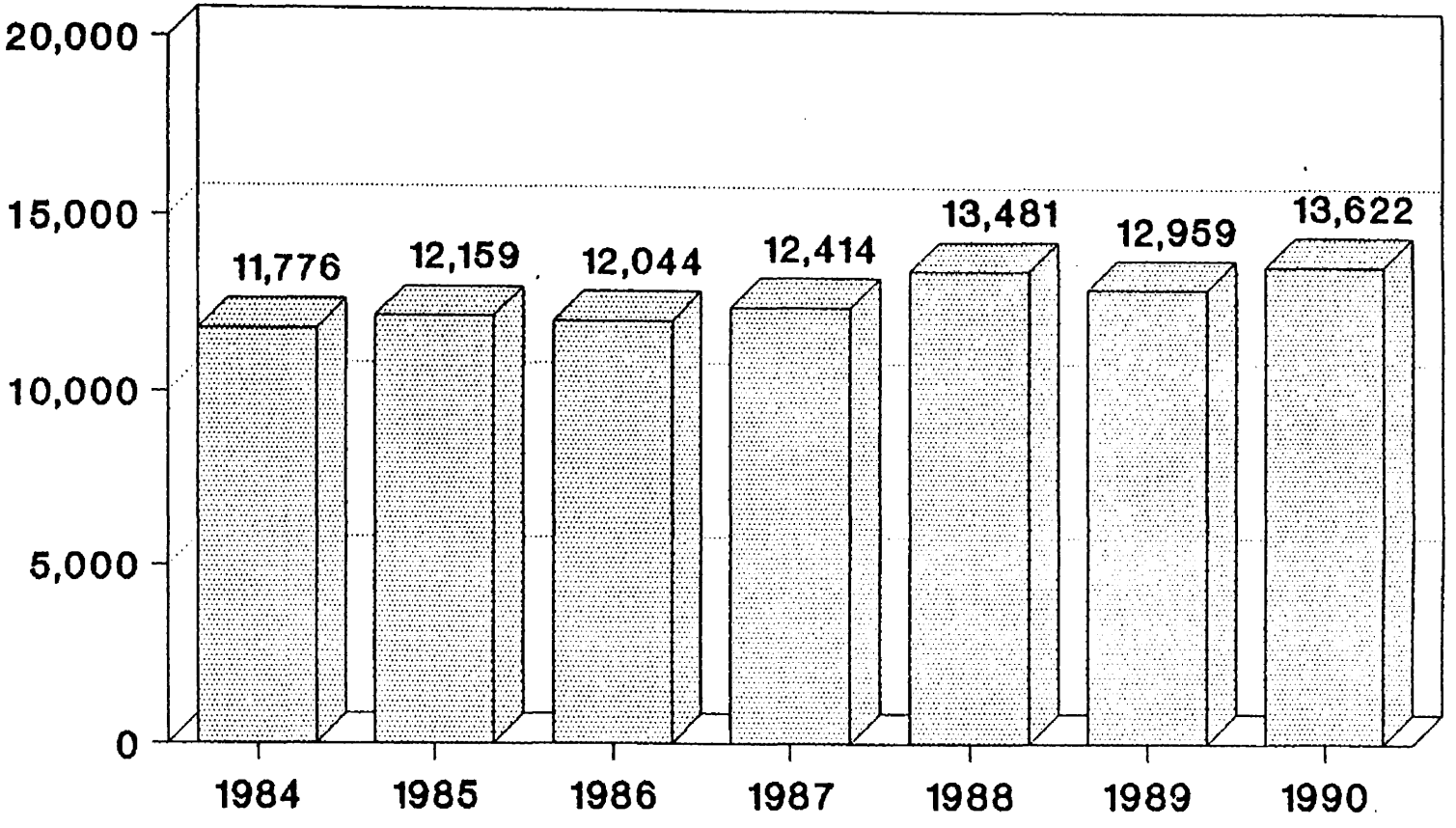
I THANK YOU VERY MUCH FOR YOUR KIND ATTENTION, AND I APPRECIATE THE OPPORTUNITY TO BRING MY CONCERNS TO YOUR ATTENTION. IF YOU HAVE ANY QUESTIONS, I WILL BE MOST HAPPY TO ADDRESS THEM AT THIS TIME.

PART I CRIME RATE
COMMONWEALTH OF VIRGINIA
(1984 - 1990)



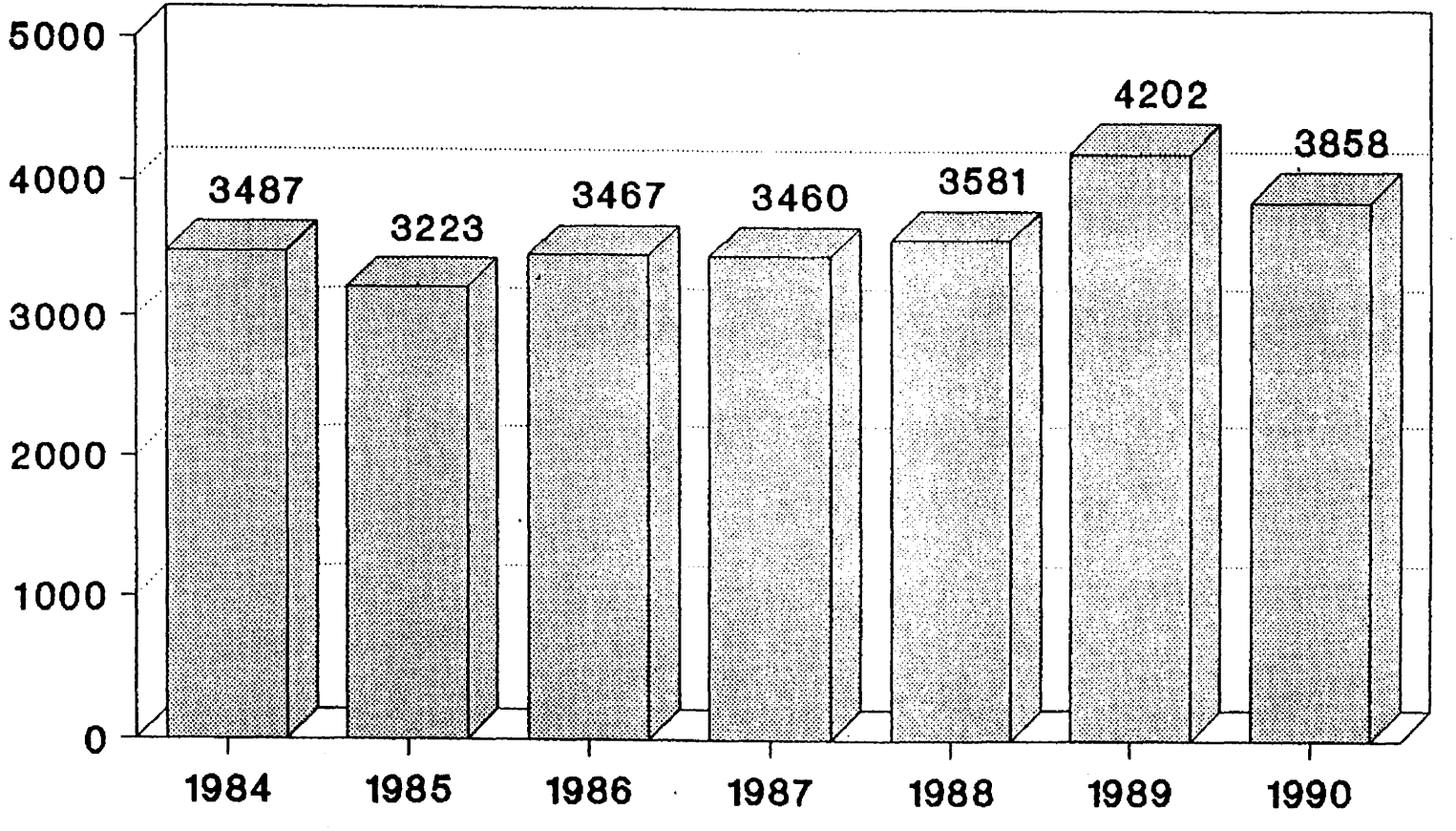
SOURCE: UNIFORM CRIME REPORT

COMMONWEALTH OF VIRGINIA
PART I ARRESTS (JUVENILES)
1984 - 1990



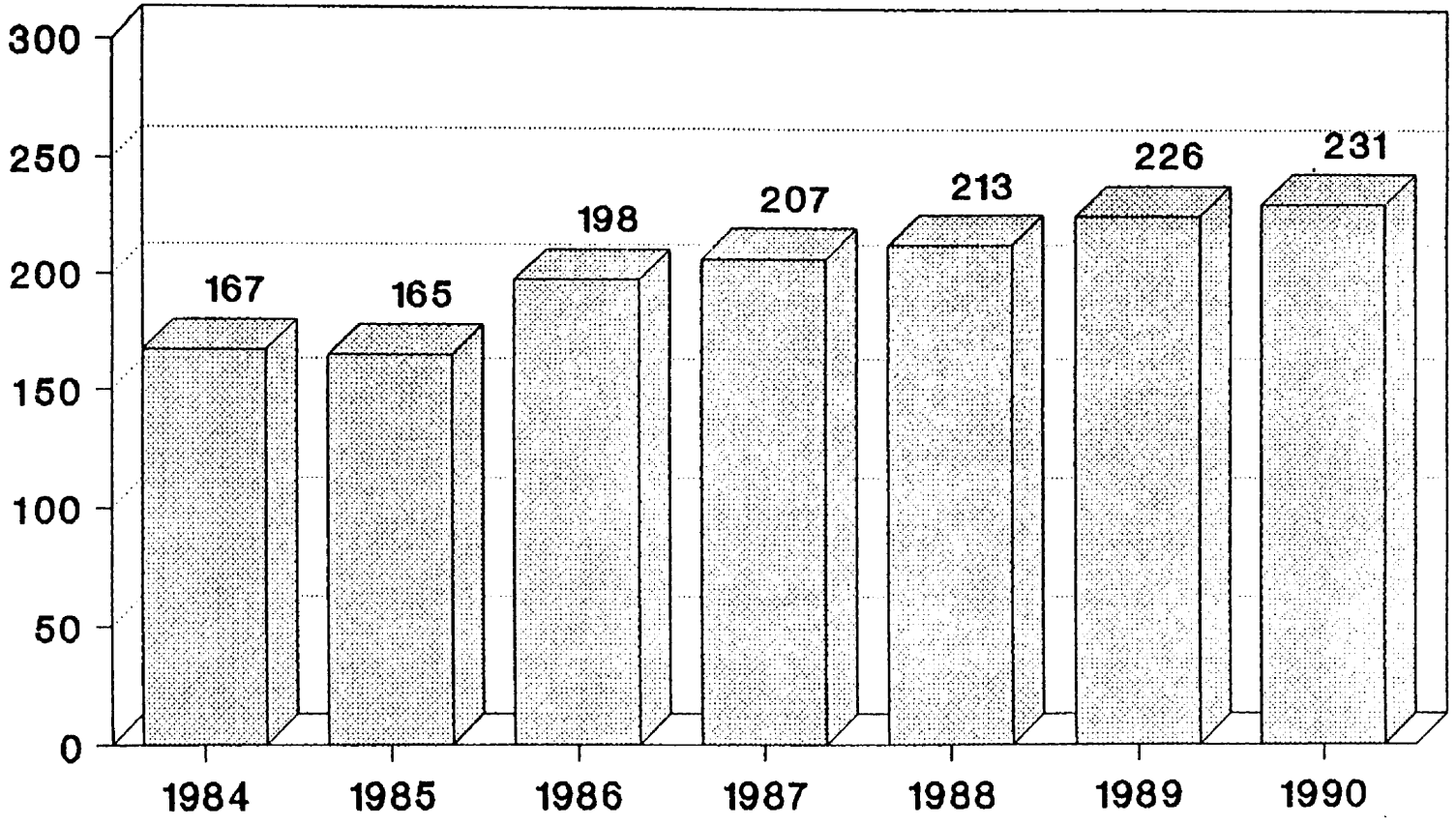
SOURCE: CRIME IN VIRGINIA, UCR, VSP

PART I CRIME INDEX
LYNCHBURG, VA
(1984 - 1990)



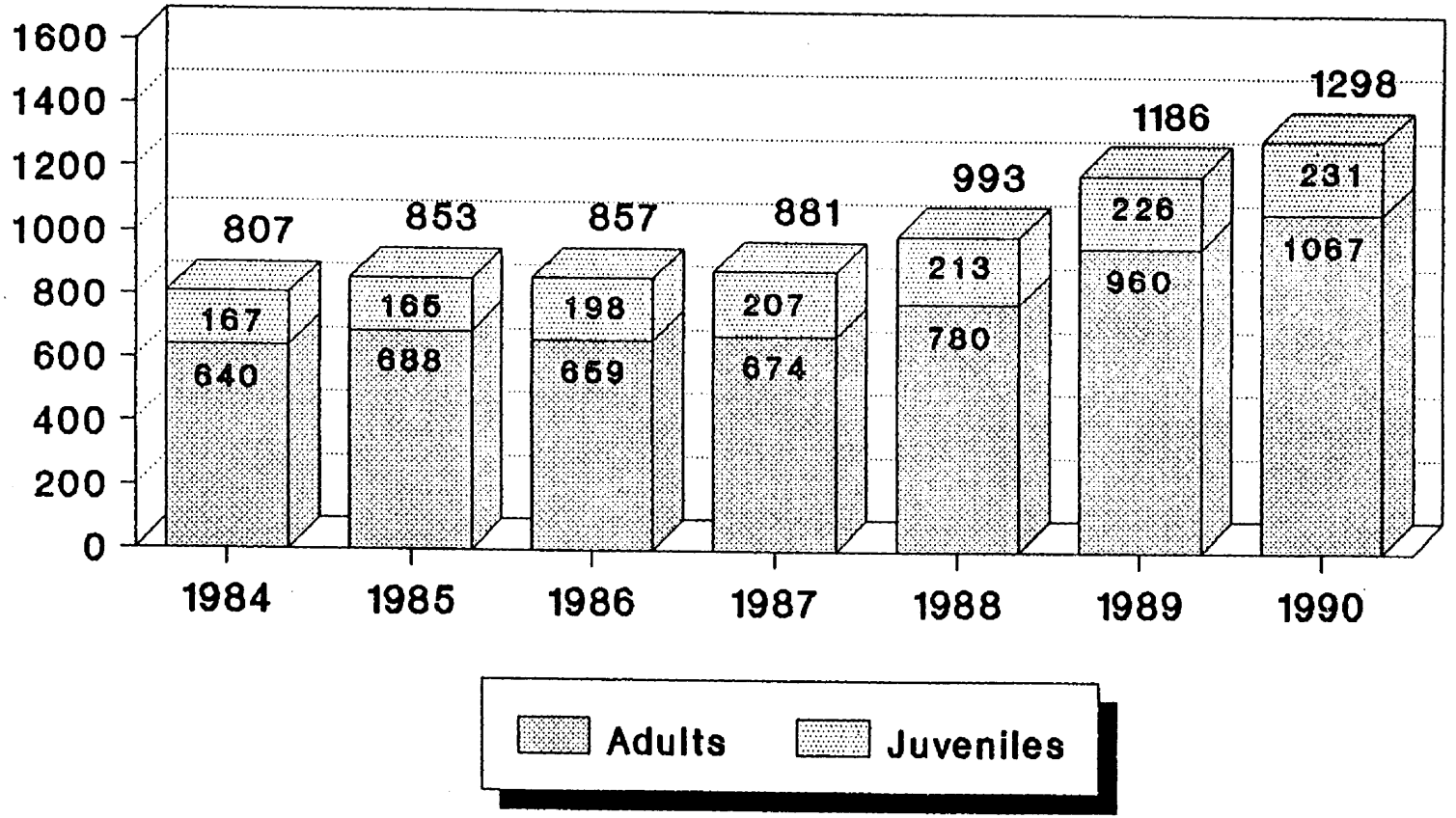
SOURCE: UNIFORM CRIME REPORT

LYNCHBURG VIRGINIA POLICE DEPT.
PART I ARRESTS (JUVENILES)
1984 - 1990



SOURCE: UNIFORM CRIME REPORT

LYNCHBURG VIRGINIA POLICE DEPT.
PART I ARRESTS
1984 - 1990



SOURCE: UNIFORM CRIME REPORT

Appendix C

VIRGINIA ASSOCIATION OF CHIEFS OF POLICE

1500 FOREST AVENUE, SUITE 218
RICHMOND, VA 23288
(804) 285-8227
FAX (804) 285-3363

RESOLUTION

WHEREAS, early involvement in crime is a major factor in producing career criminals; and

WHEREAS, there has occurred a 15.7% increase in juvenile arrests in the Commonwealth of Virginia for serious crimes from 1984 to 1990; and

WHEREAS, juveniles are being arrested at increasingly younger ages for these serious crimes; and

WHEREAS, society must hold people accountable for their crimes if law and order are to prevail; NOW THEREFORE BE IT RESOLVED, the delegates assembled in Reston, at the 66th Annual Conference of the Virginia Association of Chiefs of Police, on August 14, 1991, unanimously agreed that release of the names of juveniles, age 13 and older, arrested for crimes enumerated in Section 16.1-299, Code of Virginia, as well as arrests for crimes involving the use of firearms and the sale of illegal drugs is in the best interest of the Commonwealth.

August 14, 1991

Larry G. Vardell

LARRY G. VARDELL
President

Appendix D

Virginia Congress of Parents and Teachers

Confidentiality of Court Records

WHEREAS, The United States Code Section 5038, The Youth Corrections Act, requires that records of juvenile delinquency proceedings in federal district courts be safeguarded from disclosure to unauthorized persons; and

WHEREAS, The juvenile and his parents or guardian must be advised in writing of rights relating to the juvenile's records; and

WHEREAS, Historically juveniles courts have maintained that a juvenile's records are to be kept confidential, except for a valid court order or if a minor has been certified to the Circuit Court; and

WHEREAS, There is a threat to privacy inherent in the growth of data bank systems and the abuse of records initially considered private information; and

WHEREAS, Particular concern lies with any unrestrained access to juvenile court records as an attempt to interfere with the legal rights of parents or juveniles to have access to, to challenge, or provide for the correction or deletion of any materials, to preserve the confidentiality of health and personal data from all; and

WHEREAS, Confidentiality protects a youth's right to privacy, avoids stigmatization, and allows the process of education and rehabilitation to occur;
now, therefore, be it

RESOLVED, That the Virginia PTA/PTSA opposes any changes in the current statutes relating to access of juvenile court records; and be it further

RESOLVED, That local units become aware and work toward community sensitivity in the collection and dissemination of information regarding juvenile records.

Virginia Congress of Parents and Teachers

Confidentiality of School Records

WHEREAS, The United States Supreme Court has recognized a family's "right to privacy" and

WHEREAS, Family privacy is considered of similar order and magnitude as the fundamental rights specifically protected by the U.S. Constitution; and

WHEREAS, In 1974, in response to concern over invasion of individual privacy, the federal government adopted the Family Educational Right and Privacy Act (FERPA) assuring parents of students and students themselves, if they are 18 or over, the right to review and inspect student educational records; the right to challenge in a hearing, if necessary, the content of any educational records that are believed to be inaccurate, misleading or otherwise in violation of a student's rights; and also guarantees the prevention of disclosures of personally identifiable information without prior written permission from parents or eligible students; and

WHEREAS, There is a threat to privacy inherent in the growth of data bank systems and the abuse of records initially considered private information; and

WHEREAS, Particular concern lies with <u>any</u> unrestrained access to school records; and

WHEREAS, The National School Safety Center recommends in a recent publication a legislative revision of Family Educational Right and Privacy Act (FERPA) for the purpose of fostering interagency information sharing; now, therefore, be it

RESOLVED, That the Virginia PTA/ PTSA opposes any changes in the Family Educational Right and Privacy Act (FERPA); and be it further

RESOLVED, That local PTA units work toward community sensitivity about the hazards in the collection and dissemination of information regarding students; and be it further

RESOLVED, That local units participate in the establishment of policies for the keeping of such records which will respect the student's rights to privacy and provide for methods of checking these procedures against the possibility of purposeful or unintended misuse; and to assure that school data collection is relevant to a child's education.

Appendix E

§ 5031. Definitions

For the purposes of this chapter [18 USCS §§ 5031 et seq.], a "juvenile" is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter [18 USCS §§ 5031 et seq.] for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and "juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.

(June 25, 1948, ch 645, § 1, 62 Stat. 857; Sept. 7, 1974, P. L. 93-415, Title V, Part A, § 501, 88 Stat. 1133.)

§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), or section 922(p) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exericse of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

If an alleged juvenile delinquent is not surrendered to the authorities of a State or the District of Columbia pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter [18 USCS §§ 5031 et seq.] unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have

committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice; however, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844 (d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act [21 USCS § 841(b)(1)(A), (B), or (C), (d), or (e)], or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this subsection [paragraph] or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter [18 USCS §§ 5031 et seq.].

Any proceedings against a juvenile under this chapter [18 USCS §§ 5031 et seq.] or as an adult shall not be commenced until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter [18 USCS §§ 5031 et seq.], the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

(June 25, 1948, ch 645, § 1, 62 Stat. 857; Sept. 7, 1974, P. L. 93-415, Title V, Part A, § 502, 88 Stat. 1134; Oct. 12, 1984, P. L. 98-473, Title II, Ch XII, Part A, § 1201, 98 Stat. 2149; Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle N, § 6467(a), 102 Stat. 4375.)

§ 5038. Use of juvenile records

(a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position with that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the Government, or others entitled under this section to receive juvenile records.

(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21 such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, the court shall transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications.

(Added Sept. 7, 1974, P. L. 93-415, Title V, Part A, § 508, 88 Stat. 1137; Oct. 3, 1977, P. L. 95-115, § 8(b), 91 Stat. 1060; Oct. 12, 1984, P. L. 98-473, Title II, Ch XII, Part A, § 1202, 98 Stat. 2150.)

Article 12.

Confidentiality and Expungement.

§ 16.1-299. Fingerprints and photographs of children. — A. Fingerprints and photographs of a child fifteen years of age or older who is charged with a delinquent act which would be a felony if committed by an adult may be taken and filed by law-enforcement officers. Fingerprints and photographs of a child thirteen years of age or older who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided in § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61, forcible sodomy as provided in § 18.2-67.1, inanimate object sexual penetration as provided in § 18.2-67.2, grand larceny as provided in § 18.2-95, burglary as provided in §§ 18.2-89 through 18.2-91, arson and related crimes as provided in §§ 18.2-77 through 18.2-88 or murder, or any attempt to commit the above mentioned felonies as provided in § 18.2-25 or § 18.2-26 may be taken and filed by law-enforcement officers.

B. A child may be fingerprinted and photographed regardless of age or offense if he has been taken into custody for and charged with a violation of law, and a law-enforcement officer has determined that there is probable cause to believe that latent fingerprints found during the investigation of an offense are those of such child.

C. The fingerprints and photographs authorized in subsections A and B shall be retained or disposed of as follows:

1. If a petition is not filed against a child whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed.

2. If the juvenile court or the circuit court, pursuant to a transfer, waiver or appeal, finds a child not guilty of a charge of delinquency, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed. However, all fingerprints and photographs of a child who is less than thirteen years of age and who is found guilty of a delinquent act shall also be destroyed.

3. If the court finds that a child thirteen years of age or older has committed a delinquent act, the fingerprints and photographs may be retained in a local file pursuant to § 16.1-301 and the fingerprints may be entered into any police department's computer system by identification number or by any other method which insures the confidentiality of the juvenile's name.

4. If a child fifteen years of age or older is certified to the circuit court pursuant to § 16.1-269 and is found guilty as an adult of the offense charged, or if a child thirteen years of age or older is found guilty of any of the offenses specified in subsection A of this section or an attempt to commit any such offense in a juvenile court and is adjudicated delinquent, copies of his fingerprints shall be forwarded to the Central Criminal Records Exchange. (1977, c. 559; 1978, c. 383; 1979, c. 267; 1982, c. 514; 1985, c. 211; 1986, c. 264.)

§ 16.1-300. Confidentiality of Department records. — A. The social, medical, psychiatric and psychological reports and records of children who are committed to the Department of Youth and Family Services shall be confidential and shall be open for inspection only to the following:

1. The judge, prosecuting attorney, probation officers and professional staff assigned to serve a court having the child currently before it in any proceeding;

2. Any public agency, child welfare agency, private organization, facility or person who is treating the child pursuant to a contract with the Department;

3. The child's parent, guardian, legal custodian or other person standing in loco parentis and the child's attorney;

4. Any person who previously has been a ward of the Department and who has reached the age of majority;

5. Any state agency providing funds to the Department of Youth and Family Services and required by the federal government to monitor or audit the effectiveness of programs for the benefit of juveniles which are financed in whole or in part by federal funds;

6. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court;

7. Any person, agency, organization or institution outside the Department which, at the Department's request, is conducting research or evaluation on the work of the Department or any of its divisions.

A designated individual treating or responsible for the treatment of a person who was previously a ward of the Department may inspect such reports and records as are kept by the Department on such person or receive copies thereof, when the person who is the subject of the reports and records or his parent, guardian, legal custodian or other person standing in loco parentis if the person is under the age of eighteen, provides written authorization to the Department prior to the release of such reports and records for inspection or copying to the designated individual.

B. The Department may withhold from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis that portion of the records referred to in A hereof, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child, provided that the juvenile and domestic relations district court having jurisdiction over the facility where the child is currently placed shall concur in such determination.

If a parent, guardian, legal custodian or other person standing in loco parentis requests to inspect the reports and records concerning his child and if the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information about the child's progress as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court having jurisdiction over the facility where the child is currently placed shall have jurisdiction over petitions filed by a parent, guardian, legal custodian or other person standing in loco parentis for review of the Department's decision to withhold reports or records as provided herein. (1977, c. 559; 1978, cc. 738, 740; 1981, c. 487; 1988, c. 541; 1989, c. 733.)

§ 16.1-301. Confidentiality of law-enforcement records. — A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a child are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties, as the case may be, shall keep separate records as to violations of law other than violations of motor vehicle laws committed by juveniles. Unless a charge of delinquency is transferred for criminal prosecution pursuant to § 16.1-269 or the court otherwise orders disclosure in the interests of the child or of national security, such records with respect to such child shall not be open to public inspection nor their contents disclosed to the public.

B. Inspection of such records shall be permitted only by the following:

1. A court having the child currently before it in any proceeding;

2. The officers of public and nongovernmental institutions or agencies to which the child is currently committed, and those responsible for his supervision after release;

3. Any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law-enforcement agency;

4. Law-enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties;

5. The probation and other professional staff of a court in which the child is subsequently convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him; and

6. The child, parent, guardian or other custodian and counsel for the child by order of the court.

C. The police department of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, current information on juvenile arrests. The information exchanged shall be limited to name, address, physical description, date of arrest, and the charge for which the arrest was made. The information shall be used by the receiving agency for current investigation purposes only and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency. (Code 1950, § 16.1-163; 1956, c. 555; 1977, cc. 559, 618; 1978, c. 740; 1981, c. 175.)

§ 16.1-302. Dockets, indices and order books; hearings and records private; right to public hearing; presence of child in court. — Every juvenile court shall keep a separate docket of cases arising under this law.

Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the juvenile court except: (i) cases involving support pursuant to § 20-61 or subsections A 3, F or L of § 16.1-241; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.1. Such cases shall be docketed on the appropriate docket and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit court.

The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper, except that in any hearing held for the purpose of adjudicating the alleged violation of any criminal law, or law defining a traffic infraction, the child or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such child in court may be waived by the judge at any stage thereof. (Code 1950, § 16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, cc. 559, 585; 1978, c. 605; 1979, c. 393; 1983, c. 293.)

§ 16.1-303. Reports of court officials and employees when privileged. — 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 Commonwealth's attorney or the police in the county, city or town where the offense occurred. (Code 1950, § 16.1-209; 1956, c. 555; 1958, c. 354; 1977, c. 559.)

§ 16.1-305. Confidentiality of court records. — A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court; however, for the purposes of preparation of a presentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers shall have access to an accused's or inmate's records in juvenile court.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

C. 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 designated in subsections A and B of this section.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 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 an attorney for the Commonwealth 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. (Code 1950, § 16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, c. 559; 1979, c. 605; 1983, c. 389; 1984, c. 34; 1988, c. 541; 1989, c. 182; 1990, c. 258.)

The 1989 amendment added subsection D.

The 1990 amendment substituted "juvenile records" for "court records" in subsection C, and substituted "§ 46.2-383" for "§ 46.1-413" near the beginning of subsection D.

Law Review. — For survey on legal issues involving children in Virginia for 1989, see 23 U. Rich. L. Rev. 705 (1989).

Impeachment with evidence of prior juvenile adjudications. — A prosecutor may not impeach the defendant with evidence of prior juvenile adjudications, and the attempt to so cross-examine defendant was not harmless error. Lavinder v. Commonwealth, — Va. App. —, 395 S.E.2d 211 (1990).

Defendant was not entitled to examine the juvenile records of an adverse witness where he was given a list of juvenile adjudications, and defendant did not assert that the witness' prior juvenile adjudications involved defendant. Scott v. Commonwealth, 7 Va. App. 252, 372 S.E.2d 771 (1988), cert. denied, — U.S. —, 109 S. Ct. 2441, 104 L. Ed. 2d 997 (1989).

Use of juvenile record in capital sentencing. — Virginia law does not prohibit the use of a defendant's juvenile record in capital sentencing. Peterson v. Murray, 904 F.2d 882 (4th Cir. 1990).

§ 16.1-307. Confidentiality of circuit court records. — In proceedings against a child in the circuit court in which the circuit court deals with the child in the same manner as a case in the juvenile court, the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § 16.1-302. Such records shall be open for inspection only in accordance with the provisions of § 16.1-305 and shall be subject to the expungement provisions of § 16.1-306. (1977, c. 559; 1990, c. 258.)

The 1990 amendment added "as provided in § 16.1-302" at the end of the first sentence, and added "and shall be subject to the expungement provisions of § 16.1-306" at the end of the second sentence.

§ 16.1-309. Penalty. — A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, 16.1-305 and 16.1-307, any person who files a petition, receives a petition or has access to court records in an official capacity, participates in the investigation of allegations which form the basis of a petition, is interviewed concerning such allegations and whose information is derived solely from such interview or is present during any court proceeding who discloses or makes use of or knowingly permits the use of identifying information concerning a juvenile who is suspected of being or is the subject of a proceeding within the jurisdiction of the juvenile court pursuant to subdivisions 1 through 5 of subdivision A of § 16.1-241 or who is in the custody of the State Department of Youth and Family Services, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Youth and Family Services or acquired in the course of official duties, shall be guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act within the jurisdiction of the juvenile court pursuant to subdivision A 1 of § 16.1-241. However, this exemption shall be applicable only if the disclosure (i) is restricted to school personnel, (ii) concerns a delinquent act that has met applicable criteria of § 16.1-260 and is committed or alleged to have been committed on school property during a school sponsored activity or on the way to or from such activity and (iii) is solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. (1977, c. 559; 1978, c. 626; 1979, c. 481; 1989, cc. 520, 733.)

§ 16.1-309.1. Exception as to confidentiality. — Notwithstanding any other provision of this article, where consideration of public interest requires, the judge may make public the name and address of a child and the nature of the offense for which a child has been adjudicated delinquent (i) for an act which would be a Class 1, 2 or 3 felony, forcible rape or robbery if committed by an adult, and (ii) in any case where a child is sentenced as an adult in accordance with § 16.1-284.

Whenever a child, charged with a delinquent act which would be forcible rape, robbery or a Class 1, 2, or 3 felony if committed by an adult, becomes a fugitive from justice any time prior to final disposition of the charge, the Commonwealth's attorney may petition the court having jurisdiction of the offense to authorize public release of the child's name, age, physical description and photograph, the charge for which he is sought and any other information which may expedite his apprehension. Upon a showing that the child is a fugitive and for good cause, the court shall order release of this information to the public.

Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been terminated, or (iii) there has not been a judicial determination that the order is void ab initio. (1979, c. 94; 1981, c. 307; 1986, c. 506; 1988, c. 749.)

Cross reference. — As to punishment for Class 1, 2 and 3 felonies, see § 18.2-10.

The 1988 amendment inserted "forcible rape or robbery" in clause (i) of the first paragraph and added the second paragraph.