REPORT OF THE
VIRGINIA COMMISSION ON YOUTH ON

The Study of Confidentiality of Juvenile Records

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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Commission on Youth

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TO: The Honorable George F. Allen, Governor of Virginia

and

Members of the Virginia General Assembly

The 1993 General Assembly, through Senate Joint Resolution 205, requested the Virginia Commission on Youth to "conduct a comprehensive study of the confidentiality of juvenile records."

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input in this report.

Respectfully submitted,

R. Edward Houck
Chairman

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I. Authority for Study

§9-292 of the Code of Virginia establishes the Commission on Youth and directs it to "... study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." §9-294 provides that the Commission has the powers and duties "to undertake studies and gather information and data in order to accomplish its purpose ... and to formulate and present its recommendations to the Governor and General Assembly."

The 1993 Session of the General Assembly enacted Senate Joint Resolution 205 directing the Commission on Youth to conduct a comprehensive study on the issue of confidentiality of juvenile records (Appendix A). The Commission on Youth, in fulfilling its legislative mandate, undertook the study.

II. Members Appointed to Serve

For the studies enacted during the 1993 Session of the General Assembly, the Commission on Youth formed three subcommittees to provide oversight and direction for the topics assigned. These subcommittees were Prevention, Juvenile Justice and Treatment. At the May 7, 1993 Commission on Youth meeting, Senator R. Edward Houck (Spotsylvania), Chairman, assigned the study of juvenile confidentiality issues to the Treatment Subcommittee. In addition to Senator Houck, who chairs the subcommittee, its membership includes: Delegates Karen L. Darner (Arlington) and Arthur R. Giesen, Jr. (Waynesboro), Senator Robert L. Calhoun (Alexandria) and Thomasina T. Binga (Richmond).

III. Executive Summary

During the 1992 and 1993 Sessions of the General Assembly, an unprecedented number of bills was introduced which sought to disclose previously confidential juvenile information. In particular, legislation establishing the Comprehensive Services Act For At-Risk Youth and Families and the Serious Habitual Offender Comprehensive Action Program (SHOCAP) and legislation resulting from the School Safety Summit for the first time allowed for disclosure and exchange of certain types of previously confidential juvenile information. This exchange of information takes place between local school divisions, local law enforcement agencies, local juvenile court service units, local community service boards and other human service agencies with the goal of developing interagency approaches to service delivery. The disclosure of information involves the release of juvenile court records, school records, abuse investigations, treatment records and other information. The disclosure was justified on the grounds that it would enhance services and provide greater community safety.

The Senate Joint Resolution 205 study mandate called for the Commission on Youth to review recent legislation and analyze their effects on juvenile confidentiality provisions. Therefore, this study was less dependent upon data analysis and relied instead upon discussion and debate by professional state and local service providers serving youth and their families from each of the disciplines dealing with juvenile records. A work group representing social service agencies, the schools, the court service units, the courts, the press, civil liberties organizations, parent associations and victims rights groups was formed. This study group met four times in Fall 1993 to review legislation and formulate recommendations for the Commission on Youth's consideration. For a listing of the work group membership, please refer to Appendix B.

In addition to the work group's meetings, two additional activities contributed to the overall study recommendations. First, the Commission on Youth sponsored a public hearing on the issue of juvenile confidentiality. Thirteen speakers addressed the Commission on Youth members with their concerns regarding the recently enacted legislation. The responses of the public hearing were incorporated in the work group's overall recommendations. The public hearing notice and summary of the testimony can be found in Appendix C. The second additional activity involved participation by Commission on Youth staff in other statewide projects which related to the issues addressed in the legislation the work group was reviewing. Commission staff participated in the Department of Education's work group charged with the task of evaluating and rewriting the Department's regulations to incorporate recent changes in the state and federal laws. Staff also attended the work group of the Committee on District Courts and the Department of Education that was charged with developing procedures for the dissemination of juvenile court records to the local school divisions.

On the basis of the SJR 205 work group's review, public hearing comments and consultation with the other statewide work groups addressing similar issues, the Commission on Youth offers sixteen recommendations concerning issues of juvenile confidentiality. Copies of the introduced legislation which reflects these recommendations can be found in Appendix D.

A. Serious Habitual Offender Comprehensive Action Program

Recommendation 1

Request the Department of Criminal Justice Services to develop regulations regarding the SHOCAP program and revise the *Code of Virginia* to reflect the regulatory process.

Recommendation 2

Introduce legislation which specifies a three year time period for the accumulation of offenses that determine a juvenile's eligibility for a local SHOCAP program. In addition, program regulations should be developed, juvenile placement in the program should be under local discretion and information-sharing should be in accordance with federal law.

Recommendation 3

Request the Department of Criminal Justice Services to consult with representatives from relevant agencies when developing SHOCAP guidelines to incorporate the following concepts:

- inclusion of supervisory goals for the SHOCAP juveniles;
- identification of conditions which constitute "graduation" or exiting from the program;
- inclusion of periodic evaluation of progress toward program goals;
- allowance for additional community members to participate in SHOCAP staffing when their client is being discussed;
- definition of "authorized release of information" by SHOCAP team members;
- identification of state and federal laws which impact SHOCAP program provisions; and,
- provisions for the juvenile court to secure parental consent for the release of information prior to participation in the program.

B. Comprehensive Services Act for At-Risk Youth and Families

Recommendation 4

Introduce legislation that would exempt the proceedings of the Family Assessment and Planning teams of the Comprehensive Services Act from provisions of the Freedom of Information Act.

Recommendation 5

Convey from the Commission on Youth to the Executive Management Council of the Comprehensive Services Act and the Department of Education the potential for conflict between local Family Assessment and Planning Team plans for juveniles and Individualized Education Program plans for special education students.

Recommendation 6

Introduce legislation calling for a General Assembly study of mandatory state and federal confidentiality, disclosure and expungement laws which affect Virginia service providers. This study would identify:

- existing state and federal confidentiality, disclosure and expungement laws across agencies and disciplines,
- circumstances under which mandatory disclosure laws supersede confidentiality laws,
- areas of conflict and needed clarification in the *Code of Virginia* concerning confidential records, and
- areas where third party expungement laws are necessary.

In addition, the study should contain provisions for the development of a statewide resource manual and training curriculum for Virginia service providers on the confidentiality and disclosure laws.

C. School Safety Summit Legislation

Recommendation 7

Amend recently enacted legislation concerning notification of delinquent adjudications to the schools by the Juvenile and Domestic Relations District Court to delineate the *Code of Virginia* citations which reflect the offenses that the School Safety Summit recommended and felonious offenses only within each of the categories of offenses included §16.1-305.1.

Recommendation 8

Introduce legislation which requires Circuit Court notification to the school superintendent when a juvenile has been transferred and found guilty for the offenses enumerated by the School Safety Summit participants.

Recommendation 9

Introduce legislation which would delineate the procedures for school divisions to follow when receiving a notice from the juvenile court of a case disposition. These procedures would require that:

- the superintendent disclose the information contained in the court notice if school board action is necessary to (i) protect the physical safety of either the juvenile or other students, or (ii) to make an alternative educational placement for the juvenile;
- when the court notice is received by the principal, the notice shall be kept separate from the student's scholastic record; and
- if school disciplinary action is taken as a result of the court notification (i) documentation concerning the disciplinary action shall be placed in the juvenile's Category II file, (ii) the student's parent, guardian or person standing *in loco parentis* must be informed of the action and allowed to respond to the record, and (iii) the committing juvenile court shall be informed of the disciplinary action.

Recommendation 10

Introduce legislation which establishes guidelines for annual review and purging of court notices by school systems.

Recommendation 11

Introduce legislation to require the clerk of court to notify the superintendent if an adjudication of delinquency or finding of guilt is overturned on appeal and to require that the original court notices that went to the school be purged.

Recommendation 12

Introduce legislation which defines disciplinary records for school systems and sets forth a retention schedule for the records.

- Disciplinary records would be defined as records that are directly related to a student and the disciplinary action taken against that student for violating school board or school rules or policies on school property or at school sponsored events.
- Disciplinary records involving (i) possession and/or use of guns or other weapons, alcohol and other drugs, and assaults upon staff or others on school

property or at school sponsored activities, and (ii) disciplinary actions taken as a result of a court notification in §16.1-305.1 shall be destroyed when no longer educationally relevant. Disciplinary records of actions other than those defined in (i) and (ii) shall be destroyed at the end of each school year.

Recommendation 13

Introduce legislation to require that schools notify students (if they are 18 years old), their parent, guardian, or other person standing *in loco parentis*, or other persons having control or charge of the student when the scholastic record is being transferred to a requesting school or school division.

D. Related Issues

Recommendation 14

Introduce legislation which defines Court Service Unit records in terms of (i) the types of juvenile information they contain, (ii) the nature of their confidentiality and (iii) their distinction from juvenile court records.

Recommendation 15

Introduce legislation which allows the Department of Correctional Education to obtain scholastic records when providing local educational services to juveniles in jail.

Recommendation 16

Introduce legislation which mandates that victim compensation appeal hearings for juveniles be closed and all written records of the proceedings, with the exception of the amount of monetary awards, be confidential.

IV. Methodology

The findings of the 1993 Commission on Youth study of juvenile confidentiality issues employed two methodologies. The primary forum through which the study mandate was addressed was the formation and use of the work group of professionals. The work group reviewed the recently enacted pieces of legislation, debated the concepts within the legislation and reached consensus on the recommendations presented in this report. The disciplines and expertise represented on the work group were:

- state and local education administrators,
- state and local social service administrators,
- local court service unit directors,
- state and local public safety administrators,
- representatives from the Virginia press,
- a representative from the Virginia Chapter of the American Civil Liberties Union,

- a representative from the Virginia Network for Victims and Witnesses of Crime,
- a state administrator from the Department of Mental Health, Mental Retardation and Substance Abuse Services, and
- a representative from the Virginia Parent Teacher Association.

In addition to the work group's review process, the recommendations presented in this report incorporate testimony received at the Commission on Youth's public hearing on the issues relating to the confidentiality of juvenile records.

V. Study Goals and Objectives

Based on the requirements of the Senate Joint Resolution 205 study mandate, the following goals and objectives were developed by the Treatment Subcommittee for use by the work group in carrying out the study activities:

A. assess the current need for information exchange;
B. compare appropriate safeguards that balance the need for disclosure of information versus confidentiality rights;
C. determine current barriers to information sharing in (i) state and federal policies and laws and (ii) the local practice of these policies and laws by service providers; and,
D. determine model cooperative agreements for information sharing between the levels of government across disciplines.

VI. Legislation and Issues

The SJR 205 work group reviewed four recent pieces of legislation as a means of beginning to address the issues in the study mandate:

- Senate Bill 689 from the 1993 Session of the General Assembly concerning the Serious Habitual Comprehensive Action Plan;
- Senate Bill 171 from the 1992 Session of the General Assembly concerning the Comprehensive Services Act For At-Risk Youth and Families; and,
- Senate Bill 1009 and House Bill 2360 from the 1993 Session of the General Assembly concerning Juvenile Court notification of delinquent offenders to local schools and disciplinary records.

Each of these pieces of legislation and the resulting recommendations will be discussed in this section. Copies of the legislation which was reviewed by the work group can be found in Appendix E.

A. Serious Habitual Comprehensive Action Plan

The Serious Habitual Comprehensive Action Plan (SHOCAP) was presented by the Governor as a program recommended by the Commission on Violent Crime. Senate Bill 689 established SHOCAP as:

> ... a multi-disciplinary interagency case management and information sharing system which enables the juvenile and criminal justice system, schools and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts.

The legislation defined a serious or habitual offender as a juvenile who was (i) an offender convicted of murder, attempted murder, armed robbery, any felony sexual assault or malicious wounding, or (ii) an offender convicted of at least 3 offenses which would be felonies or Class I misdemeanors if committed by an adult. In addition, the legislation sets forth procedures to allow for the information sharing among members of the SHOCAP committee and authorization for release of the information to be used by the local committees. The Department of Criminal Justice Services (DCJS) was charged with developing statewide guidelines and providing technical assistance to localities implementing a new SHOCAP program.

When Senate Bill 689 was enacted, Prince William County was the only locality in Virginia that had a SHOCAP program in progress. Representatives from the Prince William County program presented information on administration of their local program to the Treatment Subcommittee of the Commission on Youth and the SJR 205 work group members in attendance during the June 1993 subcommittee meeting. The Prince William County program was established under the criteria of the federal SHOCAP program and is predominately law enforcement oriented with a strong emphasis on coordinated public safety and conduct control. In addition, representatives from Henrico County also addressed the subcommittee on their locality's current plans for establishing a SHOCAP committee. The Henrico County committee is being planned to more closely represent a multi-disciplinary service oriented program.

Representatives from the DCJS served on the SJR 205 work group and assured both the Treatment Subcommittee members and the work group that the programs that are envisioned as a result of Senate Bill 689 will be very different from the Prince William County program. DCJS administrators suggested that future programs will focus more on multi-disciplinary service provision and emphasize treatment as well as public safety concerns.

While the Commission on Youth members supported the goals of the DCJS in planning for service oriented SHOCAP programs, they had a number of concerns regarding provisions in the legislation. A discussion of these concerns follows.

1. Regulations

The DCJS was charged with issuing statewide guidelines, which do not have the force of law. The members felt that because the local SHOCAP committees will be

using confidential information that involves not only the juveniles placed in the program, but also in many instances their family members, the DCJS should issue regulations. In most cases, the family members have not been involved in the criminal matters that have brought the juvenile before the court and subsequently made them eligible for the program. The legislation allows for court service unit records, social services records, and other SHOCAP records to be shared among the committee members. However, many of these records contain detailed family histories and economic information. Commission members felt that if information on these family members would also be made available to the local committees, regulations should be issued to protect their privacy. In addition, it was determined that regulations would ensure greater statewide uniformity in the disclosure and handling of confidential information.

The Commission on Youth also felt that the following issues should be addressed during the regulatory process and considered for incorporation in the regulations:

1. inclusion of state and local representatives from all disciplines involved in DCJS work group process that will develop the SHOCAP regulation;
2. inclusion of provisions in the regulations for (i) supervisory goals for the juveniles served by the SHOCAP, (ii) conditions for exiting the program, and (iii) periodic evaluations of each juvenile's progress towards achieving their exit goals;
3. inclusion of provisions to allow for the addition of members involved in a particular juvenile's case to participate in the SHOCAP plans for the juvenile;
4. provision of guidance to local SHOCAP committees on §16.1-330.1(E) regarding "unauthorized release of information";
5. inclusion of provisions which define the period of time and seriousness of pattern for accumulation of the Class I misdemeanor offenses in §16.1-330.1(A)(ii); and,
6. inclusion of provisions which allow for the juvenile court to secure parental consent for release of information prior to participation in the program.

Each of these issues will be briefly discussed below.

Members of the Commission on Youth felt that the DCJS group, which would be convened to develop the regulations, should include state and local representatives from each of the disciplines involved in local SHOCAP committees in order to ensure full consideration of relevant federal regulations and laws from each discipline. Some disciplines, such as education and mental health, are subject to federal confidentiality provisions that will impact the disclosure of information by SHOCAP committee members. The Commission members identified the following state agencies for inclusion in the DCJS work group which will establish the regulations:

- the Department of Social Services,
- the Department of Education,
- the Department of Mental Health, Mental Retardation and Substance Abuse Services,
- the Department of Health,

- the Department of Youth and Family Services, and
- the Office of the Executive Secretary of the Supreme Court.

In addition, the work group should include a local representative from each of the disciplines enumerated in §16.1-330.1(D).

The Commission on Youth expressed concern over the lack of provisions in Senate Bill 689 which could provide (i) supervisory goals for the juveniles served by the SHOCAP, (ii) conditions for exiting the program, and (iii) periodic evaluations of each juvenile's progress towards achieving their exit goals. The members concluded that these provisions would ensure that the local committees focused on a complete treatment and public safety plan for each juvenile and that there would be bench marks by which to judge success. In addition, inclusion of these provisions in the regulations ensure that juveniles would not continue to be "labeled" or "tracked" for an indefinite period of time with no particular service plan.

The legislation authorizing SHOCAP mandates inclusion of representatives from a number of organizations on the local SHOCAP committees. However, members of the work group suggested, and the Commission members concurred, that there was no allowance for inclusion of representatives intimately involved in an individual case (i.e., a public defender, guardian ad litem, CASA volunteer or private treatment provider). The Commission members felt that these entities are in some cases closest to the juvenile receiving services and that they could provide useful information to the SHOCAP committee.

At the suggestion of Senator Houck, the SJR 205 work group and the Serious Juvenile Offender Task Force both reviewed the SHOCAP legislation and examined the issue of whether there should be a definitive time period for the accumulation of the three offenses in §16.1-330.1 (A)(ii) for determining eligibility in the program. A juvenile can be found delinquent of an offense at age 10 and be under the juvenile court's jurisdiction until age 21. Both groups who reviewed the legislation questioned whether commission of three Class I misdemeanor offenses over an eleven year period qualified the juvenile as a "habitual offender." Members of the Serious Juvenile Offender Task Force sighted national studies which found that only 18% of all delinquents were chronic offenders and they suggested that a three year time period would allow for the accumulation of offenses which could define "habitual."[1] Members of the Commission on Youth concurred with this suggestion.

Members of the Commission also felt that any program regulations should include provisions for acquiring parental consent for participation in the local SHOCAP programs. Acquisition of this consent is encouraged so that federal law, in areas such as the Federal Education Regulations (FERPA) which mandates parental consent prior to release of information without a court order, will not be violated. Commission members were of the opinion that the juvenile court was the appropriate entity to

[1] *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, p. 5 and pp. 33-35, Office of Justice Programs, U.S. Department of Justice, 1993

encourage this parental consent at the time they impose disposition for delinquent offenses.

2. Discretionary Supervision

The second area of the SHOCAP legislation, about which the Commission on Youth members expressed concern, was the provision of the legislation which states that the local SHOCAP committees "*shall* supervise serious or habitual offenders in their localities." The members felt that local SHOCAP committees should have the discretion to determine whether to serve all of the juveniles potentially eligible for the programs. In addition, there was a concern that mandatory supervision of all eligible juveniles would interfere with other services ordered by the juvenile court or services which were successfully being provided by other multi-disciplinary teams or service providers.

3. Confidentiality Provisions

Third, the Commission members had concerns regarding the provision of Senate Bill 689 that authorizes local SHOCAP committees to acquire the confidential information. The language in Senate Bill 689 states that "the provisions of this article authorizing information sharing between and among SHOCAP committees shall take precedence over" the confidentiality provisions of several chapters of the *Code of Virginia*. While the members understood the necessity for local SHOCAP committees to be able to acquire information on their clients, there was a concern that the current language was attempting to allow State law to supersede some provisions which were based on federal law.

4. Recommendations

With these concerns in mind, the Commission on Youth makes the following recommendations for the Serious Habitual Offender Comprehensive Action Program. The Department of Criminal Justice Services was advised of the work group's recommendations and the agency's response can be found in Appendix F.

Recommendation 1

Request the Department of Criminal Justice Services to develop regulations regarding the SHOCAP program and revise the *Code of Virginia* to reflect the regulatory process.

Rationale: The development of SHOCAP programs involves many different service sectors which have limited experience with formal sharing of previously confidential information. The regulatory process, which allows for the benefit of public comment, would better posture SHOCAP for statewide implementation by including the feedback of those localities with differing law enforcement and human service delivery system structures to have an input into the program's operational procedures and administration.

Recommendation 2

Introduce legislation which specifies that, when determining eligibility for local SHOCAP program participation, the accumulation of offenses be for a three year period. In addition, amend provisions of the legislation to require that program regulations be developed, juvenile placement in the SHOCAP programs be under local discretion and information-sharing be in accordance with federal law.

Rationale: The Serious Habitual Offender Comprehensive Action Program (SHOCAP) was enacted last session as a component of the Governor's Violent Crime Task Force recommendations. The program is designed to allow law enforcement, juvenile courts, schools and prosecutors to identify and share information on repeat or serious juvenile offenders. However, the work group felt that the current language is overly broad and may inappropriately target minor-offending youth. Other legislative suggestions were to increase the degree of local autonomy regarding program participation and to clarify that they share information in accordance with, rather than supersede, federal law.

Recommendation 3

Request the Department of Criminal Justice Services to consult with representatives from relevant agencies when developing SHOCAP regulations which incorporate the following concepts:

- include supervisory goals for the SHOCAP participants;
- identify conditions which constitute "graduation" or exiting from the program;
- include periodic evaluation of progress toward program goals;
- allow for additional community members to participate on individual SHOCAP committees when their client is being discussed;
- define what constitutes an authorized release of information by SHOCAP team members;
- identify state and federal laws which impact SHOCAP program provisions; and,
- provide for the juvenile court to secure parental consent for the release of information prior to participation in the program.

Rationale: These suggestions are offered to SHOCAP as a new program with a treatment goal. The consultation with representatives from other agencies is to ensure compliance with federal regulations pertaining to each discipline's record retention and sharing policies. The development of goals and release conditions is to provide juveniles with an incentive for behavior improvement. In addition, there are many providers in the community (i.e., public defenders, private therapists, CASA workers) who are involved in a juvenile's life who would provide useful information to the SHOCAP team when appropriate. Since one of the goals of the program is to improve communication and treatment efforts for the juvenile, it was reasoned that inclusion of these professionals in the provisions of services would be beneficial. Finally, parental consent is required for all special education juveniles prior to the release of information to comply with federal laws.

B. Comprehensive Services Act for At-Risk Youth and Families

The 1992 Session of the General Assembly passed Senate Bill 171 authorizing the Comprehensive Services Act For At-Risk Youth and Families and the 1993 Session passed the funding formula. These two pieces of legislation restructured the state and local service delivery and funding systems for youth and their families. This legislation was designed to increase local flexibility and to promote the development of programs which are community-based, child-centered and family-focused. Coordination among the five child-serving agencies (Departments of Social Service, Health, Education, Mental Health, Mental Retardation and Substance Abuse Services, Youth and Family Services, and Health) on the state and local levels is an integral component to the Act.

The Comprehensive Services Act directs localities to develop interagency teams on both the community planning and case-specific levels. The Community Management Teams (CMTs) determine (i) client eligibility, (ii) protocols for sharing information about clients and families, (iii) and appropriate service plans. On the individual case level, professionals from a variety of disciplines form local Family Assessment and Planning Teams (FAPT) to share information about their clients with the goal of aiding in the development of a comprehensive service plan. Many of the clients are receiving services through special education and/or substance abuse programs that have federally determined confidentiality mandates and close coordination in service delivery is necessary to ensure federal compliance in all areas.

While the Commission on Youth membership overwhelming agreed with the concepts inherent in the Comprehensive Services Act and acknowledged that the Act is in the early stages of implementation, there were three areas of concern that were addressed by the Commission in terms of the implementation of the Act.

1. Disclosure Requirements

The Commission on Youth found varying levels of proficiency with the new service delivery system across the state. Issues regarding the sharing of previously confidential therapeutic/diagnostic material and the appropriate application of Freedom of Information Act requirements (with respect to the allocations of public funds as part of service plan development) have yet to be resolved in a consistent way. The work group questioned the utility of going through the Freedom of Information Act (FOIA) requirements to announce local Family Assessment Planning Team meetings only to immediately convene executive sessions to discuss the individual client treatment plans.

2. Service Delivery Plans

There was also a concern expressed by Commission on Youth members that there was the potential for conflict between service delivery plans developed by the local FAPT teams and Individualized Education Program (IEP) plans developed by the local schools for special education children. The IEP process is driven by federal law and contains provisions giving the IEP plan precedence over other service delivery plans for juveniles under certain circumstances. Some of this misunderstanding may be reflective of the newness of the Act and a redefining of roles and coordination

between the two groups; however, the potential does exist for conflict between the two plans.

3. State and Federal Law

The Commission on Youth members' third area of concern after review of Senate Bill 171 was the sense of confusion and lack of information among local service providers about the various state and federal confidentiality and disclosure laws affecting their records and interagency collaboration efforts. Many local service providers questioned their liability in terms of releasing information when they are subject to state or federal confidentiality provisions at the same time they are serving on a multi-disciplinary team and subject to disclosure provisions. In many instances, the local service providers are subject to provisions from other disciplines as a result of the information they receive as team members and in most instances they are not aware of the confidentiality, disclosure and expungement laws in other fields.

4. Recommendations

With these concerns in mind, the Commission on Youth made the following recommendations regarding the Comprehensive Services Act.

Recommendation 4

Introduce legislation which would exempt the proceedings of the Family Assessment and Planning teams of the Comprehensive Services Act from provisions of the Freedom of Information Act.

Rationale: The Family Assessment and Planning Teams are the service delivery mechanism for the Comprehensive Services Act. These teams are comprised of representatives of the public child-serving agencies, the private sector and parents. Their primary role is to staff cases and develop treatment plans. They also have responsibility for recommending expenditure of public funds to pay for specific treatment services for individual clients. As a public entity, the teams are accountable for compliance with the Freedom of Information Act (FOIA). They serve primarily a treatment function and operate more effectively in meetings using clinical case staffing model than by following the public FOIA model. Further, as they only recommend expenditures to the Community Assessment and Planning teams, it was reasoned that FOIA should not apply to client-focused discussions.

Recommendation 5

Convey from the Commission on Youth to the Executive Management Council of the Comprehensive Services Act and the Department of Education the potential for conflict between local Family Assessment and Planning Team plans for juveniles and Individualized Education Program plans for special education students.

Rationale: The consensus of the Commission on Youth members was that there was a potential for conflict between the two types of service delivery plans. The members, however, felt that because the Comprehensive Services Act was so new

in terms of its implementation that written conveyance by the Commission to both parties on these potential problems would satisfy the concern of members.

Recommendation 6

Introduce legislation calling for a General Assembly study of mandatory state and federal confidentiality, disclosure and expungement laws which affect Virginia service providers. This study would identify:

- existing state and federal confidentiality, disclosure and expungement laws across agencies and disciplines;
- circumstances under which mandatory disclosure laws supersede confidentiality laws;
- areas of conflict and needed clarification in the *Code of Virginia* concerning confidential records; and
- where third party expungement laws are necessary.

In addition, the study would contain provisions for the development of a statewide resource manual and training curriculum for Virginia service providers.

Rationale: The consensus of the Commission on Youth members and representatives of the Attorney General's Office is that there is confusion in the field in terms of who has the right to access confidential information given the widespread use of multi-disciplinary teams. Members felt that service providers were not always aware of confidentiality, disclosure or expungement provisions at the state or federal level as they apply to other disciplines which impact their work. In addition, the Commission identified the need for a resource manual outlining confidentiality and disclosure laws across disciplines and providing guidance about when one law supersedes another. The work group recommends further that this study examine these issues not only as they pertain to juvenile law, but also to other populations (i.e. the elderly, handicapped, mentally or physically ill).

C. School Safety Summit Legislation

In response to the escalation of violence in schools, seven educational associations and the Department of Education developed recommendations for legislative consideration in October 1992. The Special Ad-Hoc Subcommittee Studying Acts of Crime and Violence by Students on School Property and the Joint Subcommittee Studying School Drop Out and Self-Esteem embraced these recommendations and presented them to the 1993 General Assembly for consideration. This package of recommendations is most commonly referred to as the School Safety Summit legislation. The SJR 205 study group reviewed two pieces of legislation, Senate Bill 1009 and House Bill 2360, which were part of the School Safety Summit legislative package.

Senate Bill 1009 contained provisions for the juvenile court to notify local school districts whenever a juvenile is adjudicated delinquent for a violation of the law involving:

(i) the unlawful purchase, possession or use of a weapon;

(ii) homicide, an assault or any unlawful wounding;

(iii) any controlled substance or marijuana;
(iv) arson; or,
(v) burglary.

Provisions in the legislation require that the court provide "written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication was based, to the superintendent of the school division in which the child is enrolled at the time of disposition."

House Bill 2360 incorporated the court notification provisions of Senate Bill 1009 and required that the Committee on District Courts, in cooperation with the Department of Education, develop procedures and criteria for the dissemination of the court notices. In addition, House Bill 2360 also incorporated a provision for Class 3 misdemeanor sanctions for any school personnel who unlawfully discloses information contained in the court notices. Provisions of both bills related to the court notices shall not go into effect until July 1, 1994 so that the Committee on District Courts and the Department of Education could resolve concerns of the judiciary over the release of information and develop procedures for dissemination.

The intent of House Bill 2360 was to address violence and safety concerns in the schools. House Bill 2360 incorporated a number of provisions which related to the behavior of student's on school property and to address school safety concerns, including:

- prior to admitting any child to a public school, there must be affirmation from the parent, guardian or other person(s) having control over the child indicating whether he/she has previously been expelled from school for violating school board policies regarding weapons, drugs, alcohol or willful infliction of injury to another person;
- students who have previously been expelled from a school for any of the enumerated offenses can be excluded from school for a maximum of one year if there is a finding that the student "presents a danger to the other students or staff;"
- requires that the Board of Education establish guidelines and develop model student conduct policies to assist local school boards in developing, among other things, (i) criteria for use of expulsions and suspensions, and (ii) standards for search and seizure of illegal substances and items and disciplining students with disabilities;
- defines Category I and II records and references disciplinary records for the first time in the *Code of Virginia*; and
- allows for transfer of scholastic records between school divisions without parental consent or notification.

The Commission on Youth recognized the need for actions to stem school violence and protect the safety of students and administrators in the schools. However, the members had a number of concerns with the school safety summit legislation. These concerns will be discussed below.

1. Juvenile Court Confidentiality Provisions

Commission members were concerned that the provisions of Senate Bill 1009 and House Bill 2360 which dealt with court records and notification seemed overly broad and lacked procedures to ensure the continued confidentiality provisions of the juvenile court. Citizens and juvenile court judges who spoke at the public hearing expressed concerns over the lack of statutory procedures for the dissemination of the court notices. The speakers were troubled by the lack of specification of offenses for which notification would be sent.

In addition, Commission members expressed concern over the lack of school system expungement provisions in the legislation which would coincide with the juvenile court provisions. The juvenile court expunges records of delinquent adjudications when the juvenile turns 18 years of age; however, the schools are allowed to maintain information in their Category II files for 5 years after the student graduates. This difference in time frames allows for the secondary data source to retain information longer than the originating data source and has the potential for labeling juveniles after graduation if the record is requested for future employment or educational purposes.

2. Circuit Court Notification

The Commission on Youth members expressed concern that the legislation did not include provisions for the Circuit Court to notify schools also when juveniles have been convicted as adults for the enumerated offenses. In most instances, juveniles that are transferred and convicted as adults are the most dangerous juvenile offenders and the Commission members questioned why these offenders were would not also be brought to the attention of the local schools.

3. Verdicts on Appeal

A third area of concern with both Senate Bill 1009 and House Bill 2360 was the lack of provisions which mandate that the court notify the schools if a delinquent adjudication is overturned on appeal. If a verdict is overturned on appeal, the juvenile will no longer have a court record and the record of adjudication or guilt will be purged. Commission members were concerned that there are no provisions to either the notify the schools of an overturned adjudication or mandate that the schools destroy the court records if such adjudications are overturned.

4. Definitions of Education Records

A fourth area of concern with the legislation was the inclusion of definitions and terms in the *Code of Virginia* which have historically been either included in Department of Education (DOE) Regulations or never before referenced in law or regulation. Category I and II and scholastic records are defined in House Bill 2360. The DOE currently includes in their regulations definitions of these items which are based on federal regulations. The definition of the Category II files which was included in the legislation was not the same as the definition used in the current DOE regulations. House Bill 2360 referenced "disciplinary records." The DOE does not have a definition or established expungement schedules to guide local school divisions on what actions or criteria constitute "disciplinary records." Members of the Commission felt that the

lack of DOE regulations and guidance on the definition of disciplinary records could lead to confusion and disjointed statewide expungement procedures.

Lack of statewide uniformity, Commission members conjectured, could result in inconsistencies in the practice of transferring student scholastic records. For example, one school division could expunge all routine disciplinary records, such as those for tardiness, at the end of each year and another school division could keep the same records until graduation. The two students could have the same type of disciplinary history, but, because of differing expungement procedures, they present to a new school division profiles of two very different types of student.

5. Recommendations

With these concerns in mind, the Commission on Youth is making the following recommendations to amend provisions of Senate Bill 1009 and House Bill 2360.

Recommendation 7

Amend recently enacted legislation concerning notification of delinquent adjudications to the schools by the Juvenile and Domestic Relations District Court. The amendments would delineate the *Code of Virginia* citations which reflect the offenses that the School Safety Summit recommended and only felonious offenses within each of the categories when adjudications notices are forwarded from the courts to the schools.

Rationale: The intent of the legislation was to inform the superintendents when a violent juvenile was in their school system. The Commission on Youth members had the understanding, which was echoed in public hearing testimony, that juveniles committing felonious acts were the target of this initiative and expressed a desire that legislation be amended to reflect the Code of Virginia citations which specify felonious acts. In addition, the members felt that by specifying felonious offenses in the Code, the law would establish an appropriate balance between public safety and confidentiality.

Recommendation 8

Introduce legislation which requires Circuit Court notification to the school superintendent when a juvenile has been transferred and found guilty for the offenses enumerated by the School Safety Summit participants.

Rationale: The intent of last year's legislation was to notify school systems of the presence of violent juveniles within their local school system. The justice system currently transfers the more violent juveniles to Circuit Court. Of the 412 juveniles transferred and convicted in Circuit Court during 1992, one-fourth of the juveniles remained in the community. The Commission on Youth members felt that the superintendents should also be made aware of these transfer cases because these juveniles represent the most dangerous offenders that could possibly be in their school systems.

Recommendation 9

Introduce legislation which would delineate the procedures for school divisions to follow when receiving delinquent adjudication notices from the juvenile court pursuant to §16.1-305.1. These procedures would require that:

- the superintendent disclose the information contained in the court notice only if school board action is necessary to (i) protect the physical safety of either the juvenile, other students, or administrators, or (ii) to make an alternative educational placement for the juvenile;
- when the court notice is received by the principal, the notice shall be kept separate from the student's scholastic record; and,
- if school disciplinary action is taken as a result of the court notification (i) documentation concerning the disciplinary action shall be placed in the juvenile's Category II file, (ii) the student's parent, guardian or person standing *in loco parentis* must be informed of the action and allowed to respond to the record, and (iii) the committing juvenile court shall be informed of the disciplinary action.

Rationale: The Committee on District Courts, in collaboration with the Department of Education, was requested by the 1993 General Assembly to develop procedures for the dissemination of the court records within the school system. Members of the SJR 205 work group also served on the Committee on District Court's work group. Several of the same concepts enumerated in the proposed legislation are incorporated in the proposed guidelines. However, the procedures developed by the Committee on District Courts were only guidelines which did not have the force of law. The Commission on Youth membership felt that, because these records involved heretofore confidential court information, the procedures for their dissemination should be codified.

Recommendation 10

Introduce legislation which establishes guidelines for annual review and purging of court notices by school systems.

Rationale: The Code of Virginia currently does not set forth procedures for the purging of court records sent to the school superintendent's office. However, the originating source of the information—the juvenile court—purges the information once the juvenile reaches age 18 or five years after the last adjudication. This amendment would require that court notices be reviewed by the school principal at the end of each school year and be purged when no longer educationally useful or when the juvenile graduates, whichever shall come first.

Recommendation 11

Introduce legislation to require the clerk of court to notify the superintendent if an adjudication of delinquency or finding of guilt is overturned on appeal and require that the original court notices that went to the school be purged.

Rationale: The Commission members felt that, if the appellate court found a reason for overturning the verdict and the court system no longer maintains a record on the juvenile, the school system as the secondary recipient of the information should also be required to purge the records. This recommendation attempts to provide parity between the records retention policies of the education and juvenile court systems.

Recommendation 12

Introduce legislation which defines disciplinary records for school systems and sets forth a retention schedule for the records. Provisions would require that:

- disciplinary records be defined as records that are directly related to a student and the disciplinary action taken against that student for violating school board or school rules or policies on school property or at school sponsored events; and,
- disciplinary records involving (i) possession and/or use of guns or other weapons, alcohol and other drugs, and assaults upon staff or others on school property or at school sponsored activities, and (ii) disciplinary actions taken as a result of a court notification in §16.1-305.1 shall be destroyed when no longer educationally relevant. Disciplinary records of actions other than those defined in (i) and (ii) shall be destroyed at the end of each school year.

Rationale: The Commission on Youth's proposed definition for disciplinary records is the same as that mandated by the federal government. However, the federal definition does not include reference to a retention schedule for such records. Disciplinary records for the offenses which were recommended by the School Safety Summit would be kept longer—until a time when it is no longer educationally useful. Based on testimony at the public hearing and the opinions of members of the work group from local school divisions, the amendments would require the purging of routine disciplinary records after the end of each school year due to the potential for "labeling" students. In some Virginia localities these records are already routinely being purged at the end of each school year.

Recommendation 13

Introduce legislation to require that the school notify the student (if 18 years old), the student's parent, guardian, or other person standing *in loco parentis*, or other persons having control or charge of the student, when a scholastic record is being transferred to a requesting school or school division.

Rationale: Currently, either a student who is 18 or more years old or his parent can review and respond to the student's scholastic record at any time. This amendment would notify the interested parties of a request for transfer of a scholastic records to allow the student or his parent to have the opportunity to review the record prior to its transfer to another school or division.

D. Related Confidentiality Issues

Members of the Commission on Youth were referred three issues regarding juvenile confidentiality which the work group addressed which were not related to the pieces of legislation they reviewed. A discussion of these issues follows.

1. Court Service Unit Records

The first issue was a concern from the Department of Youth and Family Services (DYFS) that court service unit records were not properly protected by the confidentiality provisions of the *Code of Virginia*. The DYFS representatives cited a recent Attorney General's opinion which stated that court service unit records were distinct and different from juvenile court records and, therefore, not subject to or protected by the same confidentiality provisions in the *Code*. There are currently no provisions in §16.1-300 which protect the confidentiality of court service unit records. The Commission members were concerned over the lack of confidentiality provisions for these records because they contain personal medical, legal, psychological and other forms of confidential information about all juveniles and their families having a case before the juvenile court.

2. Education Programs in Local Jails

The second issue which was brought to the attention of the Commission was presented to the work group by representatives of the Department of Education (DOE). The DOE found that in many instances local schools were refusing to release school records to the Department of Correctional Education (DCE) to provide these services. Juveniles in local jails are required to have educational services provided. According to information presented to the work group, some local schools are interpreting §22.1-289 of the *Code of Virginia* to determine that the Department of Correctional Education (DCE) is not an entity to whom they can statutorily release the records. The Commission membership reviewed §22.1-289 and found that it does not specifically state that DCE shall be given access to these records when providing services in a local jails.

3. Juvenile Victims Compensation Appeal Hearings

The third issue considered by the Commission on Youth members was brought forward by the Chairman, Senator R. Edward Houck, and representatives of the Virginia Network for Victims. Both sources relayed concerns from a Commonwealth's Attorney regarding appeal hearings for juvenile victims of crime. The prosecutor's concerns were two-fold. First, the current *Code of Virginia* statute addressing victim appeal hearings does not contain confidentiality provisions to mandate:

(i) closure of the court room during an appeal hearing involving a juvenile, and
(ii) records, papers and reports involved in the hearing involving a juvenile be confidential.

Victims' compensation appeal hearings often require the submission of detailed treatment information and questioning of the juvenile victim which has the potential of "victimizing" the victim yet again. The prosecutor suggested that the appeals hearing

used standardized forms, such as those used by other states, to relay treatment considerations.

While the Commission on Youth members strongly agreed that the *Code of Virginia* should include statutory provisions to close the court rooms and protect the records from appeal hearings for compensation for juvenile victims of crime, there was consensus after discussions with the Director of the Crime Victim's Compensation Division that the use of standardized treatment forms was problematic. It was reported that states which use these forms have above average numbers of fraudulent claims and that, for this reason, many are repealing the use of these forms.

4. Recommendations

Based on the concerns implicit in these three issues, the Commission on Youth made the following recommendations.

Recommendation 14

Introduce legislation which defines Court Service Unit records as distinct from court records.

Rationale: Court Service Unit records contain medical, legal, psychological and other forms of confidential information on all juveniles and their families involved in actions before the juvenile court. The recent Attorney General's Opinion necessitates the need to provide statutory provisions for the continued confidentiality of the court service unit records.

Recommendation 15

Introduce legislation which allows the Department of Correctional Education to obtain scholastic records when providing educational services to juveniles in jail.

Rationale: There are currently over 60 juveniles in jail daily, either serving sentences or awaiting Circuit Court trials, who are special education students. The provision of educational services to this population is limited. However, those jails which are certified to hold juveniles and have special education teachers are often unable to access the juvenile's educational records. Schools maintain that the Code of Virginia's silence regarding the designation of the Department of Correctional Education and the jails as appropriate recipients of educational records has been an obstacle to the jails' receiving the necessary educational materials.

Recommendation 16

Introduce legislation which mandates that victim compensation appeal hearings for juveniles be closed and all written records of the proceedings be confidential.

Rationale: Victims of crime, both adults and juveniles, apply to the Victim's Compensation Board for financial compensation. The Board conducts a paper review of the request. An individual can appeal the Board's decision through a court hearing. Currently the Code of Virginia does not specify that victim appeal hearings

for juveniles should be closed and that the contents of the proceedings be confidential. Juvenile victims of crime need to be afforded the maximum protection through confidentiality statutes.

VII. Acknowledgments

In addition to the individuals who have served on the Senate Joint Resolution 205 work group, the members of the Commission on Youth extend their appreciation to the following individuals and associations for their assistance on this study.

- Timothy Cohen

- Members of the Committee on District Court's Senate Bill 1009 Work Group
  Honorable Philip A. Wallace, Judge 24th J&DR District Court
  Honorable Philip Trompeter, Judge 23rd J&DR District Court
  Dr. C. Lindsey Suggs, Division Superintendent, Northumberland County Schools
  Dr. David Stuckwith, Division Superintendent, City of Hopewell Schools
  Cindy Jessup, Clerk, Fredericksburg J&DR Court
  Mary Lois Jessup, Clerk, City of Richmond J&DR Court

- Janice Conway, Court Technical Assistant
  Supreme Court of Virginia

- Howard M. Cullum
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- James W. Dyke, Jr.
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- Dr. Arthur Gosling, Jr., Superintendent
  Arlington County Schools

- O. Randolph Rollins
  Secretary of Public Safety

- Staff of the Division of Legislative Services

APPENDIX A:
SJR 205 Study Resolution

SENATE JOINT RESOLUTION NO. 205

Requesting the Commission on Youth to conduct a comprehensive study on confidentiality of juvenile records.

Agreed to by the Senate, February 2, 1993
Agreed to by the House of Delegates, February 17, 1993

WHEREAS, the Comprehensive Services Act for At-Risk Youth and Families establishes local multi-disciplinary teams to coordinate service delivery for youth and their families; and

WHEREAS, child-serving agencies will need to develop techniques for sharing client information across agencies which respect the confidentiality of their clients; and

WHEREAS, public and private agencies have requested technical assistance to respond to the increased demand for record sharing; and

WHEREAS, in 1992, the Secretaries of Health and Human Resources, Public Safety, Education, and Economic Development developed a Uniform Consent Form to respond to the need for collaborative service delivery; and

WHEREAS, the Educational Summit has recommended that juvenile and domestic relations courts notify school superintendents regarding the adjudications of a certain group of juvenile offenders; and

WHEREAS, routine notification of delinquent adjudications to school personnel is a departure from current policy; and

WHEREAS, the number of Serious Habitual Offender Comprehensive Action Programs (SHOCAP) in localities which allow for the sharing of information (across agencies) on chronic serious offenders is increasing; and

WHEREAS, local law enforcement has advocated easier access to information about juveniles across jurisdictions; and

WHEREAS, the issue of confidentiality of client records is currently determined by often conflicting federal mandate, state policy, and local cooperative agreements; and

WHEREAS, in current society, effective intervention with youth and their families requires a multidisciplinary approach which demands the sharing of information across agencies; and

WHEREAS, the issue of confidentiality of records must be re-examined in light of a changing society and client population; and

WHEREAS, amendments to confidentiality provisions must be made in a comprehensive way which responds to education, child welfare, juvenile justice, and treatment concerns; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Commission on Youth conduct a comprehensive study on the issue of confidentiality of juvenile records. To assist the Commission in its study, the Secretaries of Health and Human Resources, Public Safety, and Education, or their designees, shall serve as ex officio members. Additional expertise shall be provided by one representative each of local law enforcement, a community assessment and planning team pursuant to the Comprehensive Services Act, local school superintendents, court services directors, directors of local departments of social services, and directors of community services boards, all to be appointed by the Governor.

Issues to be addressed include current barriers in both policy and practice to information sharing across agencies and disciplines; appropriate safeguards which balance the need for collaborative information exchange and the right to confidentiality; model technologies for information exchange; model cooperative agreements for information sharing; and code and policy revisions to facilitate the appropriate sharing of client information.

The Commission shall complete its study in time to submit its findings and recommendations to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

APPENDIX B:
SJR 205 Work Group Members

SJR 205 Confidentiality of Juvenile Records
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APPENDIX C:
Summary of September 29, 1993 Public Hearing Testimony

NOTICE OF PUBLIC HEARING
Confidentiality of Juvenile Records

Senator R. Edward Houck has announced that members of the Virginia Commission on Youth will hold a Public Hearing on the issue of the Confidentiality of Juvenile Records.

The twelve-member Commission was established by the General Assembly to "provide legislative review and analysis on matters relating to youth and their families." The testimony received at the Public Hearing will be used to help the Commission shape its legislative agenda for the 1994 General Assembly Session.

The Commission will receive testimony from interested parties and organizations:

Date: **Wednesday, September 29, 1993**

Place: **House Room D - General Assembly Building**
Richmond, Virginia

Time: **12:00 noon - 1:00 p.m.** **Sign up for Public Hearing**
1:00 p.m. - 5:00 p.m. **Public Hearing**

The Public Hearing site is accessible.
An interpreter for the deaf will be provided upon request by September 14.

The public is invited to address the Commission on concerns or issues related to confidential records involving youth and their families in:

- Juvenile and Domestic Relations District Court,
- Local Social Services cases,
- Primary and Secondary schools,
- Mental Health/Substance Abuse treatment, and/or
- Law Enforcement.

In addition, the public can express opinions on portions of recently enacted pieces of legislation which allow for the disclosure of certain types of previously confidential juvenile information: the Serious or Habitual Offender Comprehensive Action Program (SHOCAP), the Comprehensive Services Act (CSA), and legislative recommendations arising from the School Safety Summit.

Individuals wishing to testify may register in person the day of the hearing or contact the Commission by 5 p.m. September 28. Presenters will be scheduled for up to five (5) minutes. In general, appearances will be scheduled on a first-come, first-served basis. The Chairman invites individuals to include recommendations in their statements and asks that presenters bring 14 copies of their prepared statements to the hearing, if possible. Interested persons who are unable to attend the public hearing may submit written testimony to the Commission by September 23.

The Commission is chaired by Senator Houck (Fredericksburg), with Delegate Jerrauld C. Jones of Norfolk, Vice Chairman. Also serving are Commissioners Senator Robert L. Calhoun (Alexandria), Delegate L. Karen Darner (Arlington), Delegate R. Creigh Deeds (Bath County), Delegate Arthur R. Giesen, Jr. (Waynesboro), Delegate Thomas M. Jackson, Jr. (Carroll County), Senator Yvonne B. Miller (Norfolk), Delegate Linda M. Wallace (Leesburg), Thomasina T. Binga (Richmond), Ms. Elizabeth N. Miner (Culpeper) and Mr. Robert E. Shepherd, Jr. (Richmond).

Contact: Virginia Commission on Youth
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SUMMARY

SJR 205 Public Hearing
September 29, 1993
Richmond, Virginia

The Virginia Commission on Youth held a public hearing on September 29, 1993 to address the study mandates in the Senate Joint Resolution 205 legislative study on the Issue of Confidentiality of Juvenile Records. Commission on Youth members heard testimony from 13 speakers and the testimonies were to be included as part of the Commission's work on the study. Senator R. Edward Houck, Chairman of the Commission, called the hearing to order and the following members of the Commission on Youth participated in the hearing: Senator Robert L. Calhoun, Senator Yvonne B. Miller, Delegate L. Karen Darner, Delegate R. Creigh Deeds, Ms. Elizabeth N. Miner and Mr. Robert E. Shepherd, Jr.

Speakers reflected concerns relative to confidentiality of records from the following areas:

- Juvenile and Domestic Relations District Court,
- local social service departments,
- primary and secondary schools,
- mental health, mental retardation and substance abuse, and
- law enforcement.

The first speaker was Dr. Thomas Bailey, President of the Virginia Association of Secondary School Principals. His testimony rendered his organization a strong proponent of the newly enacted legislation allowing the release court records to the schools. In reference to the Education Summit, Dr. Bailey supported recommendations that 1) required that records of school disciplinary actions be included in the scholastic record and that they be forwarded to the receiving school division, and 2) divisional superintendents be made aware of a student's juvenile court cases involving students and weapons violations, assaults, and other crimes. The VASSP supported such actions by claiming that a principal's responsibility is his or her entire staff and student population, therefore, it is necessary to have access to disciplinary records of all incoming students to ensure school safety.

Testimony was then given by Bob Walker, Executive Director of the Fraternal Order of Police. Mr. Walker spoke on the increasing use of firearms by juveniles and recommended a more strict criminal code, under which juveniles would be subjected to a two-level system, with more serious offenders being punished more severely. He recommended that "instead of going before the Juvenile Courts time after time, a youth is 'put away' the first time he uses a weapon in a violent crime." He suggested lowering the age at which a juvenile can be tried as an adult to thirteen years.

The chief opponent of the recently enacted legislation calling for schools to be notified on adjudicated youth was Judge Philip J. Trompeter from Roanoke. A Juvenile and Domestic Relations District Court Judge, Judge Trompeter went so far as to suggest repeal of the school safety summit legislation and the SHOCAP initiative. Judge Trompeter expressed concern that the bill lacked a collective view of human service agencies and presented predominately a school superintendents' view. Judge Trompeter's primary concern was that previously unfurnished juvenile court information would be used to stigmatize students, which would be detrimental to their educational growth. The Judge related to the Commission the nature of the Supreme Court work group's proposed recommended implementation plans concerning the release of court information within the school systems. Judge Trompeter said that the work group will recommend that a student's records are to be known by the school superintendent and the principal of the school a child is attending, that the records should be put in their Category II folder, and that the information should not be shared with anyone but the principal and individuals with the intention of developing a specific school program for the student.

Judge Trompeter's testimony was embraced by Kim O'Donnell of the City of Richmond Public Defender's Office. Ms. O'Donnell expressed her similar concern that the school safety summit legislation would only promote the stigmatization of youngsters for whom court notices were sent. She stated that the release of confidential records is unnecessary unless for a rehabilitative purpose that benefits a student.

Also in concurrence with the submission of Judge Trompeter were several other speakers. Lilla Wise of Arlington Public Schools felt the school safety summit legislation to be intrusive to an individual student and his or her educational needs.

Ms. Roxanne Grossman, representing herself as a parent, sided with the view that the inclusion of personal psychiatric, psychological, or family counseling records in a student's scholastic file is unnecessary if these records are not utilized in a constructive nature to develop a special program. Ms. Grossman condoned the release of relevant information only in the event a student had willfully committed a violent act against another student.

Michael Ryan of the League of Social Service Agencies voiced his support of the confidentiality of juvenile records in the realm of social services. Mr. Ryan recommended the continuation of a comprehensive legislative study "regarding confidentiality laws and regulations pertaining to collection, retention and disclosure of all documents requiring confidential handling." He stressed the importance of knowledge of one's responsibility so that confidentiality is maintained.

Julie McConnell of the American Civil Liberties Union(ACLU) concurred with the testimony of Kim O'Donnell. She cited concerns that a family joining a human service agency is asked to reveal often humiliating, personal information. Ms. McConnell felt that more caution must be observed when approaching such information so that it is not

disclosed in instances where it does not serve the best interest of the child at hand. Ms. McConnell submitted that, if school safety is an issue, then so is community safety, because when students labeled "a threat" to other students are denied educational fulfillment, they often have no place to go but the streets. She stated that, while Virginia's juvenile policies imply an effort to rehabilitate rather than penalize adjudicated delinquents, students whose records are disclosed are often not afforded such an option. Her testimony culminated in the statement that "juvenile proceedings must remain non-criminal and court records must remain confidential."

Tim Cohen, a high school student, cited concerns that disclosed court records could follow a student after graduation through copies of his/her high school transcripts which would contain the court records. Mr. Cohen stated that, although the court expunges its copies of the records when the juvenile turns 18, the fact that the school records could contain the court notices after graduation is detrimental to both the student and society as a whole. The outline of the school safety summit renders scholastic files (inclusive of disciplinary, court records) eligible for consideration five years after graduation. Mr. Cohen stressed the importance of continued education, regardless of the situation, for the sake of rehabilitation.

Doug Holmes of Fairfax Public Schools supported the legislation in his claim that record-sharing is an asset to collaborative efforts among agencies and discipline-related information about students is necessary to insure "education modification" for that student.

Dick Pulley of the Virginia Education Association strongly advocated the legislation. He felt that there should be a transfer of records so as to secure the safety of the school, faculty, and other students. The final speaker, Dr. Mary Clement, suggested that, although sometimes information is needed, there are methods by which a subject can remain confidential but information can still be collected.

The two major points of view represented (in favor of and not in favor of the legislation) seemed to remain consistent within themselves. On one hand, those who did not favor the legislation had concerns about the stigmatization of students and denial of educational opportunities, further damaging the student. These speakers favored a rehabilitative approach rather than a penalizing one. The speakers who favored the legislation did so for the welfare and safety of the larger group of individuals surrounding the subject.

APPENDIX D:
1994 Legislation Proposed
HJR 66
HB 175
HB 178
SB 218
SB 219
SB 222

1994 SESSION

LD3513836

HOUSE JOINT RESOLUTION NO. 66

Offered January 20, 1994

Creating a joint subcommittee to study state and federal law on privacy, confidentiality and mandatory disclosure of information held or used by governmental agencies.

Patrons—Darner, Deeds, Giesen, Jackson and Jones, J.C.; Senators: Calhoun, Houck and Miller, Y.B.

Referred to Committee on Rules

WHEREAS, the development of programs such as the Comprehensive Services Act and the Serious and Habitual Offender Comprehensive Action Programs have increased the involvement of multi-disciplinary teams in rendered services to certain populations; and

WHEREAS, Senate Joint Resolution 205, 1993, directed the Virginia Commission on Youth to conduct a study on the issue of confidentiality of juvenile records; and

WHEREAS, the Commission's study found conflicts in the various disciplinary fields concerning access to and disclosure of confidential information; and

WHEREAS, many of these conflicts cannot be resolved without legislation resulting from serious consideration of the underlying policy issues in the areas of education, child welfare, juvenile justice, and medical and mental health treatment; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That there be hereby created a joint subcommittee to study privacy, confidentiality, and mandatory disclosure of information held or used by governmental agencies. The joint subcommittee shall endeavor to (i) identify existing mandatory state and federal confidentiality and disclosure laws, (ii) determine under what circumstances disclosure laws supersede confidentiality laws, (iii) identify necessary statutory changes needed to clarify conflicts between disclosure and confidentiality, (iv) identify existing state expungement laws and where third party expungement provisions are necessary to ensure the continued confidentiality beyond the originating source of the information, (v) clarify the legal ramifications of the Privacy Protection Act on state confidentiality, disclosure, and expungement laws, (vi) develop a statewide resource manual to guide local service providers on confidentiality and disclosure laws and decision rules guiding issues of confidentiality versus disclosure of information, (vii) develop training programs to inform local service providers on the laws in the manual which may impact their work, and (viii) any other issues the joint subcommittee deems relevant.

The joint subcommittee shall consist of 19 members to be appointed as follows: two members of the Senate Committee for Courts of Justice, two members of the Senate Committee on Education and Health, and two members of the Senate Committee on Rehabilitation and Social Services, to be appointed by the Senate Committee on Privileges and Elections; three members of the House Committee for Courts of Justice, three members of the House Committee on Education, and three members of the House Committee on Health, Welfare and Institutions, to be appointed by the Speaker of the House of Delegates. The Governor is requested to appoint the following cabinet Secretaries to serve on the joint subcommittee: the Secretary of Administration, the Secretary of Education, the Secretary of Health and Human Resources, and the Secretary of Public Safety.

The legislative members of the joint subcommittee shall be compensated as specified in § 14.1-18 of the Code of Virginia, and all members of the joint subcommittee shall be reimbursed for their actual expenses incurred in the performance of the work of the joint subcommittee.

The direct costs of this study shall not exceed $18,000.

The Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the staff of the Commission on Youth. All agencies of the Commonwealth are requested to provide assistance to the joint subcommittee upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 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 House of Delegates		Agreed to By The Senate	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐
Date: _____		Date: _____	
Clerk of the House of Delegates		Clerk of the Senate	

LD3512836

HOUSE BILL NO. 175

Offered January 13, 1994

A BILL to amend and reenact § 16.1-300 of the Code of Virginia, as it is currently effective and as it may become effective, relating to confidentiality of certain juvenile records.

Patrons—Darner, Deeds, Giesen, Jackson and Jones, J.C.; Senators: Calhoun, Houck and Miller, Y.B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-300 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 16.1-300. (For effective date - See note) Confidentiality of Department records.

A. The social, medical, psychiatric and psychological reports and records of children who are *or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or 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 *and requests access to his own records or reports*;

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.

§ 16.1-300. (Delayed effective date - See notes) Confidentiality of Department records.

A. The social, medical, psychiatric and psychological reports and records of children who are *or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or 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 *and requests access to his own records or reports*;

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 subsection A, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child.

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 family 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.

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1994 SESSION

LD3506836

HOUSE BILL NO. 178

Offered January 14, 1994

A BILL to amend and reenact § 16.1-330.1 of the Code of Virginia, relating to the Serious or Habitual Offender Comprehensive Action Program.

Patrons—Deeds, Darner, Giesen, Jackson and Jones, J.C.; Senators: Calhoun, Houck and Miller, Y.B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-330.1 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-330.1. Definition; establishment of program; disclosure of information; penalty.

A. For purposes of this article, a serious or habitual juvenile offender is a minor who has been (i) adjudicated delinquent or convicted of murder or attempted murder, armed robbery, any felony sexual assault or malicious wounding or (ii) convicted at least three times *during any three-year period* for offenses which would be felonies or Class 1 misdemeanors if committed by an adult. Qualifying convictions or adjudications shall include only those for offenses occurring after July 1, 1993. However, any Serious or Habitual Offender Comprehensive Action Program (SHOCAP) in existence on July 1, 1993, shall be deemed to have been established pursuant to this article and, notwithstanding the limitations of this subsection, may continue to supervise persons who were being supervised on July 1, 1993.

B. The Serious or Habitual Offender Comprehensive Action Program (SHOCAP) is a multidisciplinary interagency case management and information sharing system which enables the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts. Each SHOCAP ~~shall~~ *may review the cases brought before it and may* supervise serious or habitual juvenile offenders in the community as well as those under probation or parole supervision and enhance current conduct control, supervision and treatment efforts to provide a more coordinated public safety approach to serious juvenile crime, increase the opportunity for success with juvenile offenders and assist in the development of early intervention strategies.

C. Any county or city *, or combination thereof,* in the Commonwealth may by action of its governing body establish a SHOCAP committee. The committee shall consist of representatives from local law enforcement, schools, attorneys for the Commonwealth, juvenile court services, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Youth and Family Services. Any county or city which establishes a SHOCAP committee shall, within forty-five days of such action, notify the Department of Criminal Justice Services. The Department shall issue ~~statewide~~ SHOCAP ~~guidelines~~ *regulations for the operation of the program, including conditions for entering and exiting the program,* and *shall* provide technical assistance to local jurisdictions on implementation of SHOCAP.

D. Each SHOCAP committee shall share among its members and with other SHOCAP committees otherwise confidential information on identified serious or habitual juvenile offenders. Every person, including members of the SHOCAP committee, who is to receive confidential information pursuant to this article shall first submit to the committee a signed statement acknowledging the duty imposed by this article to maintain the confidentiality of that information.

All records and reports concerning serious or habitual juvenile offenders made available to members of a SHOCAP committee and all records and reports identifying an individual offender which are generated by the committee from such reports shall be confidential and shall not be disclosed, except as specifically authorized by this article or other applicable law. Disclosure of the information may be made to other staff from member agencies as

authorized by the SHOCAP committee for the furtherance of case management, community supervision, conduct control and locating of the offender for the application and coordination of appropriate services. Staff from the member agencies who receive such information will be governed by the confidentiality provisions of this article. The staff from the member agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals who provide direct services to the offender or who provide community conduct control and supervision to the offender. *All records and reports identifying an individual offender which are generated by a SHOCAP committee shall be expunged when the juvenile has completed (i) the SHOCAP program goals and conditions for exiting the program, or (ii) his period of probation, whichever occurs first.*

The provisions of this article authorizing information sharing between and among SHOCAP committees shall ~~take precedence over~~ *be in accordance with* the provisions of (i) Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii) Article 5 (§ 22.1-287 et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.1 and any regulations enacted pursuant thereto governing access to juvenile mental health records and (iv) Title 63.1 and any regulations enacted pursuant thereto governing access to records concerning treatments or services provided to a juvenile.

E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly permit, assist or encourage the unauthorized release of any identifying information contained in any reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be punishable as a Class 3 misdemeanor.

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

1994 SESSION

LD3511836

SENATE BILL NO. 218

Offered January 24, 1994

A BILL to amend and reenact § 19.2-368.6, as it is currently effective and as it may become effective, and § 19.2-368.14 of the Code of Virginia, relating to records, papers, etc., of juvenile victim's compensation claim.

Patrons—Houck, Calhoun and Miller, Y.B.; Delegates: Darner, Davies, Deeds, Giesen, Jackson, Jones, J.C. and Puller

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Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-368.6, as it is currently effective and as it may become effective, and §19.2-368.14 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-368.6. (For effective date - See note) Assignment of claims; investigation; hearing; confidentiality of records; decisions.

A. A claim, when accepted for filing, shall be properly investigated, and, if necessary, assigned by the chairman to a commissioner, deputy commissioner or other proper party for disposition. All claims arising from the death of an individual shall be considered together by the same person.

B. The person to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based.

C. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for, or convicted of, any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to a lack of criminal responsibility or other legal exemption.

D. The person to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If he is unable to decide the claim, upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible. *The hearing of any claim involving a claimant or victim who is a juvenile shall be closed. All records, papers, and reports involving such claim shall be confidential except as to the amount of the award and nonidentifying information concerning the claimant or victim.*

E. ~~Confidentiality~~ *For purposes of this chapter, confidentiality* provided for by law applicable to a claimant's or victim's juvenile court records ~~is~~ *shall* not *be* applicable ~~in proceedings under~~ *to the extent that the Commission shall have access to those records only for the purposes set forth in* this chapter.

F. After examining the papers filed in support of the claim, and the report of investigation, and after a hearing, if any, a decision shall be made either granting an award pursuant to § 19.2-368.11:1 of this chapter or denying the claim.

G. The person making a decision shall issue a written report setting forth such decision and his reasons therefor, and shall notify the claimant and furnish him a copy of such report.

§ 19.2-368.6. (Delayed effective date - See notes) Assignment of claims; investigation; hearing; confidentiality of records; decisions.

A. A claim, when accepted for filing, shall be properly investigated, and, if necessary, assigned by the chairman to a commissioner, deputy commissioner or other proper party for disposition. All claims arising from the death of an individual shall be considered together by the same person.

B. The person to whom such claim is assigned shall examine the papers filed

support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based.

C. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for, or convicted of, any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to a lack of criminal responsibility or other legal exemption.

D. The person to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If he is unable to decide the claim, upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible. *The hearing of any claim involving a claimant or victim who is a juvenile shall be closed. All records, papers, and reports involving such claim shall be confidential except as to the amount of the award and nonidentifying information concerning the claimant or victim.*

E. Confidentiality provided for by law applicable to a claimant's or victim's juvenile court records ~~is~~ *shall* not *be* applicable ~~in proceedings under~~ *to the extent that the Commission shall have access to those records only for the purposes set forth in* this chapter.

F. After examining the papers filed in support of the claim, and the report of investigation, and after a hearing, if any, a decision shall be made either granting an award pursuant to § 19.2-368.11:1 of this chapter or denying the claim.

G. The person making a decision shall issue a written report setting forth such decision and his reasons therefor, and shall notify the claimant and furnish him a copy of such report.

§ 19.2-368.14. Public record; exception.

~~The~~ *Except as provided in § 19.2-368.6 concerning juvenile claimants or victims, the* record of any proceedings under this chapter shall be a public record; provided, however, that any record or report obtained by the Commission, the confidentiality of which is protected by any other law or regulation, shall remain confidential, subject to such law or regulation.

Official Use By Clerks	
Passed By The Senate	**Passed 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

1994 SESSION

LD3731836

SENATE BILL NO. 219

Offered January 24, 1994

A BILL to amend and reenact §§ 16.1-305.1 and 22.1-289 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 22.1-288.2, relating to disclosure of disposition in certain delinquency cases; maintenance of records of disposition; penalty.

Patrons—Houck and Calhoun; Delegates: Deeds, Giesen and Jones, J.C.

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-305.1 and 22.1-289 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 22.1-288.2 as follows:

§ 16.1-305.1. (Effective July 1, 1994) Disclosure of disposition in certain delinquency cases.

Whenever a child *A. Upon disposition of a proceeding in a court of competent jurisdiction in which a juvenile* is adjudicated delinquent ~~and the adjudication is~~ *or convicted of a crime* based upon a violation of the law involving (i) the unlawful purchase, possession or use of a weapon *pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2,* (ii) ~~homicide, an assault or any unlawful wounding~~ *homicide, pursuant to Article 1 (§ 18.2-31 et seq.) of Chapter 4 of Title 18.2,* (iii) ~~any controlled substance or marijuana~~ *felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2,* (iv) ~~arson or~~ *criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2,* (v) *manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, marijuana, or any imitation controlled substance, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, or; (vii)* burglary, *pursuant to § 18.2-89,* the clerk of the ~~juvenile~~ court *in which the disposition is entered* shall, *within fifteen days,* provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication *or conviction* was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. Further disclosure of this information by the superintendent to school personnel is authorized only ~~to allow appropriate action within the school setting with regard to the juvenile or another student~~ *as provided in § 22.1-288.2. If, upon appeal, the adjudication or conviction is reversed, the clerk of the court which initially provided the notice shall, within fifteen days, provide written notice of the reversal to the superintendent who received the initial notice.*

§ 22.1-288.2. Receipt, dissemination and maintenance of records of certain adjudications or convictions.

The superintendent may disseminate the notice or information contained in a notice received by him pursuant to § 16.1-305.1 to school personnel responsible for the management of student records and to other relevant school personnel, including, but not limited to, the principal of the school in which the student is enrolled, only (i) if the student poses a danger to himself or others or (ii) to facilitate the student's appropriate educational placement or other educational services.

A parent, guardian or other person having control or charge of the student and, with consent of a parent or in compliance with a court order, the court in which the disposition was rendered, shall be notified in writing of any disciplinary action taken with regard to any incident upon which the adjudication or conviction was based and the reasons therefor. The parent or guardian shall also be notified of his or her right to review, and to request an amendment of, the student's scholastic record, in accordance with regulations of the Board of Education governing the management of scholastic

records.

Every notice of adjudication or conviction received by a superintendent, and information contained in the notice, which is not a disciplinary record as defined in § 22.1-289, shall be maintained by him and by any others to whom he disseminates it, separately from all other records concerning the student. However, if the school administrators or the school board takes disciplinary action against a student based upon an incident which formed the basis for the adjudication or conviction, the notice shall become a part of the student's disciplinary record.

Whenever the superintendent receives notice that an adjudication or conviction has been reversed on appeal, he shall ensure that any person to whom information concerning the conviction or adjudication was disseminated promptly receives notice of the reversal. Any person receiving the notice of reversal shall promptly destroy the notice and any reference to the notice contained in any other record.

Each school board shall develop and implement policies and procedures mandating a review of all records including such notices. The review shall be conducted annually at the end of the school year. All notices and records containing information contained in the notice shall be destroyed at the end of the school year in which the notice was received unless retention of the information is authorized pursuant to § 22.1-289, but in no event shall the notice be retained after the student either graduates from secondary school or completes a program adopted by the Board of Education, or leaves school.

§ 22.1-289. Transfer and management of scholastic records; disclosure of information in court notices; penalty.

A. As used in this section:

"Category I record" means continuous and current documentation of significant factual information pertinent to the educational growth and development of individual students as they progress through school.

"Category II record" means information of a sensitive or confidential nature and shall include, but need not be limited to, the disciplinary records of the student; reports prepared by professional staff of a local school division for the express use of other professionals within the local school division; and appropriate confidential information from the records of cooperating individuals or agencies, such as psychiatrists, child welfare agencies, hospitals, juvenile courts, local health departments, and local social services departments.

"Disciplinary record" means information pertaining to disciplinary action taken against a student by school administrators or school boards for the violation of school board policies governing student conduct on school property or at school-sponsored activities, and shall include the notice of adjudication or conviction sent to the superintendent pursuant to § 16.1-305.1 only if the incident or incidents forming the basis for the adjudication or conviction occurred on school property or during a school-sponsored activity.

"Scholastic record" means those Category I and Category II records that are directly related to a student which are maintained by an educational agency or institution or by a party acting for the agency or institution. *A notice of adjudication or conviction received by a superintendent relating to an incident which did not occur on school property or during a school-sponsored activity shall not be a part of a student's scholastic record.*

B. Whenever a pupil transfers from one school division to another, the scholastic record or a copy of the scholastic record shall be transferred to the school division to which the pupil transfers upon request from such school division.

C. Each school board shall develop and implement policies and procedures mandating an annual review of all disciplinary records, to be conducted at the end of the school year. Disciplinary records shall be destroyed at the end of the school year in which the record was created except that the following records may be retained until no longer educationally relevant: (i) a notice of disposition or received pursuant to § 16.1-305.1 or information contained in the notice if disciplinary action was taken against the student, (ii)

records involving disciplinary actions resulting from possession or use of firearms or other weapons, alcohol or drugs or assault upon staff or others on school property or at school-sponsored activities, (iii) records relating to expulsion or suspension of the student or (iv) records required to be maintained under regulations of the Board governing the management of scholastic records. In no event shall a notice of disposition received pursuant to § 16.1-305.1 be retained after the student either graduates from secondary school or completes a program adopted by the Board of Education, or leaves school.

D. Every student's scholastic record (Category I and Category II records) shall be available to the student and his parent, guardian, or other person having control or charge of the student for inspection during the regular school day. ~~However, permission~~ *Permission* of the parent, guardian, or other person having control or charge of the student, *or of a student who is eighteen years of age or older,* shall not be required for transfer of such scholastic record to another school or school division within or without this Commonwealth. *However, a school responding to a request for the transfer of the scholastic record shall provide written notice of the transfer of the record, including the identity of the requester, to the parent, guardian, or other person having control or charge of the student, or to a student who is eighteen years of age or older, within five days of the date in which the record was transferred.*

E. Whenever the division superintendent is notified by the Department of Correctional Education, pursuant to § 22.1-344 of this title, that a pupil who last attended a school within the school division is a pupil in a school of a learning center of the Department of Youth and Family Services, *or a pupil in an educational program in a local jail,* the school division superintendent or his designee shall transfer the scholastic record of such pupil to the designated learning center *or local jail, as the case may be,* within five work days.

The Board of Education shall adopt regulations concerning the transfer *and management* of scholastic records from one school division to another ~~and~~. to the learning centers of the Department of Youth and Family Services, *and to educational programs in local jails.*

~~C.~~*F.* The division superintendent or his designee shall notify the local police or sheriff's department for investigation as a possible missing child of any enrolled pupil whose scholastic record he is unable to obtain within sixty days or sooner, if the division superintendent or his designee has reason to suspect that the pupil is a missing child.

~~D.~~ Superintendents and their designees shall be immune from any civil or criminal liability in connection with any notice to a police or sheriff's department of a pupil lacking a scholastic record or failure to give such notice as required by this section.

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

1994 SESSION

LD5340836

SENATE BILL NO. 222

Offered January 24, 1994

A BILL to amend and reenact § 2.1-345 of the Code of Virginia, relating to exemptions from the Freedom of Information Act.

Patrons—Houck and Calhoun; Delegates: Darner, Deeds, Giesen and Jackson

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Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-345 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-345. Public bodies to which chapter inapplicable.

The provisions of this chapter shall not be applicable to the Virginia Parole Board, petit juries, grand juries, *family assessment and planning teams established pursuant to § 2.1-753,* and the Virginia State Crime Commission.

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

APPENDIX E:
Legislation Reviewed
SB 171
SB 689
SB 1009
HB 2360

An Act to amend and reenact §§ 2.1-1.7, 9-6.25:1, 16.1-278.5, 16.1-286, 16.1-294, 22.1-101.1, 37.1-197.1, 63.1-55, 63.1-248.6, 66-14 and 66-35 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 46, consisting of sections numbered 2.1-745 through 2.1-759; and to repeal §§ 2.1-700, 2.1-701, and 2.1-702 of the Code of Virginia, providing for a collaborative system of services and funding for troubled and at-risk youth and their families.

[S 171]

Approved APR 15 1992

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.7, 9-6.25:1, 16.1-278.5, 16.1-286, 16.1-294, 22.1-101.1, 37.1-197.1, 63.1-55, 63.1-248.6, 66-14 and 66-35 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 46, consisting of sections numbered 2.1-745 through 2.1-759, as follows:

§ 2.1-1.7. State councils.—A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies either affiliated with more than one agency or independent of an agency within the executive branch:

Agricultural Council, Virginia
Alcohol and Drug Abuse Problems, Governor's Council on
Apprenticeship Council
~~Beach Erosion Council, Virginia~~
Child Day Care and Early Childhood Programs, Virginia Council on
Child Day-Care Council
Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion
Commonwealth's Attorneys' Services and Training Council
Developmental Disabilities Planning Council, Virginia
Equal Employment Opportunity Council, Virginia
~~Handicapped Children, Interagency Coordinating Council on Delivery of Related Services~~ to
Health Services Cost Review Council, Virginia
Housing for the Disabled, Interagency Coordinating Council on
Human Rights, Council on
Human Services Information and Referral Advisory Council
Indians, Council on
Job Training Coordinating Council, Governor's
Land Evaluation Advisory Council
Local Debt, State Council on
Long-Term Care Council
Military Advisory Council, Virginia
Needs of Handicapped Persons, Overall Advisory Council on the
Prevention, Virginia Council on Coordinating
Public Records Advisory Council, State
Rate-setting for Children's Facilities, Interdepartmental Council on
Revenue Estimates, Advisory Council on
State Health Benefits Advisory Council
Status of Women, Council on the

B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall be referred to as councils:

Environment, Council on the
Council on Information Management
Higher Education, State Council of
World Trade Council, Virginia.

CHAPTER 46.

COMPREHENSIVE SERVICES ACT FOR AT-RISK YOUTH AND FAMILIES.

§ 2.1-745. Intent and purpose.—It is the intention of this law to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families in the Commonwealth.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. Ensure that services and funding are consistent with the Commonwealth's policies of preserving families and providing appropriate services in the least restrictive environment, while protecting the welfare of children and maintaining the safety of the public;

2. Identify and intervene early with young children and their families who are at risk of developing emotional or behavioral problems, or both, due to environmental, physical or psychological stress;

3. Design and provide services that are responsive to the unique and diverse strengths and needs of troubled youths and families;

4. Increase interagency collaboration and family involvement in service delivery and management;

5. Encourage a public and private partnership in the delivery of services to troubled and at-risk youths and their families; and

6. Provide communities flexibility in the use of funds and to authorize communities to make decisions and be accountable for providing services in concert with these purposes.

§ 2.1-746. State executive council; members; duties.—The members of the state executive council shall be the Commissioners of Health, of Mental Health, Mental Retardation and Substance Abuse Services and of Social Services; the Superintendent of Public Instruction; the Executive Secretary of the Virginia Supreme Court; the Director of the Department of Youth and Family Services; and a parent representative. The parent representative shall be appointed by the Governor for a term not to exceed three years and shall not be an employee of any public or private program which serves children and families. The council shall annually elect a chairman who shall be responsible for convening the council. The council shall meet, at a minimum, semiannually, to oversee the administration of this chapter and make such decisions as may be necessary to carry out its purposes.

The state executive council shall:

1. Appoint the members of the state management team in accordance with the requirements of § 2.1-747;

2. Provide for the establishment of interagency programmatic and fiscal policies developed by the state management team, which support the purposes of this chapter, through the promulgation of regulations by the participating state boards or by administrative action, as appropriate;

3. Oversee the administration of state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;

4. Provide for the administration of necessary interagency functions which support the work of the state management team;

5. Review and take appropriate action on issues brought before it by the state management team; and

6. Advise the Governor and appropriate Cabinet Secretaries on proposed policy and operational changes which facilitate interagency service development and implementation, communication and cooperation.

§ 2.1-747. State management team; appointment; membership.—The state management team is hereby established to better serve the needs of troubled and at-risk youths and their families by managing cooperative efforts at the state level and providing support to community efforts. The team shall be appointed by and be responsible to the state executive council set out in § 2.1-746. The team shall include one representative from each of the following state agencies: the Department of Health, Department of Youth and Family Services, Department of Social Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Education. The team shall also include a parent representative who is not an employee of any public or private program which serves children and families; a representative of a private organization or association of providers for children's or family services; a juvenile and domestic relations district court judge; and one member from each of five different geographical areas of the Commonwealth and who is representative of the different participants of community policy and management teams. The nonstate agency members shall serve staggered terms of not more than three years, such terms to be determined by the state executive council.

The team shall annually elect a chairman who shall be responsible for convening the team. The team shall develop and adopt bylaws to govern its operations which shall be subject to approval by the state executive council. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § 2.1-639.15 of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

§ 2.1-748. State management team; powers and duties.—The state management team is authorized to:

1. Develop and recommend to the state executive council interagency program and fiscal policies which promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;

2. Develop and recommend to the state executive council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;

3. Provide for training and technical assistance at the state level and to localities in the provision of efficient and effective services that are responsive to the strengths and needs of troubled and at-risk youths and their families; and

4. Serve as liaison to the participating state agencies which administratively support the team and which provide other necessary services by serving as fiscal agent, designing and administering the interagency tracking and evaluation system, and providing training and technical assistance.

§ 2.1-749. Duties of agencies represented. on state management team.—The state agencies represented on the state management team shall provide administrative support for the team in the development and implementation of the collaborative system of services and funding authorized by this chapter. This support shall also include, but not be limited to, the provision of timely fiscal information, data for client- and service-tracking, and assistance in training local agency personnel on the system of services and funding established by this chapter.

§ 2.1-750. Community policy and management team; appointment; fiscal agent.—Every county, city, or combination of counties, cities, or counties and cities shall establish a community policy and management team in order to receive funds pursuant to this chapter. Each such team shall be appointed by the governing body of the participating local political subdivision establishing the team. In making such appointments, the governing body shall ensure that the membership is appropriately balanced among the representatives required to serve on the team in accordance with § 2.1-751. When any combination of counties, cities or counties and cities establishes a community policy and management team, the board of supervisors of each participating county or the council in the case of each participating city shall jointly establish the size of the team and the type of representatives to be selected from each locality in accordance with § 2.1-751. The governing bodies of each participating county and city served by the team shall appoint the designated representatives from their localities. The participating governing bodies shall jointly designate an official of one member city or county to act as fiscal agent for the team.

The county or city which comprises a single team and the county or city whose designated official serves as the fiscal agent for the team in the case of joint teams shall annually audit the total revenues of the team and its programs. The county or city which comprises a single team and any combination of counties or cities establishing a team shall arrange for the provision of legal services to the team.

§ 2.1-751. Community policy and management teams; membership; immunity from liability.—The community policy and management team to be appointed by the local governing body shall include, at a minimum, the local agency heads or their designees of the following community agencies: community services board established pursuant to § 37.1-195, juvenile court services unit, department of health, department of social services and the local school division. The team shall also include a representative of a private organization or association of providers for children's or family services if such organizations or associations are located within the locality and a parent representative who is not an employee of any public or private program which serves children and families. Those persons appointed to represent community agencies shall be authorized to make policy and funding decisions for their agencies.

The local governing body may appoint other members to the team including, but not limited to, a local government official, a local law-enforcement official and representatives of other public agencies.

When any combination of counties, cities or counties and cities establishes a community policy and management team, the membership requirements previously set out shall be adhered to by the team as a whole.

Persons who serve on the team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public

agency shall file a statement of economic interests as set out in § 2.1-639.15 of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

§ 2.1-752. Community policy and management teams; powers and duties.—The community policy and management team shall manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families and to maximize the use of state and community resources. Every such team shall:

1. Develop interagency policies and procedures to govern the provision of services to children and families in its community;

2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible populations including immediate access to funds for emergency services and shelter care;

3. Coordinate long-range, community-wide planning which ensures the development of resources and services needed by children and families in its community;

4. Establish policies governing referrals and reviews of children and families to the family assessment and planning teams and a process to review the teams' recommendations and requests for funding;

5. Establish quality assurance and accountability procedures for program utilization and funds management;

6. Establish procedures for obtaining bids on the development of new services;

7. Manage funds in the interagency budget allocated to the community from the state pool of funds, the trust fund, and any other source;

8. Authorize and monitor the expenditure of funds by each family assessment and planning team;

9. Have authority to submit grant proposals which benefit its community to the state trust fund and to enter into contracts for the provision or operation of services upon approval of the participating governing bodies; and

10. Serve as its community's liaison to the state management team, reporting on its programmatic and fiscal operations and on its recommendations for improving the service system, including consideration of realignment of geographical boundaries for providing human services.

§ 2.1-753. Family assessment and planning team; membership; immunity from liability.—Each community policy and management team shall establish and appoint one or more family assessment and planning teams as the needs of the community require. Each family assessment and planning team shall include representatives of the following community agencies who have authority to access services within their respective agencies: community services board established pursuant to § 37.1-195, juvenile court services unit, department of health, department of social services, local school division and a parent representative who is not an employee of any public or private program which serves children and families. The family assessment and planning team may include a representative of a private organization or association of providers for children's or family services and of other public agencies.

Persons who serve on a family assessment and planning team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § 2.1-639.15 of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

§ 2.1-754. Family assessment and planning team; powers and duties.—The family assessment and planning team shall assess the strengths and needs of troubled youths and families who are approved for referral to the team and identify and determine the complement of services required to meet these unique needs.

Every such team, in accordance with policies developed by the community policy and management team, shall:

1. Review referrals of youths and families to the team;

2. Provide for family participation in all aspects of assessment, planning and implementation of services;

3. Develop an individual family services plan for youths and families reviewed by the team which provides for appropriate and cost-effective services;

4. Refer the youth and family to community agencies and resources in accordance with

the individual family services plan;

5. Recommend to the community policy and management team expenditures from the local allocation of the state pool of funds; and

6. Designate a person who is responsible for monitoring and reporting, as appropriate, on the progress being made in fulfilling the individual family services plan developed for each youth and family, such reports to be made to the team or the responsible local agencies.

§ 2.1-755. Referrals to family assessment and planning teams.—The community policy and management team shall establish policies governing the referral of troubled youths and families to the family assessment and planning team. These policies shall include which youths and families are to be assessed by the family assessment and planning team and shall consider the criteria set out in § 2.1-758 A 1 and 2.

The community policy and management team shall also establish policies governing the circumstances under which youths and families are not required to be assessed by a family assessment and planning team, but for whom funds from the state pool may be directly accessed to pay for specified services.

§ 2.1-756. Information sharing; confidentiality.—All public agencies which have served a family or treated a child referred to a family assessment and planning team shall cooperate with this team. The agency which refers a youth and family to the team shall be responsible for obtaining the consent required to share agency client information with the team. After obtaining the proper consent, all agencies shall promptly deliver, upon request and without charge, such records of services, treatment or education of the family or child as are necessary for a full and informed assessment by the team.

Proceedings held to consider the appropriate provision of services and funding for a particular child or family or both who have been referred to the family assessment and planning team and whose case is being assessed by this team or reviewed by the community management and planning team shall be confidential and not open to the public, unless the child and family who are the subjects of the proceeding request, in writing, that it be open. All information about specific children and families obtained by the team members in the discharge of their responsibilities to the team shall be confidential.

Demographic, service and cost information on youths and families receiving services and funding through this chapter which is of a nonidentifying nature may be gathered for reporting and evaluation purposes.

§ 2.1-757. State pool of funds.—A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are:

1. To place authority for making program and funding decisions at the community level;

2. To consolidate categorical agency funding and institute community responsibility for the provision of services;

3. To provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and

4. To reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Handicapped children placed by local social services agencies or the Department of Youth and Family Services in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and

5. Children committed to the Department of Youth and Family Services and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient (i) to provide special education services and foster care services for children identified in subdivisions B 1, B 2 and B 3 of this section and (ii) to meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs.

D. When a community services board established pursuant to § 37.1-195, local school division, local social service agency, court service unit, or the Department of Youth and Family Services has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit or Department of Youth and Family Services has met its fiscal responsibility for that child for the services funded through the pool. Each agency shall continue to be responsible for providing services identified in individual family service plans which are within the agency's scope of responsibility and which are funded separately from the state pool.

§ 2.1-758. Eligibility for state pool of funds.—A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 below and shall be determined by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems which:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at imminent risk of entering, purchased residential care. In addition, the child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs.

4. The child or youth has been entrusted to a local social services agency by his parents or guardian or has been committed to the agency by a court of competent jurisdiction for the purposes of placement as authorized by § 63.1-56.

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person less than eighteen years of age and (ii) any individual through twenty-one years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.

§ 2.1-759. State trust fund.—A. Effective January 1, 1993, there is established a state trust fund with funds appropriated by the General Assembly. The purposes of this fund are to develop:

1. Early intervention services for young children at risk of developing emotional or behavior problems, or both, due to environmental, physical or psychological stress, and their families; and

2. Community services for troubled youths who have emotional or behavior problems, or both, and who can appropriately and effectively be served in the home or community, or both, and their families.

The fund shall consist of moneys from the state general fund, federal grants, and private foundations.

B. Proposals for requesting these funds shall be made by community policy and management teams to the state management team. The state management team shall make recommendations on the proposals it receives to the state executive council, which shall award the grants to the community teams in accordance with the policies developed under the authority of § 2.1-748 of this chapter.

§ 9-6.25:1. Advisory boards, commissions and councils.—There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following advisory boards, commissions and councils within the executive branch:

Advisory Board for the Department for the Deaf and Hard-of-Hearing
Advisory Board for the Department for the Aging
Advisory Board on Child Abuse and Neglect
Advisory Board on Medicare and Medicaid
Advisory Board on Occupational Therapy
Advisory Board on Physical Therapy to the Board of Medicine
Advisory Board on Respiratory Therapy to the Board of Medicine
Advisory Board on Teacher Education and Certification
Advisory Commission on Mapping, Surveying, and Land Information Systems
Advisory Council on Revenue Estimates
Appomattox State Scenic River Advisory Board
Art and Architectural Review Board
Board of Directors, Virginia Truck and Ornamentals Research Station
Board of Forestry
Board of Health Professions
Board of Military Affairs
Board of Transportation Safety
Board of Trustees of the Family and Children's Trust Fund
Board of Visitors, Gunston Hall Plantation
Board on Veterans' Affairs
Catoctin Creek State Scenic River Advisory Board
Cave Board
Chickahominy State Scenic River Advisory Board
Coal Surface Mining Reclamation Fund Advisory Board
Council on Indians
Council on the Status of Women
Dual Party Relay Services Advisory Board
Emergency Medical Services Advisory Board
Falls of the James Committee
Forensic Science Advisory Board
Goose Creek Scenic River Advisory Board
Governor's Council on Alcohol and Drug Abuse Problems
Governor's Mined Land Reclamation Advisory Committee
~~Handicapped Children, Interagency Coordinating Council on Delivery of Related Services to~~
Hemophilia Advisory Board
Human Services Information and Referral Advisory Council
Industrial Development Services Advisory Board
Interagency Coordinating Council on Housing for the Disabled
Interdepartmental Board of the State Department of Minority Business Enterprise
Laboratory Services Advisory Board
Local Advisory Board to the Blue Ridge Community College
Local Advisory Board to the Central Virginia Community College
Local Advisory Board to the Dabney S. Lancaster Community College
Local Advisory Board to the Danville Community College
Local Advisory Board to the Eastern Shore Community College
Local Advisory Board to the Germanna Community College
Local Advisory Board to the J. Sargeant Reynolds Community College
Local Advisory Board to the John Tyler Community College
Local Advisory Board to the Lord Fairfax Community College
Local Advisory Board to the Mountain Empire Community College
Local Advisory Board to the New River Community College
Local Advisory Board to the Northern Virginia Community College

Local Advisory Board to the Patrick Henry Community College
Local Advisory Board to the Paul D. Camp Community College
Local Advisory Board to the Piedmont Virginia Community College
Local Advisory Board to the Rappahannock Community College
Local Advisory Board to the Southwest Virginia Community College
Local Advisory Board to the Thomas Nelson Community College
Local Advisory Board to the Tidewater Community College
Local Advisory Board to the Virginia Highlands Community College
Local Advisory Board to the Virginia Western Community College
Local Advisory Board to the Wytheville Community College
Long-Term Care Council
Medical Advisory Board, Department of Motor Vehicles
Medical Board of the Virginia Retirement System
Migrant and Seasonal Farmworkers Board
Motor Vehicle Dealer's Advisory Board
Nottoway State Scenic River Advisory Board
Personnel Advisory Board
Plant Pollination Advisory Board
Private College Advisory Board
Private Security Services Advisory Board
Psychiatric Advisory Board
Radiation Advisory Board
Rappahannock Scenic River Advisory Board
Reforestation Board
Retirement System Review Board
Rockfish State Scenic River Advisory Board
Shenandoah State Scenic River Advisory Board
Small Business Advisory Board
St. Mary's Scenic River Advisory Committee
State Advisory Board on Air Pollution
State Advisory Board for the Virginia Employment Commission
State Building Code Technical Review Board
State Council on Local Debt
State Health Benefits Advisory Council
State Insurance Advisory Board
State Land Evaluation Advisory Council
State Networking Users Advisory Board
State Perinatal Services Advisory Board
State Public Records Advisory Council
~~State Health Benefits Advisory Council~~
Staunton Scenic River Advisory Committee
Tourism and Travel Services Advisory Board
Toxic Substances Advisory Board
Virginia Advisory Commission on Intergovernmental Relations
Virginia Coal Research and Development Advisory Board
Virginia Commission for the Arts
Virginia Commission on the Bicentennial of the United States Constitution
Virginia Council on Coordinating Prevention
Virginia Equal Employment Opportunity Council
Virginia Military Advisory Council
Virginia Mine Safety Board
Virginia Public Buildings Board
Virginia Transplant Council
Virginia War Memorial Board
Virginia Water Resources Research Center, Statewide Advisory Board
Virginia Winegrowers Advisory Board.

§ 16.1-278.5. Children in need of supervision.—A. If a child is found to be in need of supervision, the court shall, before final disposition of the case, direct the appropriate public agency to evaluate the child's service needs using an interdisciplinary team approach. The team shall consist of qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies *and may be the family assessment and planning team established pursuant to § 2.1-753* .

A report of the evaluation shall be filed as provided in § 16.1-274 A.

B. The court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter any order of disposition authorized by § 16.1-278.4 for a child found to be in need of services;

2. Place the child on probation under such conditions and limitations as the court may prescribe;

3. Order the child and/or his parent to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child;

4. Require the child to participate in a public service project under such conditions as the court may prescribe; or

5. a. Beginning July 1, 1992, in the case of any child subject to compulsory school attendance as provided in § 22.1-254, where the court finds that the child's parent is in violation of §§ 22.1-254, 22.1-255, 22.1-265, or § 22.1-267, in addition to any penalties provided in § 22.1-263 or § 22.1-265, the court may order the parent with whom the child is living to participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and/or the parent. Upon the failure of the parent to so participate or cooperate, or to comply with the conditions and limitations that the court orders, the court may impose a fine of not more than $100 for each day in which the person fails to comply with the court order.

b. If the court finds that the parent has willfully disobeyed a lawful process, judgment, decree, or court order requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court may order or any penalties provided by §§ 16.1-278.2 through 16.1-278.19, 22.1-263 or § 22.1-265, the court may impose the penalty authorized by § 18.2-371.

C. Any order entered pursuant to this section shall be provided in writing to the child, his parent or legal custodian, and to the child's attorney and shall contain adequate notice of the provisions of § 16.1-292 regarding willful violation of such order.

§ 16.1-286. Cost of maintenance; approval of placement; semiannual review; roster of placed children.—A. When the court determines that the behavior of a child within its jurisdiction is such that it cannot be dealt with in the child's own locality or with the resources of his locality, ~~it~~ *the judge shall refer the child to the locality's family assessment and planning team for assessment and a recommendation for services. Based on this recommendation, the court* may take custody and place the child, pursuant to the provisions of subdivision 5 b of § 16.1-278.4 or 13 b of § 16.1-278.8 in a private or locally operated public facility, or nonresidential program, excluding those facilities operating under the provisions of § § 16.1-313 *and 16.1-322.1* , and approved by the State Board *of Youth and Family Services* . ~~If such placement is made in accordance with policies and procedures established by the State Board and is not outside the political boundaries of the Commonwealth of Virginia, the cost of such placements shall be paid by the Treasurer out of the general appropriation for criminal costs on warrants of the Comptroller issued upon vouchers approved and signed by the Director or his designee.~~ *No child shall be placed outside the Commonwealth by a court without first complying with the appropriate provisions of Chapter 10.1 (§ 63.1-219.1 et seq.) of Title 63.1 or with regulations of the State Board of Social Services relating to resident children placed out of the Commonwealth.*

The Board shall establish a per diem allowance to cover the cost of such placements. *This allowance may be drawn from funds allocated through the state pool of funds to the community policy and management team of the locality where the child resides as such residence is determined by the court.* The cost, however, shall not exceed that amount which would be incurred if the services required by the child were provided in a juvenile facility operated by the Department of Youth and Family Services. However, when the court determines after an investigation and a hearing that the child's parent or other person legally obligated to provide support is financially able to contribute to support of the child, the court may order that the parent or other legally obligated person pay, in such manner as the court may direct, reasonable sums commensurate with the ability to pay toward the support and treatment of the child placed in a program pursuant to this section. If the parent or other obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt. Alternatively, the court, after reasonable notice to the obligor, may enter an order adjudicating that the obligor is delinquent and such order shall have the effect of a civil judgment when duly docketed in the manner

prescribed for the docketing of other judgments for money provided.

B. ~~Pursuant to regulations established by the Board, the Director or his designee shall be responsible for the placement or approval of placement of all children placed pursuant to the provisions of this section in facilities or programs which can provide appropriate care and for the provision of proper supervision by the court or court service unit making the placement.~~ *The court service unit of the locality which made the placement shall be responsible for monitoring and supervising all children placed pursuant to this section.* The court shall receive and review, at least semiannually, recommendations concerning the continued care of each child in such placements.

C. The Director shall cause a current roster to be maintained concerning the whereabouts of all children placed pursuant to this section.

§ 16.1-294. Placing child on parole in foster home or with institution; how cost paid.—When the child is returned to the custody of the court for parole supervision by the court service unit or the local department of public welfare or social services for supervision, and, after a full investigation, the court is of the opinion that the child should not be placed in his ~~or her~~ home or is in need of treatment, and there are no funds available to board and maintain the child or to purchase the needed treatment services, the court service unit or the local department of public welfare or social services shall arrange with the Director of the Department of Youth and Family Services for the boarding of the child in a foster home or with any private institution, society or association or for the purchase of treatment services. *In determining the proper placement for such a child, the Department may refer the child to the locality's family assessment and planning team for assessment and recommendation for services.* The cost of maintaining such child shall be paid monthly, according to schedules prepared and adopted by the Department, out of funds appropriated for such purposes. Treatment services for such child shall be paid from funds appropriated to the Department for such purpose.

§ 22.1-101.1. Increase of funds for certain nonresident students; how increase computed and paid; billing of out-of-state placing agencies or persons.—A. To the extent such funds are appropriated by the General Assembly, a school division shall be reimbursed for the cost of educating a child who is not a handicapped child and who is not a resident of such school division under the following conditions:

1. When such child has been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency, whether state or local, which is authorized under the laws of this Commonwealth to place children;

2. When such child has been placed within the geographical boundaries of the school division in an orphanage or children's home which exercises legal guardianship rights; or

3. When such child, who is a resident of Virginia, has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 which is located within the geographical boundaries of the school division.

B. To the extent such funds are appropriated by the General Assembly, a school division shall be reimbursed for the cost of educating a handicapped child who is not a resident of such school division ~~according to the regulations of the Board of Education through funds designated for the Interagency Assistance Fund for Noneducational Placements of Handicapped Children~~ under the following conditions:

1. When the handicapped child has been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency, whether state or local, which is authorized under the laws of this Commonwealth to place children;

2. When such handicapped child has been placed within the geographical boundaries of the school division in an orphanage or children's home which exercises legal guardianship rights; or

3. When such handicapped child, who is a resident of Virginia, has been placed, not solely for school purposes, in a child-caring institution or group home licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 which is located within the geographical boundaries of the school division.

C. Each school division shall keep an accurate record of the number of days which any child, identified in subsection A or B above, was enrolled in its public schools, the required local expenditure per child, the handicapping condition, if applicable, the placing agency or person and the jurisdiction from which the child was sent. Each school division shall certify this information to the Board of Education by July 1 following the end of the school year in order to receive proper reimbursement. No school division shall charge tuition to any such child.

D. When a child who is not a resident of Virginia, whether handicapped or not, has

been placed by an out-of-state agency or a person who is the resident of another state in foster care or other custodial care or in a child-caring institution or group home licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 located within the geographical boundaries of the school division, the school division shall not be reimbursed for the cost of educating such child from funds appropriated by the General Assembly. The school division in which such child has been enrolled shall bill the sending agency or person for the cost of the education of such child as provided in subsection C of § 22.1-5.

The costs of the support and maintenance of the child shall include the cost of the education provided by the school division; therefore, the sending agency or person shall have the financial responsibility for the educational costs for the child pursuant to Article V of the Interstate Compact on the Placement of Children as set forth in Chapter 10.1 (§ 63.1-219.1 et seq.) of Title 63.1. Upon receiving the bill for the educational costs from the school division, the sending agency or person shall reimburse the billing school division for providing the education of the child. Pursuant to Article III of the Interstate Compact on the Placement of Children, no sending agency or person shall send, bring, or cause to be sent or brought into this Commonwealth any child for placement unless the sending agency or person has complied with this section by honoring the financial responsibility for the educational cost as billed by a local school division.

§ 37.1-197.1. Prescription team.— *A.* In order to provide comprehensive mental health, mental retardation and substance abuse services within a continuum of care, the community services board shall:

~~(a)~~ *1.* Establish and coordinate the operation of a prescription team which shall be composed of representatives from the community services board, social services or public welfare department, health department, Department of Rehabilitative Services serving in the community services board's area and, as appropriate, the social services staff of the state institution serving the community services board's catchment area and the local school division. Such other human resources agency personnel may serve on the team as the team deems necessary. The team, under the direction of the community services board, shall be responsible for integrating the community services necessary to accomplish effective prescreening and predischarge planning for clients referred to the community services board. When prescreening reports are required by the court on an emergency basis pursuant to § 37.1-67.2 or § 37.1-67.3, the team may designate one team member to develop the report for the court and report thereafter to the team.

~~(b)~~ *2.* Provide prescreening services prior to the admission for treatment pursuant to §§ 37.1-65, 37.1-67.2 or § 37.1-67.3 of any person who requires emergency mental health services while in a political subdivision served by the board.

~~(c)~~ *3.* Cooperate and participate in predischarge planning for any person, who prior to hospitalization resided in a political subdivision served by the board or who chooses to reside after hospitalization in a political subdivision served by the board, who is to be released from a state hospital pursuant to § 37.1-98.

B. The community services board may perform the functions set out in subsection A hereof in the case of children by referring clients who are minors to the locality's family assessment and planning team and cooperating with the community policy and management team in the coordination of services for troubled youths and their families.

§ 63.1-55. Child welfare and other services.—Each local board shall provide, either directly or through the purchase of services subject to the supervision of the Commissioner and in accordance with rules prescribed by the State Board, any or all child welfare services herein described when such services are not available through other agencies serving residents in the locality. For purposes of this section, the term "child welfare services" means public social services which are directed toward:

1. Protecting the welfare of all children including handicapped, homeless, dependent, or neglected children;

2. Preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children;

3. Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving these problems and preventing the break up of the family where preventing the removal of a child is desirable and possible;

4. Restoring to their families children who have been removed by providing services to the families and children;

5. Placing children in suitable adoptive homes in cases where restoration to the biological family is not possible or appropriate; and

6. Assuring adequate care of children away from their homes in cases where they cannot be returned home or placed for adoption.

The General Assembly and the governing body of each county and city shall appropriate such sum or sums of money *for use by the community policy and management teams through the state pool of funds established in Chapter 46 (§ 2.1-745 et seq.) of Title 2.1* as shall be sufficient to provide basic foster care services for children who are identified as being at risk, as determined by policy developed by the Board of Social Services, or who are under the custody and control of the local board of public welfare. The local governing body of each county and city shall appropriate such sums of money as necessary for the purchase of such other essential social services to children and adults under such conditions as may be prescribed by the State Board in accordance with federally reimbursed public assistance and social service programs.

Each local board is also authorized and, as may be provided by rules and regulations of the State Board, shall provide rehabilitation and other services to help individuals attain or retain self-care or self-support and such services as are likely to prevent or reduce dependency and, in the case of dependent children, to maintain and strengthen family life.

§ 63.1-248.6. Local departments to establish child-protective services; duties.—A. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services. The local department shall be the public agency responsible for receiving and investigating complaints and reports, except that (i) in cases where the reports or complaints are to be made to the juvenile and domestic relations district court, the court shall be responsible for the investigation and (ii) in cases where an employee at a private or state-operated hospital, institution or other facility, or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution or other facility, or public school, the local department shall request the Department to assist in conducting the investigation in accordance with rules and regulations approved by the State Board.

B. The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four - hours - a - day, seven - days - per - week basis.

C. The local department shall widely publicize a telephone number for receiving complaints and reports.

D. The local department shall upon receipt of a report or complaint:

1. Make immediate investigation;

2. When investigation of a complaint reveals cause to suspect abuse or neglect, complete a report and transmit it forthwith to the central registry;

3. When abuse or neglect is found, arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If removal of the child or his siblings from ~~his~~ *their* home is deemed necessary, petition the court for such removal;

5. Report immediately to the attorney for the Commonwealth and make available to him the records of the local department upon which such report is based, when abuse or neglect is suspected in any case involving (i) death of a child ~~or~~ ; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of § 18.2-371, and provide the attorneys for the Commonwealth with records of any prior founded disposition of complaints of abuse or neglect involving the victim. The local department shall not allow reports of the death of the victim from other local agencies to substitute for a direct report to the attorney for the Commonwealth;

6. Send a follow-up report based on the investigation to the central registry within fourteen days and at subsequent intervals to be determined by department regulations;

7. Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the central registry;

8. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect; and

9. When abuse or neglect is suspected in any case involving the death of a child, the child protective services unit of the local Department of Social Services shall report the case immediately to the regional medical examiner and the local law-enforcement agency.

E. The local department shall foster, when practicable, the creation, maintenance and

coordination of hospital and community-based multi-discipline teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions. Such teams shall assist the local departments in identifying abused and neglected children, coordinating medical, social, and legal services for the children and their families, helping to develop innovative programs for detection and prevention of child abuse, promoting community concern and action in the area of child abuse and neglect, and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect. *These teams may be the family assessment and planning teams established pursuant to § 2.1-753.* The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

F. The local department shall report annually on its activities concerning abused and neglected children to the court and to the Child-Protective Services Unit in the Department on forms provided by the Department.

G. Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

H. Notwithstanding any other provision of law, the local department may, in accordance with the regulations of the Board, transmit information regarding reports, complaints and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

§ 66-14. Allowance for maintenance of children placed by Commonwealth in private homes, etc.—For the maintenance of each child committed to the Department and placed ~~by it~~ in a private home or in a facility other than one operated by the Commonwealth, there shall be paid by ~~the Commonwealth out of funds appropriated to the Department~~ *the locality where the child resides, as determined by the court,* a per diem allowance which shall be established by the Department. *This allowance shall be drawn from funds allocated to the locality's community policy and management team through the state pool of funds.* The cost of such care shall not exceed that amount which would be incurred if the services required by the child were provided in a juvenile facility operated by the Department.

No child shall be placed outside the Commonwealth without first complying with the appropriate provisions of Chapter 10.1 (§ 63.1-219.1 et seq.) of Title 63.1 or with regulations of the State Board of Social Services relating to resident children placed out of the Commonwealth.

§ 66-35. Responsibilities of boards.—It shall be the responsibility of the youth services citizen board to:

1. Assist community agencies and organizations , *including the community policy and management team established pursuant to § 2.1-750,* in establishing and modifying programs and services to youth on the basis of an objective assessment of the community's needs and resources;

2. Evaluate and monitor community programs and services to determine their impact on youth;

3. Provide a mechanism whereby all youths and their families with needs for services will be linked to appropriate services; and

4. Attempt to resolve agency policies and procedures that make it difficult for youths and their families to receive services.

The board shall actively participate with community representatives in the formulation of a comprehensive plan for the development, coordination and evaluation of the youth services program and shall make formal recommendations to the governing authority or authorities at least annually concerning the comprehensive plan and its implementation during the ensuing year.

2. That §§ 2.1-745 through 2.1-749 shall become effective July 1, 1992.

3. That § 2.1-759 shall become effective January 1, 1993, if state funds are provided to carry out the purposes of this section during the 1992 Session of the General Assembly.

4. That §§ 2.1-700, 2.1-701 and 2.1-702 of the Code of Virginia are repealed effective July 1, 1993, if funds are provided to carry out the purposes of this act during the 1992-94 biennium and the appropriation act and legislation amending the Code of Virginia effective on July 1, 1993, specify the funding formula, including two hold harmless provisions as described below, by which the funds are distributed to localities.

The state hold harmless provision shall provide that no locality ever receive less state funds than it received in the base year which is fiscal year 1992.

The local hold harmless provision shall provide that the match for a locality shall be no more than the amount it would have paid for its allocation in the base year which is fiscal year 1992. The local provision shall not hold harmless a locality's cost of matching state dollars in excess of the amount received in the base year. The local provision shall be phased out during the next two bienniums and eliminated effective July 1, 1997.

5. That §§ 2.1-750 through 2.1-758 and the amendments to §§ 2.1-1.7, 9-6.25:1, 16.1-278.5, 16.1-286, 16.1-294, 22.1-101.1, 37.1-197.1, 63.1-55, 63.1-248.6, 66-14 and 66-35 shall become effective July 1, 1993, if funds are provided to carry out the purposes of this act during the 1992-94 biennium and the appropriation act and legislation amending the Code of Virginia effective on July 1, 1993, specify the funding formula, including two hold harmless provisions, by which the funds are distributed to localities.

The state hold harmless provision shall provide that no locality ever receive less state funds than it received in the base year which is fiscal year 1992.

The local hold harmless provision shall provide that the match for a locality shall be no more than the amount it would have paid for its allocation in the base year which is fiscal year 1992. The local provision shall not hold harmless a locality's cost of matching state dollars in excess of the amount received in the base year. The local provision shall be phased out during the next two bienniums and eliminated effective July 1, 1997.

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President of the Senate

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Speaker of the House of Delegates

Approved:

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Governor

1993 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 465

An Act to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 14.1, consisting of sections numbered 16.1-330.1 and 16.1-330.2, relating to serious or habitual offender comprehensive action program; penalty for disclosure.

[S 689]

Approved MAR 2 3 1993

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 14.1, consisting of sections numbered 16.1-330.1 and 16.1-330.2, as follows:

Article 14.1.

Serious or Habitual Offender Comprehensive Action Program.

§ 16.1-330.1. Definition; establishment of program; disclosure of information; penalty.—A. For purposes of this article, a serious or habitual juvenile offender is a minor who has been (i) adjudicated delinquent or convicted of murder or attempted murder, armed robbery, any felony sexual assault or malicious wounding or (ii) convicted at least three times for offenses which would be felonies or Class 1 misdemeanors if committed by an adult. Qualifying convictions or adjudications shall include only those for offenses occurring after July 1, 1993. However, any Serious or Habitual Offender Comprehensive Action Program (SHOCAP) in existence on July 1, 1993, shall be deemed to have been established pursuant to this article and, notwithstanding the limitations of this subsection, may continue to supervise persons who were being supervised on July 1, 1993.

B. The Serious or Habitual Offender Comprehensive Action Program (SHOCAP) is a multidisciplinary interagency case management and information sharing system which enables the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts. Each SHOCAP shall supervise serious or habitual juvenile offenders in the community as well as those under probation or parole supervision and enhance current conduct control, supervision and treatment efforts to provide a more coordinated public safety approach to serious juvenile crime, increase the opportunity for success with juvenile offenders and assist in the development of early intervention strategies.

C. Any county or city in the Commonwealth may by action of its governing body establish a SHOCAP committee. The committee shall consist of representatives from local law enforcement, schools, attorneys for the Commonwealth, juvenile court services, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Youth and Family Services. Any county or city which establishes a SHOCAP committee shall, within forty-five days of such action, notify the Department of Criminal Justice Services. The Department shall issue statewide SHOCAP guidelines and provide technical assistance to local jurisdictions on implementation of SHOCAP.

D. Each SHOCAP committee shall share among its members and with other SHOCAP committees otherwise confidential information on identified serious or habitual juvenile offenders. Every person, including members of the SHOCAP committee, who is to receive confidential information pursuant to this article shall first submit to the committee a signed statement acknowledging the duty imposed by this article to maintain the confidentiality of that information.

All records and reports concerning serious or habitual juvenile offenders made available to members of a SHOCAP committee and all records and reports identifying an individual offender which are generated by the committee from such reports shall be confidential and shall not be disclosed, except as specifically authorized by this article or other applicable law. Disclosure of the information may be made to other staff from member agencies as authorized by the SHOCAP committee for the furtherance of case management, community supervision, conduct control and locating of the offender for the application and coordination of appropriate services. Staff from the member agencies who receive such information will be governed by the confidentiality provisions of this article. The staff from the member agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals who provide direct services to the offender or who provide community conduct control and supervision to the offender.

The provisions of this article authorizing information sharing between and among SHOCAP committees shall take precedence over the provisions of (i) Article 12 (§ 16.1-300

et seq.) of Chapter 11 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii) Article 5 (§ 22.1-287 et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.1 and any regulations enacted pursuant thereto governing access to juvenile mental health records and (iv) Title 63.1 and any regulations enacted pursuant thereto governing access to records concerning treatments or services provided to a juvenile.

E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly permit, assist or encourage the unauthorized release of any identifying information contained in any reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be punishable as a Class 3 misdemeanor.

§ 16.1-330.2. Immunity.—Any staff person or agency who is sharing information within the structure of a SHOCAP committee established pursuant to this article shall have immunity from civil or criminal liability that otherwise might result by reason of the type of information exchanged.

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President of the Senate

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Speaker of the House of Delegates

Approved:

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Governor

1993 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 645

An Act to amend and reenact § 16.1-309 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-305.1, relating to juvenile records; disclosure.

[S 1009]

Approved MAR 26 1993

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-309 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-305.1 as follows:

§ 16.1-305.1. Disclosure of disposition in certain delinquency cases.—Whenever a child is adjudicated delinquent and the adjudication is based upon a violation of the law involving (i) the unlawful purchase, possession or use of a weapon, (ii) homicide, an assault or any unlawful wounding, (iii) any controlled substance or marijuana, (iv) arson or (v) burglary, the clerk of the juvenile court shall provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense.

§ 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~~ *subsection* 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 *to school personnel* 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~~ , *provided the disclosure is made* solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. *Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to § 16.1-305.1, provided the disclosure is made solely to enable school personnel to take appropriate actions within the school setting with regard to the juvenile or another student.*

2. That the provisions of § 16.1-305.1 and the amendments to § 16.1-309 of this act shall become effective July 1, 1994.

3. That on or before December 1, 1993, the Committee on District Courts with the assistance of the Department of Education shall develop procedures for the dissemination of records pursuant to § 16.1-305.1 to specify to whom and for what purpose the records are to be disseminated by the school division superintendent.

An Act to amend and reenact §§ 16.1-309, 22.1-132.1, 22.1-278 and 22.1-289 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-305.1, 22.1-3.2 and 22.1-277.2, relating to the Virginia School Crime and Violence Prevention Act; penalties.

[H 2360]

Approved MAR 29 1993

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-309, 22.1-132.1, 22.1-278, and 22.1-289 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-305.1, 22.1-3.2, and 22.1-277.2 as follows:

§ 16.1-305.1. Disclosure of disposition in certain delinquency cases.—Whenever a child is adjudicated delinquent and the adjudication is based upon a violation of the law involving (i) the unlawful purchase, possession or use of a weapon, (ii) homicide, an assault or any unlawful wounding, (iii) any controlled substance or marijuana, (iv) arson or (v) burglary, the clerk of the juvenile court shall provide written notice of the disposition ordered by the court, including the nature of the offense upon which the adjudication was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. Further disclosure of this information by the superintendent to school personnel is authorized only to allow appropriate action within the school setting with regard to the juvenile or another student.

§ 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 *to school personnel* 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~~ *, if the disclosure is made* solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. *Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to § 16.1-305.1, if the disclosure is made solely to enable school personnel to take appropriate actions within the school setting with regard to the juvenile or another student.*

§ 22.1-3.2. Notice of student's school status required as condition of admission.—Prior to admission to any public school of the Commonwealth, a school board shall require the parent, guardian, or other person having control or charge of a child of school age to provide, upon registration, a sworn statement or affirmation indicating whether the student has been expelled from school attendance at a private school or in a public school division of the Commonwealth or in another state for an offense in violation of school board policies relating to weapons, alcohol or drugs, or for the willful infliction of injury to another person. Any person making a materially false statement or affirmation shall be guilty upon conviction of a Class 3 misdemeanor. The registration document shall be maintained as a part of the student's scholastic record.

§ 22.1-132.1. Before- and after-school daycare programs authorized.—A. Upon agreement of the relevant governing body, ~~the school boards of the counties of Caroline, Floyd,~~

~~Franklin, Giles, King George, Loudoun, Lunenburg, Montgomery, New Kent, Patrick, Prince William, Scott and Southampton and the Cities of Bristol, Charlottesville, Danville, Lynchburg, Manassas, Manassas Park, Norfolk, Portsmouth and Richmond~~ *a school board* may establish day-care programs outside the regular school hours for students who attend elementary and middle schools. In order to be eligible to attend such programs, a student shall be enrolled in a public or private school or reside in the relevant school division. Such programs may be conducted before or after school hours or both.

B. The school board of ~~any city having a population greater than 41,000 but not more than 45,000~~ *the City of Petersburg* may establish day-care programs during school hours for children of students who reside in the relevant school division and who are enrolled in a public school in the said city.

C. No state or local funds appropriated for educational purposes shall be used to support any programs established pursuant to subsections A and B of this section.

The school boards shall contract only with those agencies which are licensed or certified by the ~~Department~~ *Commissioner* of Social Services.

This provision shall not be construed to apply to programs implemented pursuant to § 22.1-131.

§ 22.1-277.2. Admission of expelled students; authority to exclude under certain circumstances.—A student, who has been expelled from attendance at school by a school board or a private school in this Commonwealth or in another state for an offense in violation of school board policies related to weapons, alcohol or drugs, or for the willful infliction of injury to another person, may be excluded from attendance in Virginia for no more than one school year upon a finding that the student presents a danger to the other students or staff of the school division after (i) written notice to the student and his parent, guardian, or other person having control or charge that the student may be subject to exclusion, the reasons therefor, and, in the event of such exclusion, of the right to appeal the decision at a hearing before the school board or a committee thereof; and (ii) a review of the case has been conducted by the division superintendent or his designee and exclusion has been recommended. If the decision by the superintendent or his designee has been appealed to a committee of the school board, the student or his parent, guardian or other person having control or charge shall be provided written notice of the right to appeal the decision to the full board, which shall, within thirty days following any such hearing, notify in writing, the student or his parent, guardian or other person having control or charge of its decision. Upon the expiration of the exclusion period, which shall not be more than one school year, the student may petition the school board for admission. For the purposes of this section, "one school year" shall mean no more than 180 teaching days.

§ 22.1-278. Guidelines for school board policies; school board regulations.— ~~School boards shall adopt regulations governing suspension and expulsion of pupils. Such regulations, which shall be consistent with the welfare and efficiency of the schools, their pupils and staff, shall set forth the grounds for suspension and expulsion from school and the procedures to be followed in such cases in the school division.~~ *By July 1, 1994, the Board of Education shall establish guidelines and develop model student conduct policies to aid local school boards in the implementation of such policies. The guidelines shall include, but not be limited to, (i) criteria for the use of suspension and expulsion as disciplinary measures, the grounds for suspension and expulsion, and the procedure to be followed in such cases; (ii) standards, consistent with state, federal and case laws, for school board policies on alcohol and drugs, vandalism, trespassing, threats, search and seizure, disciplining of students with disabilities, intentional injury of others and dissemination of such policies to students, their parents, and school personnel; and (iii) standards for in-service training of school personnel in and examples of the appropriate management of student conduct and student offenses in violation of school board policies.* ~~The~~ *In the case of suspension and expulsion, the* procedures set forth in § 22.1-277 shall be the minimum procedures that the school board may prescribe. *By October 31, 1994, school boards shall adopt regulations governing student conduct which are consistent with, but may be more stringent than, the guidelines of the Board.*

§ 22.1-289. Transfer of scholastic records.— *A. As used in this section:*

"Category I record" means continuous and current documentation of significant factual information pertinent to the educational growth and development of individual students as they progress through school.

"Category II record" means information of a sensitive or confidential nature and shall include, but need not be limited to, the disciplinary records of the student; reports prepared by professional staff of a local school division for the express use of other

professionals within the local school division; and appropriate confidential information from the records of cooperating individuals or agencies, such as psychiatrists, child welfare agencies, hospitals, juvenile courts, local health departments, and local social services departments.

"Scholastic record" means those Category I and Category II records that are directly related to a student which are maintained by an educational agency or institution or by a party acting for the agency or institution.

B. Whenever a pupil transfers from one school division to another, the ~~cumulative~~ *scholastic* record ~~of the pupil, which may be available to the pupil's parent for inspection during consultation with a certificated employee of the school division from which the pupil is transferring,~~ or a copy of the *scholastic* record shall be transferred to the school division to which the pupil transfers ~~if a~~ *upon* request ~~for such cumulative record is received~~ from ~~the~~ *such* school division ~~to which the transfer is made~~ .

Every student's scholastic record (Category I and Category II records) shall be available to the student and his parent, guardian, or other person having control or charge of the student for inspection during the regular school day. However, permission of the parent, guardian, or other person having control or charge of the student shall not be required for transfer of such scholastic record to another school or school division within or without this Commonwealth.

Whenever the division superintendent is notified by the Department of Correctional Education, pursuant to § 22.1-344 of this title, that a pupil who last attended a school within the school division is a pupil in a school of ~~the Department's~~ *a* learning ~~centers~~ *center of the Department of Youth and Family Services* , the school division superintendent or his designee shall transfer the ~~cumulative~~ *scholastic* record of such pupil to the designated learning center within five work days.

The Board of Education ~~may~~ *shall* adopt regulations concerning the transfer of ~~cumulative~~ *scholastic* records from one school division to another and to the learning centers of the Department of ~~Correctional Education~~ *Youth and Family Services* .

C. The division superintendent or his designee shall notify the local police or sheriff's department for investigation as a possible missing child of any enrolled pupil whose ~~cumulative~~ *scholastic* record he is unable to obtain within sixty days or sooner, if the division superintendent or his designee has reason to suspect that the pupil is a missing child.

D. Superintendents and their designees shall be immune from any civil or criminal liability in connection with any notice to a police or sheriff's department of a pupil lacking a ~~cumulative~~ *scholastic* record or failure to give such notice as required by this section.

E. Except as provided in §§ 16.1-309 and 22.1-287 and this section, a superintendent or his designee, or other school personnel who unlawfully discloses information obtained pursuant to § 16.1-305.1 shall be guilty of a Class 3 misdemeanor.

2. That § 16.1-305.1 and the amendments to § 16.1-309 included in this act shall become effective on July 1, 1994.

3. By December 1, 1993, the Committee on District Courts, in cooperation with the Department of Education, shall develop, for use by division superintendents, criteria for disclosure of, and determinations of who may receive, any notice of disposition of a child adjudicated delinquent which may be provided such division superintendents pursuant to § 16.1-305.1.

APPENDIX F:
Department of Criminal Justice Services' Response

COMMONWEALTH of VIRGINIA

Department of Criminal Justice Services

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Criminal Justice Services Board
Helen F. Fahey, Chair

Committee on Training
Sheriff E. Stuart Kitchen, Chair

November 5, 1993

MEMORANDUM:

To: Senator Edward Houck, Chairman
Commission on Youth

From: Martin B. Mait
Deputy Director, DCJS

Re: Comments and Concerns related to SHOCAP recommendations by SJR 205 workgroup.

The Department of Criminal Justice Services has reviewed the recommendations from the SJR 205 workgroup as they relate to the recently enacted SHOCAP legislation. Let me first express our appreciation for the time and interest spent by both the Commission and the workgroup in learning about this program and the constructive and thoughtful comments that have been made. The program is in its infancy and input from a wide variety of persons who have an interest in and knowledge about children's issues is valued for its cogency. Subject to the following specific concerns, we are appreciative of the interest shown by the Commission on Youth and the SJR 205 workgroup in the Shocap program, and receive the recommendations as constructive input into the development process for the program.

Background:

The Department's vision of the Serious or Habitual Offender Community Action Program is one of inter-disciplinary and interagency cooperation for intervention and coordination of services to juveniles who have been adjudicated for serious felony or habitual offenses. While there is a misconception that it is only a public safety program, it is a dual purpose program for public safety and rehabilitation, that relies on an holistic approach to the juvenile offender. Equal emphasis must be given to both the public safety and the provision of consistent, appropriate and comprehensive services. Guidance given to local SHOCAP programs, whether by "guidelines" or "Regulations" will require that persons identified as SHOCAP eligible be brought before the full range of community services that may be available and appropriate in the home community. This holistic response is

consistent with the latest mainstream thought in the juvenile justice arena. SHOCAP needs to be an "intervention" program. Consistent with rehabilitation theory, intervention needs be done early, before an individual has embarked on set and destructive behavior patterns. The SHOCAP program then serves the following functions: early intervention, exposure to local helping agencies, and monitoring which allows all service providers to know whether efforts are being received and incorporated by the individual. Whatever guidelines or regulations are ultimately published by DCJS will at a minimum incorporate these program elements.

Concerns:

1. Recommendation that Section 16.1-330.1(D) be amended to replace "Shall take precedence over" with "shall take place in accordance with" in reference to confidentiality requirements.

The SJR 205 workgroup has appropriately identified the difficult task of determining the tangle of confidentiality and disclosure requirements contained in both state and federal code. Drafters of the current language were well aware of this confusing and often conflicting body of law concerning confidentiality. While policy makers recognize the benefits of interdisciplinary cooperation, little has been done to enable cooperation through information sharing. Pre-SHOCAP statute efforts to achieve cooperative efforts have been thwarted by not just conflicting laws, but conflicting interpretations of the laws and regulations concerning dissemination and confidentiality. DCJS is aware of the fact that state law cannot abridge requirements of federal law. We are aware, for example, that substance abuse treatment records are absolutely confidential under federal law, and no efforts would be made to require such disclosure. One cannot say that all Virginia confidentiality requirements are mirror images of federal law or regulations. The Department would prefer that the Commission not recommend this change. However, if the Commission decides change is appropriate to seek, we would recommend that the "shall take place in accordance with" language be further modified with the phrase "insofar as these laws are consistent with mandatory provisions of similar federal legislation concerning confidentiality of information". This would allow SHOCAP to access Virginia based information that may not be covered by Federal analogues, and would go toward breaking the gridlock of confusing and conflicting laws.

We would also note that any SHOCAP "guidelines" or "Regulations" will deal in greater detail with the types of information which may be shared, and most importantly with the ultimate destruction of SHOCAP shared material.

2. Recommendation that Section 16.1-330.1(D) be amended to enumerate the Code of Virginia citations for the specific offenses which would be SHOCAP eligible.

The Department has general and specific concerns with this recommendation. First, at the time of this memorandum, it is unknown which offenses would be included in the list, and until such list is known, it would be premature to react. Second, the Department is concerned that any list developed may be so restrictive as to prevent the intervention of comprehensive case management and rehabilitative efforts for the SHOCAP individual. Consistent mainstream research indicates that chronic offenders tend to escalate the seriousness of their anti-social behavior. If SHOCAP is to have the beneficent purposes it is designed for, early intervention is important. Three Class I misdemeanor offenses -- no matter what the nature of the charge -- constitute a good indicator of serious developmental problems in willingness to conform to society's rules. Excusing certain types of offenses because some deem them minor if committed by juveniles, discounts the General Assembly's efforts at labeling offenses against society. Thirdly, the Department believes that a committee of professional caretakers in the community, including school, health, mental health, social services, courts and law enforcement can come to some discrete determinations of who would benefit from the program, subject to the community's resources. This approach is vastly different from the issue of juvenile transfer to circuit court which the Commission is also looking at. If one's position is that juvenile court should be the primary forum for most juvenile cases, and only in limited serious cases should circuit court be considered, then it is appropriate to develop a specific list of offenses which may make a juvenile transfer eligible. However, the same philosophy should support a broader discretion in making juvenile offenders SHOCAP eligible, since the purpose here is to prevent further penetration into the criminal justice system by the provision of extensive, coordinated services in the community. For these reasons, we believe it not wise to enumerate the offenses for which a person may be SHOCAP eligible.

3. Recommendation that DCJS define the period of time and seriousness of pattern for accumulation of the Class I misdemeanor offenses in their regulations.

For reasons outlined at number 2 above, the Department believes it unwise to be too rigid in setting the parameters of SHOCAP eligibility. The Department believes that community professionals, knowing the limitations of their resources and their community sentiments, are in the best position to determine who should be under supervision of SHOCAP. The program is, after all is said and done, a post-adjudicative program. If a court has determined that a juvenile has been involved with violating the law, and those legal violations match minimum statutory criteria for admission to the program, then the local community should be able to determine through its SHOCAP committee, where scant resources will be focused. Similarly, artificial time requirements may inhibit the effective provision of services. A youthful offender who may have been sentenced to a DYFS facility may be out

of the community for a period of eighteen months, during which no new offenses would be recorded. Artificial time boundaries may hinder that person from obtaining coordinated services upon return since the "habitual" prong of the test may be missing. Certainly the Department is willing to recognize that SHOCAP eligibility need end somewhere, but that is a separate issue which will be dealt with as the program develops.

4. Recommendation that regulations require that the juvenile court require parental consent for release of information prior to participation in program.

DCJS wholeheartedly endorses the view that parents should be involved in the rehabilitation efforts of children. Unfortunately, that is set in an ideal world. Court Service Unit personnel are in the position to comment that many parents are uncooperative at best or otherwise defiant of efforts to assist their children. Guidelines or Regulations will set a preliminary goal of obtaining parental consent for information release. However, provisions must be made for those situations where parents are uncooperative. No determination has been made as to the next step required if parents do not cooperate. If research indicates that federal law will require a court order, the DCJS will in fact require court approval for approved SHOCAP programs.

Conclusion:

The Department commends the Commission for the interest shown in the SHOCAP program. This is a new program with much promise, but we have had no time to develop a track record, nor give empirical information on the status of the law as written. We will be happy to keep the Commission on Youth apprised on progress made in implementing the program.

Should the Commission on Youth decide to embark on its study of confidentiality, security and dissemination of records, we would ask that DCJS be included as a participant in the study. The various initiatives of our Juvenile Services Section together with our broad purview of the Criminal Justice System should serve your study as a useful resource for your efforts.

cc: Del Jerrauld Jones, Vice-Chairman
Nancy Ross, Executive Director
Kim Echelberger, Legislative Analyst

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