



# COMMONWEALTH of VIRGINIA

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The Honorable Richard H. Stuart  
Member, Senate of Virginia  
Post Office Box 1146  
Montross, Virginia 22520

Dear Senator Stuart:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-205 of the *Code of Virginia*.

## Issues Presented

You inquire whether § 15.2-1705 of the *Code of Virginia*, as amended in 2013, prohibits an individual from qualifying as a law enforcement officer when that individual pled guilty or no contest to a disqualifying crime, but the charge was later dismissed or expunged. You also ask whether an individual who, as a juvenile, was adjudicated delinquent based on conduct that would be a disqualifying crime if committed by an adult is precluded from serving as a law enforcement officer.

## Response

It is my opinion that § 15.2-1705 disqualifies a prospective law enforcement officer from service if that individual has been convicted of, or has pled guilty or no contest to, one of the offenses specified in the statute, even if the charge is later dismissed or expunged. Nevertheless, upon request of a state or local law enforcement agency, the Department of Criminal Justice Services may waive this disqualification for good cause shown. It is further my opinion that, although an individual who was adjudicated delinquent as a juvenile for an enumerated offense is not automatically disqualified from service as a law enforcement officer pursuant to the statute, state and local law enforcement agencies are authorized to consider certain aspects of juvenile adjudications as a basis for denying employment.

## Applicable Law and Discussion

Section 15.2-1705 of the *Code of Virginia*, as amended in 2013, establishes the minimum qualifications for an individual who wishes to serve as a law enforcement officer. It provides, in pertinent part, that

all such officers who enter upon the duties of such office on or after July 1, 2013, shall not have been convicted of or pled guilty or no contest to (a) any misdemeanor involving moral turpitude, including but not limited to petit larceny under § 18.2-96, or any offense involving moral turpitude that would be a misdemeanor if committed in the Commonwealth, (b) any misdemeanor sex offense in the Commonwealth, another state, or the United States, including but not limited to sexual battery under § 18.2-67.4 or

consensual sexual intercourse with a minor 15 or older under clause (ii) of § 18.2-371, or (c) domestic assault under § 18.2-57.2 or any offense that would be domestic assault under the laws of another state or the United States.<sup>1]</sup>

In construing a statute, we “give effect to the legislature’s intent as evidenced by the plain meaning of statutory language, ‘unless a literal interpretation would result in manifest absurdity.’”<sup>2</sup> We must “construe the law as it is written,” for it is “unnecessary to resort to the rules of statutory construction when a statute is free from ambiguity and the intent is plain.”<sup>3</sup> Moreover, “[w]e ‘assume that the legislature chose, with care, the words it used when it enacted the relevant statute[.]’”<sup>4</sup> and courts are not free to add to or ignore language contained in statutes.<sup>5</sup>

With respect to your first inquiry, the plain language of § 15.2-1705 expressly provides that a prospective law enforcement officer will be disqualified from service if he has “been convicted of or pled guilty or no contest to” any of the delineated offenses.<sup>6</sup> The statute is stated in the disjunctive: it applies when a prospective law enforcement officer has been “convicted of” a listed offense, and it also applies when that individual has “pled guilty or no contest to” a disqualifying offense.<sup>7</sup> Section 15.2-1705 contains no language exempting such persons whose charges against them later were dismissed or expunged.<sup>8</sup>

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<sup>1</sup> VA. CODE ANN. § 15.2-1705(A) (Supp. 2014). Prior to the 2013 amendment, the statute listed conviction, etc. of a felony as a disqualifying condition. That portion of the statute remains in effect. The 2013 amendments merely served to add conviction of certain misdemeanor offenses as additional, or expanded, disqualifying conditions. See 2013 Va. Acts chs. 307, 468.

<sup>2</sup> David v. David, 287 Va. 231, 237, 754 S.E.2d 285, 289 (2014) (quoting Hollingsworth v. Norfolk S. Ry. Co., 279 Va. 360, 366, 689 S.E.2d 651, 654 (2010)).

<sup>3</sup> Hampton Roads Sanitation Dist. Comm’n v. City of Chesapeake, 218 Va. 696, 702, 240 S.E.2d 819, 823 (1978).

<sup>4</sup> Alger v. Commonwealth, 267 Va. 255, 261, 590 S.E.2d 563, 556 (2004) (quoting Barr v. Town & Country Props., Inc., 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990)).

<sup>5</sup> Signal Corp. v. Keane Sys., 265 Va. 38, 46, 574 S.E.2d 253, 257 (2003).

<sup>6</sup> Section 15.2-1705(A).

<sup>7</sup> I note that, under Virginia law, “a voluntary and intelligent plea of guilty by an accused is, in reality, a self-supplied conviction authorizing imposition of the punishment fixed by law.” Peyton v. King, 210 Va. 194, 196, 169 S.E.2d 569, 571 (1969). Similarly, “by entering a plea of *nolo contendere*, the defendant ‘implies a confession . . . of the truth of the charge . . . [and] agrees that the court may consider him guilty’ for the purpose of imposing judgment and sentence.” Commonwealth v. Jackson, 255 Va. 552, 555, 449 S.E.2d 276, 278 (1988) (quoting Honaker v. Howe, 60 Va. 50, 53 (1869)) (omissions and alteration in original).

<sup>8</sup> I also note that, under certain circumstances, the *Code of Virginia* authorizes trial courts to defer disposition and ultimately dismiss criminal charges following a determination that there is sufficient evidence to support a finding of guilt, but without entering an actual adjudication of guilt. See, e.g., VA. CODE ANN. §§ 18.2-57.3 (2014) (first offender domestic assault); 18.2-61(C) (2014) (rape, when defendant is married to the victim and all parties consent to deferral); 18.2-67.1(C) (2014) (same, forcible sodomy); 18.2-67.2(C) (2014) (same, object sexual penetration); 18.2-251 (2014) (first offender drug offense); VA. CODE ANN. §§ 19.2-303.2 (2008) (first offender misdemeanor property offenses); 19.2-151 (2008) (authorizing dismissal for certain misdemeanors following accord and satisfaction). Also, until the trial court enters an order specifically finding the defendant guilty, the court “has the inherent authority to take the matter under advisement or to continue the case for disposition at a later date.” Hernandez v. Commonwealth, 281 Va. 222, 226, 707 S.E.2d 273, 275 (2011).

The language of § 15.2-1705 is clear and unambiguous. Had the General Assembly wished to limit application of § 15.2-1705 to proceedings resulting in a finalized criminal conviction, it would have so provided. Because I cannot conclude “that the General Assembly did not mean what it actually expressed”<sup>9</sup> in § 15.2-1705, “the plain meaning and intent of the enactment will be given it.”<sup>10</sup> Accordingly, if a prospective law enforcement officer has been convicted of, or has pled guilty or no contest to a listed offense, the statute applies and serves to disqualify him from service, regardless of whether the underlying charge is ultimately dismissed.

However, it is important for me to note that the disqualification is not absolute. It may be waived. §15.2-1705(B) states, in relevant part, that upon request of a state or local law enforcement agency, “the Department of Criminal Justice Services is . . . authorized to waive the requirements for qualification. . . for good cause shown.”

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Turning to your second question, I note that “[t]he rule in Virginia has been clear for some time that proceedings in juvenile court are civil, and not criminal, in nature.”<sup>11</sup> Thus, Virginia law provides that “a finding of guilty on a petition charging delinquency . . . shall not operate to impose any of the disabilities ordinarily imposed by conviction for a crime.”<sup>12</sup> Consequently, absent an express indication of legislative intent, an adjudication of delinquency is not considered a “conviction” for purposes of other provisions of the *Code of Virginia*.<sup>13</sup>

Nothing in the language of § 15.2-1705 indicates that it is intended to encompass juvenile adjudications of delinquency. “Where a statute speaks in specific terms, an implication arises that omitted terms were not intended to be included within the scope of the statute.”<sup>14</sup> Moreover, the General Assembly clearly knows how to exercise “its ability to draft a statute that specifically delineates when a juvenile status adjudication may be considered.”<sup>15</sup> Therefore, because the General Assembly declined to do so in § 15.2-1705, I conclude that juvenile adjudications of delinquency will not disqualify an individual from service as a law enforcement officer under § 15.2-1705.<sup>16</sup>

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<sup>9</sup> Hicks v. Mellis, 275 Va. 213, 218, 657 S.E.2d 142, 144 (2008).

<sup>10</sup> Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) (citing Sch. Bd. of Chesterfield Cnty. v. Sch. Bd. of the City of Richmond, 219 Va. 244, 250, 247 S.E.2d 380, 384 (1978)).

<sup>11</sup> Conkling v. Commonwealth, 45 Va. App. 518, 612 S.E.2d 235 (2005) (internal quotations omitted).

<sup>12</sup> VA. CODE ANN. § 16.1-308 (Supp. 2014).

<sup>13</sup> See *Conkling*, 45 Va. App. at 523-24, 612 S.E.2d at 238 (“That an adjudication is treated as a conviction in specific circumstances implies that it is not so treated as a general rule.”).

<sup>14</sup> Commonwealth ex. rel. Va. Dept’t of Corrs. v. Brown, 259 Va. 697, 704-05, 529 S.E.2d 96, 100 (2000).

<sup>15</sup> *Conkling*, 45 Va. App. at 522, 612 S.E.2d at 238. For statutes indicating a distinction between convictions and juvenile adjudications of delinquency, see VA. CODE ANN. § 17.1-805(B) (Supp. 2014) (noting that, for the sentencing guidelines, “previous convictions shall include prior adult convictions and juvenile convictions”); §§ 18.2-270(E) (2014) (distinguishing between an “adult conviction” and “finding of guilty in the case of a juvenile”); 18.2-308.2(A) (2014) (distinguishing between individuals “convicted of a felony” and those “adjudicated delinquent as a juvenile”); §§ 19.2-295.1 (Supp. 2014) (listing “adult convictions” as well as “juvenile convictions and adjudications of delinquency”); 19.2-327.11 (Supp. 2014) (listing both “convictions” and “adjudications of delinquency” in the context of a petition for a writ of actual innocence); VA. CODE ANN. §§ 63.2-1719 (2012) (listing “adult convictions” as well as “juvenile convictions or adjudications of delinquency”); and 63.2-1724 (Supp. 2014) (same).

<sup>16</sup> This conclusion is consistent with that of numerous prior opinions of this Office, which similarly have noted that juvenile adjudications of delinquency typically are not considered convictions under the Code. See, e.g., Ops.

Nevertheless, although juvenile adjudications of delinquency will not operate as a specific disqualifying event under § 15.2-1705, prospective employers are not barred from considering the existence of any such adjudications when deciding whether to extend an offer of employment to a prospective law enforcement officer. Rather, state and local law enforcement agencies are permitted to consider certain characteristics of juvenile adjudications in denying employment:

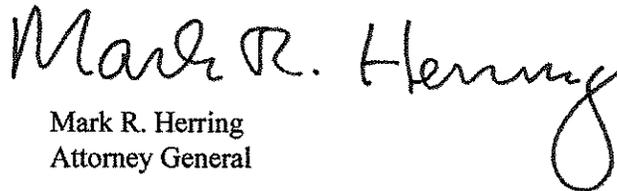
Nothing in this section shall prevent the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof from denying employment to a person who has been adjudicated delinquent where such denial is based on the nature and gravity of the offense, the time since adjudication, the time since completion of any sentence, and the nature of the job sought.<sup>[17]</sup>

### Conclusion

Accordingly, it is my opinion that § 15.2-1705 disqualifies a prospective law enforcement officer from service if that individual has been convicted of, or has pled guilty or no contest to, one of the offenses specified in the statute, even if the charge is later dismissed or expunged. Nevertheless, upon request of a state or local law enforcement agency, the Department of Criminal Justice Services may waive this disqualification for good cause shown. It is further my opinion that, although an individual who was adjudicated delinquent as a juvenile for an enumerated offense is not automatically disqualified from service as a law enforcement officer pursuant to the statute, state and local law enforcement agencies are authorized to consider certain aspects of juvenile adjudications as a basis for denying employment.

With kindest regards, I am

Very truly yours,



Mark R. Herring  
Attorney General

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Va. Att'y Gen. 2002 at 124 (“[J]uveniles are charged with ‘delinquent acts’ rather than ‘crimes’” and, “thus, are not subject to adult penalties.”); 2001 at 85 (“[A] juvenile is not charged with a criminal act and a finding of delinquency is not a conviction of a crime.”); 2001 at 82 (same); 1987-88 at 260 (juvenile adjudications may not be used to enhance a larceny offense to a felony); 1986-87 at 155 (noting intent of General Assembly to distinguish delinquent acts of juveniles from criminal acts of adults); 1978-79 at 83 (juvenile finding of “not innocent” on marijuana charge does not bar probation as a first time offender for a later adult offense); 1977-78 at 94 (“[A] a juvenile is not ‘convicted’ if he is tried in a juvenile court.”) 1977-78 at 203 (“[A] finding of delinquency by a juvenile court is not a ‘conviction’ of a crime under § 19.2-301.1A of the Code.”); 1975-76 at 199 (juvenile adjudication is not considered a “conviction” for purposes of voter registration); 1975-76 at 198 (use of the term “felony” or “misdemeanor” is “inappropriate in juvenile proceedings” because “[a] juvenile is not charged with a crime or convicted of a criminal offense”); 1974-75 at 227 (juveniles are not “convicted” of felonies in juvenile court and, therefore, are not “subject to any of the attendant civil disabilities that are attached to a felony conviction”).

<sup>17</sup> Section 16.1-308.