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**HOUSE BILL NO. 724**

Offered January 14, 2004

Prefiled January 13, 2004

*A BILL to amend and reenact §§ 16.1-269.2 and 16.1-273 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 52-8.6, and to repeal § 16.1-299.2 of the Code of Virginia, relating to criminal gang reporting.*

Patrons—Shannon, Alexander, Amundson, Armstrong, BaCote, Barlow, Baskerville, Bland, Brink, Councill, Eisenberg, Hall, Howell, A.T., Hull, Johnson, Jones, D.C., Lewis, Miles, Moran, Petersen, Plum, Pollard, Scott, J.M., Sickles, Stump, Van Landingham, Van Yahres, Ward and Watts

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-269.2 and 16.1-273 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 52-8.6 as follows:**

§ 16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a ~~youth~~ *an organized criminal gang* as defined in § ~~16.1-299.2~~ 52-8.6, shall be made by the probation services or other qualified agency designated by the court. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the juvenile court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-273. Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may include the physical, mental and social conditions, including an assessment of any affiliation with a ~~youth~~ *an organized criminal gang* as defined in § ~~16.1-299.2~~ 52-8.6, and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be a felony if committed by an adult, or a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit or by an individual employed by or currently under contract to such agencies and who is specifically trained to conduct such assessments under the supervision of such counselor.

B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the victim, or may in its discretion, require the preparation of a victim impact statement in accordance with the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant physical, psychological or economic injury as a result of the violation of law.

§ 52-8.6. *Reporting organized criminal gang membership.*

*When it is determined, either by admission, arrest, incarceration or investigation, by a state or local law-enforcement agency, regional jail, the Department of Corrections or a regional multi-jurisdictional*

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57 law-enforcement task force, that a person is a member of an organized criminal gang, the agency shall  
58 enter the person's name and other appropriate gang-related information required by the Department of  
59 State Police into the information systems known as the Organized Criminal Gang File of the Virginia  
60 Criminal Information Network (VCIN), established and maintained by the Department pursuant to  
61 Chapter 2 (§ 52-12 et seq.) of this title, and the Violent Criminal Gang File of the National Crime  
62 Information Center (NCIC), maintained by the Federal Bureau of Investigation. The entry shall be made  
63 as soon as practicable after determining that a person is a member of an organized criminal gang. All  
64 records contained in these information systems shall be entered, retained and validated in accordance  
65 with established VCIN and NCIC policies.

66 For purposes of this section, "organized criminal gang" means an ongoing organization, association  
67 or group (i) having common characteristics, including but not limited to initiation practices, hand  
68 signals, structured style of dress, specific geographical territorial claim or identifiable leadership and  
69 (ii) consisting of three or more individuals who identify themselves as a group by a name or symbol and  
70 are involved in a pattern of recurrent felonious criminal conduct.

71 **2. That § 16.1-299.2 of the Code of Virginia is repealed.**