

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 843

An Act to amend and reenact §§ 16.1-269.2, 16.1-273, and 18.2-55.1 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 gang reporting.

[H 2734]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-269.2, 16.1-273, and 18.2-55.1 of the Code 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 criminal street~~ gang as defined in § ~~16.1-299.2~~ 18.2-46.1, 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 criminal street~~ gang as defined in § ~~16.1-299.2~~ 18.2-46.1, 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.

§ 18.2-55.1. Hazing of youth gang members unlawful; criminal liability.

It shall be unlawful to cause bodily injury by hazing (i) any member of a ~~youth gang~~ as defined in § ~~16.1-299.2~~ or a criminal street gang as defined in § 18.2-46.1, or (ii) a person seeking to become a member of a youth gang or criminal street gang. Any person found guilty of hazing is guilty of a Class 1 misdemeanor.

For the purposes of this section, "hazing" means to recklessly or intentionally endanger the health or safety of a person or to inflict bodily injury on a person in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a youth gang or criminal street gang regardless of whether the person so endangered or injured participated voluntarily

in the relevant activity.

§ 52-8.6. Criminal street gang reporting.

When it is determined, by a state or local law-enforcement agency, regional jail, the Department of Corrections, or a regional multijurisdictional law-enforcement task force, that a person is a member of a criminal street gang, as defined in § 18.2-46.1 by means of (i) an admission of membership in a gang; (ii) an observation by a law-enforcement officer that a person frequents a known gang area, associates with known gang members and demonstrates gang style of dress, tattoos, hand signals, or symbols; or (iii) being arrested on more than one occasion with known gang members for offenses consistent with gang activities, the agency shall enter the person's name and other appropriate gang-related information required by the Department of State Police into the information system known as the Organized Criminal Gang File of the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of this title, and the Violent Criminal Gang File of the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The entry shall be made as soon as practicable after determining that a person is a member of an organized criminal gang. All records contained in these information systems shall be entered, retained, and validated in accordance with established VCIN and NCIC policies.

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