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SENATE BILL NO. 561

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 2.2-2618, 16.1-300, 53.1-10, and 66-3.2 of the Code of Virginia, relating to criminal gang information.

Patrons—Stolle, Howell and Norment; Delegates: Albo, Bell, Melvin and Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2618, 16.1-300, 53.1-10, and 66-3.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2618. Powers and duties of Council.

The Council, in order to (i) strengthen the criminal justice system in the Commonwealth; (ii) provide a professional organization for the education, training, service and coordination of technical efforts of state prosecutors; and (iii) maintain and improve prosecutor efficiency and effectiveness in enforcing the law of the Commonwealth, shall have, but are not limited to, the following powers and duties:

1. Organize, supervise and perform functions consistent with this article;

2. Coordinate training and continuing legal education activities for attorneys for the Commonwealth;

3. Contract or enter into agreements with state or federal agencies or education institutions;

4. Gather and disseminate information to attorneys for the Commonwealth relative to their official duties, including changes in the law affecting their office *and information on individuals identified as gang members, as transmitted by the Department of Corrections and the Department of Juvenile Justice*;

5. Coordinate with the Department of Criminal Justice Services and the Judicial Conference in reference to training and interdisciplinary criminal justice matters;

6. Obtain statistical reports from attorneys for the Commonwealth relating to their performance, function and work-load;

7. Receive and establish an equitable distribution plan for the allocation of any funds from public or private sources;

8. Maintain close contact with the office of the Attorney General and with all attorneys for the Commonwealth and assistant attorneys for the Commonwealth in the discussion of problems or recommendations concerning necessary research, minimum standards, educational needs and other matters relative to upgrading the professional status of attorneys for the Commonwealth; and

9. Perform such other acts as may be necessary for the effective performance of its duties.

§ 16.1-300. 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 Juvenile Justice 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 or providing services to the child pursuant to a contract with the Department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of this title;

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

4. Any person 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 Juvenile Justice 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, *including any law-enforcement agency, school administration, or probation office* by order of the court, having a legitimate interest in the case, *the juvenile*, or in the work of the court;

7. Any person, agency or institution having a legitimate interest when release of the confidential information is (i) for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information or (ii) when the requesting party has custody or is providing supervision for a

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59 juvenile and the release of the confidential information is in the interest of maintaining security in a
60 secure facility as defined by § 16.1-228;

61 8. Any attorney for the Commonwealth, any pretrial services officer, local community-based
62 probation officer and adult probation and parole officer for the purpose of preparing pretrial
63 investigation, including risk assessment instruments, presentence reports, including those provided in
64 § 19.2-299, discretionary sentencing guidelines worksheets, including related risk assessment instruments,
65 as directed by the court pursuant to subsection C of § 19.2-298.01 or any court-ordered post-sentence
66 investigation report; and

67 9. Any person, agency, organization or institution outside the Department that, at the Department's
68 request, is conducting research or evaluation on the work of the Department or any of its divisions; or
69 *any state criminal justice agency that is conducting research, provided that the agency agrees that all*
70 *information received shall be kept confidential, or released or published only in aggregate form; and*

71 10. *The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as*
72 *permitted under subsection B of § 66-3.2.*

73 A designated individual treating or responsible for the treatment of a person may inspect such reports
74 and records as are kept by the Department on such person or receive copies thereof, when the person
75 who is the subject of the reports and records or his parent, guardian, legal custodian or other person
76 standing in loco parentis if the person is under the age of 18, provides written authorization to the
77 Department prior to the release of such reports and records for inspection or copying to the designated
78 individual.

79 B. The Department may withhold from inspection by a child's parent, guardian, legal custodian or
80 other person standing in loco parentis that portion of the records referred to in subsection A hereof,
81 when the staff of the Department determines, in its discretion, that disclosure of such information would
82 be detrimental to the child or to a third party, provided that the juvenile and domestic relations district
83 court (i) having jurisdiction over the facility where the child is currently placed or (ii) that last had
84 jurisdiction over the child if such child is no longer in the custody or under the supervision of the
85 Department shall concur in such determination.

86 If any person authorized under subsection A to inspect Department records requests to inspect the
87 reports and records and if the Department withholds from inspection any portion of such record or
88 report pursuant to the preceding provisions, the Department shall (i) inform the individual making the
89 request of the action taken to withhold any information and the reasons for such action; (ii) provide
90 such individual with as much information as is deemed appropriate under the circumstances; and (iii)
91 notify the individual in writing at the time of the request of his right to request judicial review of the
92 Department's decision. The circuit court (a) having jurisdiction over the facility where the child is
93 currently placed or (b) that had jurisdiction over the original proceeding or over an appeal of the
94 juvenile and domestic relations district court final order of disposition concerning the child if such child
95 is no longer in the custody or under the supervision of the Department shall have jurisdiction over
96 petitions filed for review of the Department's decision to withhold reports or records as provided herein.

97 § 53.1-10. Powers and duties of Director.

98 The Director shall be the chief executive officer of the Department and shall have the following
99 duties and powers:

100 1. To supervise and manage the Department and its system of state correctional facilities;

101 2. To implement the standards and goals of the Board as formulated for local and community
102 correctional programs and facilities and lock-ups;

103 3. To employ such personnel and develop and implement such programs as may be necessary to
104 carry out the provisions of this title, subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, and within
105 the limits of appropriations made therefor by the General Assembly;

106 4. To make and enter into all contracts and agreements necessary or incidental to the performance of
107 the Department's duties and the execution of its powers under this title, including, but not limited to,
108 contracts with the United States, other states, and agencies and governmental subdivisions of this
109 Commonwealth, and contracts with corporations, partnerships, or individuals which include, but are not
110 limited to, the purchase of water or wastewater treatment services or both as necessary for the expansion
111 or construction of correctional facilities, consistent with applicable standards and goals of the Board;

112 5. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the
113 United States government and agencies and instrumentalities thereof, and any other source, subject to the
114 approval of the Governor. To these ends, the Director shall have the power to comply with such
115 conditions and execute such agreements as may be necessary, convenient or desirable, consistent with
116 applicable standards and goals of the Board;

117 6. To collect data pertaining to the demographic characteristics of adults, and juveniles who are
118 adjudicated as adults, incarcerated in state correctional institutions, including, but not limited to, the race
119 or ethnicity, age, and gender of such persons, *whether they are a member of a criminal gang*, and the
120 types of and extent to which health-related problems are prevalent among such persons. Beginning July

1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor and the General Assembly at each regular session of the General Assembly thereafter. The report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports; ~~and~~

7. To make application to the appropriate state and federal entities so as to provide any prisoner who is committed to the custody of the state a Department of Motor Vehicles approved identification card that would expire 90 days from issuance, a copy of his birth certificate if such person was born in the Commonwealth, and a social security card from the Social Security Administration; *and*

8. *To forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list of all identified gang members incarcerated in state correctional institutions. The list shall contain identifying information for each gang member, as well as his criminal record. Upon the request of any attorney for the Commonwealth, an affidavit shall be provided, signed by the custodian of the records, that a person on the list has previously been identified as a member of a criminal gang. Such affidavit may be admitted into evidence in any court proceeding as prima facie evidence of the individual's membership in the gang.*

§ 66-3.2. Additional duties of the Director.

A. The Director shall coordinate with the Department of Corrections the development and submission of requests for compensation from the United States Department of Justice State Criminal Alien Assistance Program for costs associated with incarcerating undocumented aliens.

B. *The Director shall forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list of all juveniles, 14 years of age or older, that (i) have been committed to the Department, (ii) have been found guilty of a felony offense defined as a "predicate criminal act" under § 18.2-46.1, or have been adjudicated delinquent on the basis of an act which would be a felony and a "predicate criminal act" under § 18.2-46.1 if committed by an adult, and (iii) have been identified as belonging to a criminal gang. The list shall contain identifying information for each gang member, as well as the offense, court, and date of conviction or adjudication. Upon the request of any attorney for the Commonwealth, an affidavit shall be provided, signed by the custodian of the records, that a person on the list has previously been identified as a member of a criminal gang. Such affidavit may be admitted into evidence in any court proceeding as prima facie evidence of the individual's membership in the gang.*

2. That the information forwarded by the Department of Corrections and the Department of Juvenile Justice to the Commonwealth's Attorneys' Services Council shall be in a form mutually agreeable to all parties.