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HOUSE BILL NO. 1898

Offered January 10, 2007

Prefiled January 4, 2007

A BILL to amend and reenact § 16.1-300 of the Code of Virginia, relating to confidentiality of juvenile records held by the Department of Juvenile Justice.

Patrons—Albo, Athey, Cosgrove, Crockett-Stark, Landes and Sherwood

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 is amended and reenacted as follows:**

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

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

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

10. With the exception of medical, psychiatric, and psychological records and reports, any full-time or part-time employee of the Department of State Police or of a police department or sheriff's office that is a part of or administrated by the Commonwealth or any political subdivision thereof, and who is responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth, for purposes of a criminal investigation of an allegation of criminal gang activity involving a predicate criminal act as defined in § 18.2-46.1 or information that a person is a member of a criminal street gang as defined in § 18.2-46.1. No person who obtains information pursuant to this subdivision shall divulge such information except in connection with a criminal investigation regarding a criminal street gang as defined in § 18.2-46.1 that is authorized by the Attorney General or by the attorney for the Commonwealth or in connection with a prosecution or proceeding in court; and

11. The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as

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59 permitted under subsection B of § 66-3.2.

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

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

73 C. *Notwithstanding any provision of this section to the contrary, no records or information may be*
74 *withheld from a law-enforcement agency that is investigating a detained child for an offense that would*
75 *be a felony if committed by an adult, provided that such investigation involves an offense that is*
76 *unrelated to the matters upon which such child is being detained, and no law-enforcement agency shall*
77 *be prohibited access to any such child, provided that such access is for the purpose of furthering the*
78 *investigation for an offense that would be a felony if committed by an adult and is unrelated to the*
79 *matters upon which such child is being detained.*

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