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HOUSE BILL NO. 2661

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 16.1-300 of the Code of Virginia, relating to release of confidential records of the Department of Juvenile Justice.

Patron—Marsden

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, or (iii) *for consideration of admission to any group home, residential facility, or postdispositional facility. For consideration of admission to any group home, residential facility, or postdispositional facility, release of the information may be construed by the court service unit to mean release of copies of the records, such records to be destroyed if the juvenile is not admitted to such a facility;*

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

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59 such information except in connection with a criminal investigation regarding a criminal street gang as
60 defined in § 18.2-46.1 that is authorized by the Attorney General or by the attorney for the
61 Commonwealth or in connection with a prosecution or proceeding in court; and

62 11. The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as
63 permitted under subsection B of § 66-3.2.

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

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

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