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SENATE BILL NO. 486

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 8, 2010)

(Patron Prior to Substitute—Senator Hurt)

A BILL to amend and reenact §§ 16.1-300, 16.1-309.1, and 52-8.6 of the Code of Virginia, relating to confidentiality of Department of Juvenile Justice records; exceptions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-300, 16.1-309.1, and 52-8.6 of the Code of Virginia are 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, (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, and copies of the records in the custody of such home or facility shall be destroyed if the child is not admitted to the home or 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 is entitled to any information related to a criminal street gang including that a person is a member of a criminal street gang as defined in § 18.2-46.1. Information shall be provided by the Department to law enforcement without their request to aid in initiating an investigation or assist in an ongoing investigation of a criminal street gang as defined in § 18.2-46.1. The Department shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. No

60 person who obtains information pursuant to this subdivision shall divulge such information except in
61 connection with a criminal investigation regarding a criminal street gang as defined in § 18.2-46.1 that is
62 authorized by the Attorney General or by the attorney for the Commonwealth or in connection with a
63 prosecution or proceeding in court;

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

66 12. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for
67 purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

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

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

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

92 § 16.1-309.1. Exception as to confidentiality.

93 A. Notwithstanding any other provision of this article, where consideration of public interest requires,
94 the judge shall make available to the public the name and address of a juvenile and the nature of the
95 offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2,
96 or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ 18.2-89 et
97 seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is
98 sentenced as an adult in circuit court.

99 B. 1. At any time prior to disposition, if a juvenile, charged with a delinquent act which would be
100 forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter
101 5 of Title 18.2 or a Class 1, 2, or 3 felony if committed by an adult, or held in custody by a
102 law-enforcement officer or in a secure facility becomes a fugitive from justice, the attorney for the
103 Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a
104 locally operated court services unit, may petition the court having jurisdiction of the offense to authorize
105 public release of the juvenile's name, age, physical description and photograph, the charge for which he
106 is sought or for which he was adjudicated and any other information which may expedite his
107 apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order
108 release of this information to the public. If a juvenile charged with a delinquent act that would be
109 forcible rape, robbery, burglary, or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter
110 5 of Title 18.2, or a Class 1, 2, or 3 felony if committed by an adult or held in custody by a
111 law-enforcement officer or in a secure facility, becomes a fugitive from justice at a time when the court
112 is not in session, the Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated
113 court services unit may authorize the public release of the juvenile's name, age, physical description and
114 photograph, the charge for which he is sought, and any other information which may expedite his
115 apprehension.

116 2. After final disposition, if a juvenile (i) found to have committed a delinquent act which would be
117 forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter
118 5 of Title 18.2 or a Class 1, 2 or 3 felony if committed by an adult becomes a fugitive from justice or
119 (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision 14 of
120 § 16.1-278.8 or 16.1-285.1 becomes a fugitive from justice by escaping from a facility operated by or
121 under contract with the Department or from the custody of any employee of such facility, the

Department may release to the public the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was committed, and any other information which may expedite his apprehension. The Department shall promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure facility not operated by or under contract with the Department becomes a fugitive by such escape, the attorney for the Commonwealth of the locality in which the facility is located may release the information as provided in this subdivision.

C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a weapon, a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of violence" as defined in subsection A of § 19.2-297.1 if committed by an adult, the judge may, where consideration of the public interest requires, make the juvenile's name and address available to the public.

D. Upon the request of a victim of a delinquent act which would be a felony if committed by an adult, the court may order that such victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in § 19.2-11.01.

E. Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained in the court order to other law-enforcement officers in the conduct of official duties.

G. Notwithstanding any other provision of law, where consideration of public safety requires, the Department ~~or~~ and locally operated court service unit ~~may~~ shall release ~~any~~ information relating to a juvenile's criminal street gang involvement ~~or, if any, and the criminal street gang-related activity and membership of others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of a juvenile identified as affiliated with a criminal street gang, as defined in § 18.2-46.1 and shall include the identity or identifying information of the juvenile;~~ however, the Department and local court service unit shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. Such information ~~may~~ shall be released to any State Police, local police department, ~~or~~ sheriff's office, or law-enforcement task force that is a part of or administered by the Commonwealth or any political subdivision thereof, and that is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information shall be for the purpose of an investigation into criminal street gang activity.

H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), an intake officer shall report to the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security a juvenile who has been detained in a secure facility based on an allegation that the juvenile committed a violent juvenile felony and who the intake officer has probable cause to believe is in the United States illegally.

§ 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, *the Department of Juvenile Justice*, 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.