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SENATE BILL NO. 486

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 27, 2010)

(Patron Prior to Substitute—Senator Hurt)

A BILL to amend and reenact §§ 16.1-300 and 16.1-309.1 of the Code of Virginia, relating to juvenile records; gang information; exceptions to confidentiality.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-300 and 16.1-309.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-300. Confidentiality of Department records; exceptions.

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 that a person is a member of a criminal street gang as defined in § 18.2-46.1. *Such information shall be provided to such law-enforcement officers without their request if the Department reasonably believes that the information may aid in initiating a criminal investigation or assist in an ongoing investigation 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

60 prosecution or proceeding in court;

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

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

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

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

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

89 § 16.1-309.1. Exception as to confidentiality.

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

96 B. 1. At any time prior to disposition, if a juvenile, charged with a delinquent act which would be
97 forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter
98 5 of Title 18.2 or a Class 1, 2, or 3 felony if committed by an adult, or held in custody by a
99 law-enforcement officer or in a secure facility becomes a fugitive from justice, the attorney for the
100 Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a
101 locally operated court services unit, may petition the court having jurisdiction of the offense to authorize
102 public release of the juvenile's name, age, physical description and photograph, the charge for which he
103 is sought or for which he was adjudicated and any other information which may expedite his
104 apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order
105 release of this information to the public. If a juvenile charged with a delinquent act that would be
106 forcible rape, robbery, burglary, or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter
107 5 of Title 18.2, or a Class 1, 2, or 3 felony if committed by an adult or held in custody by a
108 law-enforcement officer or in a secure facility, becomes a fugitive from justice at a time when the court
109 is not in session, the Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated
110 court services unit may authorize the public release of the juvenile's name, age, physical description and
111 photograph, the charge for which he is sought, and any other information which may expedite his
112 apprehension.

113 2. After final disposition, if a juvenile (i) found to have committed a delinquent act which would be
114 forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter
115 5 of Title 18.2 or a Class 1, 2 or 3 felony if committed by an adult becomes a fugitive from justice or
116 (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision 14 of
117 § 16.1-278.8 or 16.1-285.1 becomes a fugitive from justice by escaping from a facility operated by or
118 under contract with the Department or from the custody of any employee of such facility, the
119 Department may release to the public the juvenile's name, age, physical description and photograph, the
120 charge for which he is sought or for which he was committed, and any other information which may
121 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 locally operated court service unit ~~may~~ *shall* release any information, *except for medical, psychiatric, and psychological records and reports,* relating to a juvenile's criminal street gang involvement ~~or, if any, and the criminal street~~ gang-related activity of others, *as criminal street gang is defined in § 18.2-46.1,* obtained from an investigation or supervision of ~~a~~ the 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.~~ Such information ~~may~~ *shall* be released to any State Police, local police department or sheriff's office, 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.