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SENATE BILL NO. 1288

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact § 16.1-300 of the Code of Virginia, relating to confidentiality of Department of Juvenile Justice records; community gang task forces.

Patron—McDougle

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.);

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, in any state, having a legitimate interest (i) when release of the confidential information is 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 if the facility is located in Virginia, or as similarly defined by the law of the state in which such facility is located if it is not located in Virginia, or (iii) when release of the confidential information is 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, 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. This information may also be disclosed,

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59 *at the Department's discretion, to a community gang task force, provided that (i) the task force consists*
60 *of only representatives of state or local government or their direct contractors or (ii) a sworn*
61 *law-enforcement officer assigned to the task force is present at the task force meeting.* The Department
62 shall not release the identifying information of a juvenile not affiliated with or involved in a criminal
63 street gang unless that information relates to a specific criminal act. No person who obtains information
64 pursuant to this subdivision shall divulge such information except in connection with a criminal
65 investigation regarding a criminal street gang as defined in § 18.2-46.1 that is authorized by the
66 Attorney General or by the attorney for the Commonwealth or in connection with a prosecution or
67 proceeding in court;

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

70 12. Any state or local correctional facility as defined in § 53.1-1 when such facility has custody of
71 or is providing supervision for a person convicted as an adult who is the subject of the reports and
72 records. The reports and records shall remain confidential and shall be open for inspection only in
73 accordance with this section; and

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

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

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

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