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HOUSE BILL NO. 2392

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 16.1-309.1 and 53.1-220.1 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 19.2-11.02; and to repeal § 19.2-83.2, Article 3 (§ 19.2-294.2) of Chapter 17 of Title 19.2, and §§ 53.1-218, 53.1-219, and 53.1-220.2 of the Code of Virginia, relating to inquiry and report of immigration status; persons charged with or convicted of certain crimes; certain victims or witnesses of crimes.

Patrons—Lopez, Aird, Ayala, Guzman, Hope, Hurst, Jones, J.C., Kory, Levine, Plum, Roem, Simon, Sullivan and Tran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-309.1 and 53.1-220.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-11.02 as follows:

§ 16.1-309.1. Exception as to confidentiality.

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

B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

b. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

2. After final disposition, if a juvenile (i) found to have committed a delinquent act becomes a fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision 14 of § 16.1-278.8 or 16.1-285.1 becomes a fugitive from justice by escaping from a facility operated by or 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

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58 information which may expedite his apprehension. The Department shall promptly notify the attorney for
59 the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released
60 pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure
61 facility not operated by or under contract with the Department becomes a fugitive by such escape, the
62 attorney for the Commonwealth of the locality in which the facility is located may release the
63 information as provided in this subdivision.

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

70 D. Upon the request of a victim of a delinquent act that would be a felony or that would be a
71 misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, or 18.2-67.5
72 if committed by an adult, the court may order that such victim be informed of the charge or charges
73 brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim"
74 shall be defined as in § 19.2-11.01.

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

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

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

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

99 **§ 19.2-11.02. Prohibiting inquiry into the immigration status of certain victims or witnesses of**
100 **crime.**

101 *No officer or agent of any state or local law-enforcement agency shall, in connection with the report,*
102 *investigation, or prosecution of a criminal violation of state or local law, inquire into the immigration*
103 *status of any person who (i) reports that he is a victim of the crime or is the parent or guardian of a*
104 *minor victim of the crime or (ii) is a cooperating witness in the investigation of the crime or the parent*
105 *or guardian of a minor witness to the crime.*

106 **§ 53.1-220.1. Transfer of prisoners convicted of designated illegal acts.**

107 With the consent of the appropriate state authorities, the Immigration and Naturalization Service may,
108 ~~following notification under § 19.2-294.2,~~ take physical custody of and responsibility for any alien
109 convicted of any (i) felony offense involving murder, rape, robbery, burglary, larceny, extortion, or
110 abduction, or (ii) illegal drug violation designated as a felony under Article 1 (§ 18.2-247 et seq.) of
111 Chapter 7 of Title 18.2. The director, sheriff or other official in charge of the facility in which such
112 alien is incarcerated may enter into an agreement, which includes provisions relating to reimbursement,
113 with the Immigration and Naturalization Service to retain custody or supervision of such alien until he is
114 deported or until other mutually satisfactory arrangements are made to transfer custody of such alien to
115 the Service.

116 **2. That § 19.2-83.2, Article 3 (§ 19.2-294.2) of Chapter 17 of Title 19.2, and §§ 53.1-218, 53.1-219,**
117 **and 53.1-220.2 of the Code of Virginia are repealed.**