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SENATE BILL NO. 491

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Surovell
on February 4, 2020)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 16.1-309.1, 19.2-83.2, 53.1-218, and 53.1-219 of the Code of Virginia, relating to inquiry and report of immigration status; persons charged with or convicted of certain crimes.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-309.1, 19.2-83.2, 53.1-218, and 53.1-219 of the Code of Virginia are amended and reenacted 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 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.

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

66 D. Upon the request of a victim of a delinquent act that would be a felony or that would be a
67 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
68 if committed by an adult, the court may order that such victim be informed of the charge or charges
69 brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim"
70 shall be defined as in § 19.2-11.01.

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

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

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

90 H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), ~~an intake officer~~ *a clerk of*
91 *the court* shall report to the Bureau of Immigration and Customs Enforcement of the ~~United States~~ *U.S.*
92 Department of Homeland Security a juvenile who has been detained in a secure facility ~~based on an~~
93 ~~allegation that the juvenile committed but only upon an adjudication of delinquency or finding of guilt~~
94 *for a violent juvenile felony and who the intake officer has probable cause to believe when there is*
95 *evidence that the juvenile is in the United States illegally.*

96 **§ 19.2-83.2. Jail officer to ascertain citizenship of inmate.**

97 Whenever any person is taken into custody at any jail *for a felony offense*, the sheriff or other officer
98 in charge of such facility shall inquire as to whether the person (i) was born in a country other than the
99 United States; and (ii) is a citizen of a country other than the United States. The sheriff or other officer
100 in charge of such facility shall make an immigration alien query to the Law Enforcement Support Center
101 of the ~~United States~~ *U.S.* Immigration and Customs Enforcement for any person *taken into custody for a*
102 *felony* who (i) was born in a country other than the United States; and (ii) is a citizen of a country other
103 than the United States, or for whom the answer to *clause* (i) or (ii) is unknown. The sheriff or other
104 officer in charge shall communicate the results of any immigration alien query to the Local Inmate Data
105 System of the State Compensation Board. The State Compensation Board shall communicate, on a
106 monthly basis, the results of any immigration alien query that results in a confirmation that the person is
107 illegally present in the United States to the Central Criminal Records Exchange of the Department of
108 State Police in a format approved by the Exchange. The information received by the Central Criminal
109 Records Exchange concerning the person's immigration status shall be recorded in the person's criminal
110 history record.

111 **§ 53.1-218. Duty of officer in charge to inquire as to citizenship; notice to federal immigration**
112 **officer of commitment of alien.**

113 Whenever any person is committed to a correctional facility *for the commission of a felony*, the
114 director, sheriff or other officer in charge of such facility shall inquire as to whether the person (i) was
115 born in a country other than the United States; and (ii) is a citizen of a country other than the United
116 States. The director, sheriff or other officer in charge of such facility shall make an immigration alien
117 query to the Law Enforcement Support Center of the ~~United States~~ *U.S.* Immigration and Customs
118 Enforcement for any person *committed to the facility for the commission of a felony* who (i) was born in
119 a country other than the United States; and (ii) is a citizen of a country other than the United States, or
120 for whom the answer to *clause* (i) or (ii) is unknown.

121 In the case of a jail, the sheriff, or other officer in charge of such facility shall communicate the

results of any immigration alien query that confirm that the person is illegally present in the United States to the Local Inmate Data System of the State Compensation Board. The State Compensation Board shall communicate, on a monthly basis, the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange.

In the case of a correctional facility of the Department of Corrections, the director or other officer in charge of such facility shall communicate the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange.

The information received by the Central Criminal Records Exchange concerning the person's immigration status shall be recorded in the person's criminal history record.

However, notification ~~need~~ *shall* not be made to the Central Criminal Records Exchange if it is apparent that a report on alien status has previously been made to the Exchange pursuant to § 19.2-83.2 or 19.2-294.2.

§ 53.1-219. Duty of clerk to furnish copy of complaint, indictment, judgment and sentence.

Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing any alien to any correctional facility *for the commission of a felony*, it shall be the duty of the clerk of such court to furnish without charge a certified copy, in duplicate, of the complaint, information or indictment and the judgment and sentence and any other records pertaining to the case of the convicted alien.