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HOUSE BILL NO. 2226

Offered January 13, 2021

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A BILL to amend and reenact § 52-8.6 of the Code of Virginia, relating to criminal street gang reporting; notice and process for contesting entry of information into databases.

Patron—Kory

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 52-8.6 of the Code of Virginia is amended and reenacted as follows:

§ 52-8.6. Criminal street gang reporting.

A. 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 intended to benefit the gang activities, the agency shall provide written notice, in English and Spanish, to the person, or, if the person is under 18 years of age, to his parent or guardian, of the determination that the person is a member of a criminal street gang and the basis for such determination, unless providing such notification would compromise an active criminal investigation or compromise the health or safety of the person if the person is under 18 years of age. The notice shall describe the process for contesting such determination. The person, his parent or guardian, or his attorney may respond to the notice within 45 days and submit written documentation to the agency contesting the determination. If the person, his parent or guardian, or his attorney does not respond to the notice within 45 calendar days, 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 (databases) as soon as practicable after determining that a person is a member of an organized criminal gang, and the agency may enter the person's name and other appropriate gang-related information in any other systems that contain gang information or affiliation. All records contained in these information systems databases shall be entered, retained, and validated in accordance with established VCIN and NCIC policies.

B. Upon receiving written documentation from a person contesting a determination that he is a member of a criminal street gang, the agency shall review the documentation and provide the person, his parent or guardian, or his attorney written verification of the agency's decision whether to affirm or reverse its determination that such person is a member of a criminal street gang within 45 days of receipt of the written documentation contesting the determination. If the agency finds, by clear and convincing evidence, that the person is a member of a criminal street gang after reviewing the submitted written documentation, the agency shall enter the person's name and other appropriate gang-related information required by the Department into the databases and may enter such information into any other systems that contain gang information or affiliation. The agency shall include the basis for this decision in the written verification of its decision. If after reviewing the written documentation, the agency does not find by clear and convincing evidence that the person is a member of a criminal street gang, the agency shall not enter the person's name or any other information into the databases or any other systems that contain gang information or affiliation and shall remove any reference to the person being a member of a criminal street gang from law-enforcement records. If the agency does not provide written verification of its decision within the required 45-day period, then it shall be deemed that the person is not a member of a criminal street gang and the agency shall not enter the person's name or any other information into the databases or any other systems that contain gang information or affiliation.

C. A person, his attorney, or, if the person is under 18 years of age, his parent or guardian, may at any time request in writing of the Department information as to whether his information has been entered into the databases or of any agency that maintains a system that contains gang information or affiliation information as to whether his information has been entered into such system. If the

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59 Department or agency finds that such person's information has not been entered into the databases or  
60 other system, the Department or agency shall so notify the requestor within 45 days of receipt of the  
61 request. If the Department finds that the person's information has been entered into the databases, the  
62 Department shall, as soon as practicable, forward the request to the agency that entered the person's  
63 information into the databases. The agency shall respond to the requestor with the information  
64 requested within 45 days of receipt of the request from the Department or the original request unless  
65 doing so would compromise an active criminal investigation or compromise the health or safety of the  
66 person if the person is under 18 years of age.

67 D. If a person's information has been electronically entered into the databases or any other systems  
68 that contain gang information or affiliation, the person, his attorney, or, if the person is under 18 years  
69 of age, his parent or guardian, may submit to the agency written documentation contesting such  
70 determination and requesting that his information be removed from the databases or any other systems  
71 that contain gang information or affiliation. Upon receiving written documentation contesting a  
72 determination that a person is a member of a criminal street gang and requesting removal of his  
73 information from the databases or any other systems that contain gang information or affiliation, the  
74 agency shall review the documentation and provide a written verification of the agency's decision on  
75 whether to remove the person's information from the databases within 45 days of receipt of the written  
76 documentation contesting the determination. If after reviewing the written documentation the agency  
77 finds, by clear and convincing evidence, that the person is a member of a criminal street gang, the  
78 agency shall deny the request for removal of information and include the basis for such decision in the  
79 written verification of its decision. If the agency does not find, by clear and convincing evidence, that  
80 the person is a member of a criminal street gang, the agency shall remove the person's name or any  
81 other information from the databases and any other systems that contain gang information or affiliation.  
82 If the agency does not provide written verification of its decision within the required 45-day period, then  
83 the request to remove shall be deemed to be approved, and the agency shall remove the person's name  
84 or any other information from the databases any other systems that contain gang information or  
85 affiliation.

86 E. 1. Any person, or, if the person is under 18 years of age, his parent or guardian, who has  
87 contested his determination as a member of a criminal street gang or requested removal of his  
88 information from the databases or any other systems that contain gang information or affiliation may  
89 petition the court (i) to review the agency's decision to affirm its determination and enter the person's  
90 information in the databases or any other systems that contain gang information or affiliation or to  
91 deny the person's request for removal of such information and (ii) to order the agency to remove the  
92 person's information from the databases or any other systems that contain gang information or  
93 affiliation. The petition may be brought by the person, his attorney, or, if the person is under 18 years  
94 of age, by his parent or guardian.

95 2. The petition shall be filed and served within 90 days of the agency's mailing or personal service  
96 of the written verification of the decision to affirm its determination and enter the person's information  
97 in the databases or any other systems that contain gang information or affiliation or to deny the request  
98 for removal of information from the databases or any other systems that contain gang information or  
99 affiliation. The petition may be filed in the general district court of the locality in which the agency that  
100 entered the person's information into the databases or any other systems that contain gang information  
101 or affiliation is located or in the locality where the person resides. A copy of the petition shall be  
102 served on the agency in person or by first-class mail. Proof of service of the petition on the agency  
103 shall be filed in the general district court. A proceeding under this subsection is not a criminal case.

104 3. In reviewing the petition, the evidence to be considered by the court shall be limited to the  
105 agency's statement of the basis of its determination that such person is a member of a criminal street  
106 gang included in the written verification of its decision and any evidence supporting such decision and  
107 the documentation provided to the agency by the person contesting the designation.

108 4. If, upon review of the evidence and any arguments presented to the court, the court finds that the  
109 agency has failed to establish that the person is a member of a criminal street gang, as defined in  
110 § 18.2-46.1, by clear and convincing evidence, the court shall order the agency to remove the person's  
111 name and any other information from the databases and any other systems that contain gang  
112 information or affiliation.

113 F. If a person whose information has been entered into the databases or any other systems that  
114 contain gang information or affiliation has not been found guilty of any criminal offenses in furtherance  
115 of or intended to benefit the criminal street gang as defined in § 18.2-46.1 within five years of the entry  
116 of his information in the databases or any other systems that contain gang information or affiliation,  
117 then the Department or agency shall automatically remove his information from the databases or any  
118 other systems that contain gang information or affiliation and provide written notification, in English  
119 and Spanish, to such person of the removal of his information.

120 G. On or before July 1, 2022, and annually thereafter, a state or local law-enforcement agency,

121 regional jail, the Department of Corrections, the Department of Juvenile Justice, or a regional  
122 multijurisdictional law-enforcement task force that has submitted information to the databases within the  
123 preceding five years shall submit a report to the Department of Criminal Justice Services (DCJS) that  
124 contains the following information, disaggregated by gang with the name of the gang redacted and by  
125 race for the preceding 12 months: (i) the number of persons the agency added to the databases or any  
126 other systems that contain gang information or affiliation; (ii) the number of requests for removal of a  
127 person's information from the databases the agency received; (iii) the number of requests for removal  
128 that the agency granted, the number of requests for removal that the agency denied, and the number of  
129 requests for removal pending; (iv) the number of persons the agency automatically removed from the  
130 databases or any other systems that contain gang information or affiliation; (v) the number of persons  
131 determined by the agency to be members of a criminal street gang pursuant to subsection A and so  
132 notified by the agency; (vi) the number of persons determined by the agency to be members of a  
133 criminal street gang pursuant to subsection A whom the agency did not so notify and the reason such  
134 persons were not given such notice; (vii) the number of persons who contested the determination that  
135 they are a member of a criminal street gang upon being notified pursuant to subsection A; and (viii)  
136 how many determinations that a person is a member of a criminal street gang the agency reversed after  
137 reviewing the written documentation contesting such determination and how many such determinations  
138 the agency affirmed. On or before November 1, 2022, and annually thereafter, the Department of  
139 Criminal Justice Services shall publish the total number of people included in the Organized Gang File  
140 of VCIN and the information submitted by each agency pursuant to this subsection on the Department of  
141 Criminal Justice Service's website.