

12105607D

## HOUSE BILL NO. 391

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 22, 2012)

(Patron Prior to Substitute—Delegate Gilbert)

A *BILL to amend and reenact § 16.1-300 of the Code of Virginia, relating to sharing of confidential juvenile records with correctional facilities.*

**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 a state or local correctional facility as defined in § 53.1-1 has custody of or is providing supervision for a person convicted as an adult who is the subject of the reports and records and the release of the confidential information is for the provision of treatment or rehabilitative services or in the interest of maintaining security in such facility, or* (iv) 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

60 investigation of a criminal street gang as defined in § 18.2-46.1. The Department shall not release the  
61 identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that  
62 information relates to a specific criminal act. No person who obtains information pursuant to this  
63 subdivision shall divulge such information except in connection with a criminal investigation regarding a  
64 criminal street gang as defined in § 18.2-46.1 that is authorized by the Attorney General or by the  
65 attorney for the Commonwealth or in connection with a prosecution or proceeding in court;

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

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

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

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

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