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SENATE BILL NO. 1268

Offered January 8, 2025

Prefiled January 8, 2025

A BILL to amend and reenact § 16.1-309.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 19, consisting of sections numbered 16.1-362 through 16.1-365, relating to Department of Juvenile Justice; inquiry and report of immigration status; juvenile or adult adjudicated delinquent or convicted of violent juvenile felony.

Patrons—Durant and Craig

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-309.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 19, consisting of sections numbered 16.1-362 through 16.1-365, 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 A 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

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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.

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

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

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

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

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

H. Notwithstanding any other provision of ~~Article 12 (§ 16.1-299 et seq.)~~ *this article*, a clerk of the court an intake officer shall, within 60 days of the final disposition, report to ~~the Bureau of U.S. Immigration and Customs Enforcement of the U.S. Department of Homeland Security~~ a juvenile or adult who has been detained in a secure facility but only upon an adjudication of delinquency or finding of guilt for a violent juvenile felony and when there is evidence that the juvenile or adult is in the United States illegally. *To determine whether there is evidence that the juvenile or adult is in the United States illegally, the intake officer shall inquire as to whether the juvenile or adult (i) was born in a country other than the United States and (ii) is a citizen of a country other than the United States, or if the answer to either question is unknown.*

I. *Notwithstanding any other provision of this article, upon official request of the U.S. immigration officer in charge of the territory or district in which a court that orders any juvenile or adult who is in the United States illegally to be confined in a secure facility following the adjudication or conviction of a violent juvenile felony is located, the clerk of such court shall furnish without charge a certified copy of, in duplicate, all relevant records to the matter, including the complaint, the petition, and all records related to the adjudication and disposition.*

J. Notwithstanding any other provision of this article, whenever an intake officer proceeds informally against a juvenile, the Department or local court service unit may disclose only such information as necessary to enforce any provision of the diversion program to any law-enforcement officer, school principal where such juvenile attends school, or known victim. Such information shall remain confidential and not be part of such juvenile's academic record. Additionally, a local court service unit may provide information regarding the availability and ordering of a protective order and restitution and dispositional information to the victim in the case.

Article 19.

Detention of Juveniles or Adults in the United States Illegally.

§ 16.1-362. Duty of Director to inquire about citizenship; notice to immigration officer of commitment of certain juvenile or adult.

A. *Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), when any juvenile or adult is committed to a secure facility upon an adjudication of delinquency or finding of guilt for a violent juvenile felony, the Director or other person in charge of such secure facility shall inquire as to whether such juvenile or adult (i) was born in a country other than the United States and (ii) is a citizen of a country other than the*

United States.

B. If such juvenile or adult (i) was born in a country other than the United States and (ii) is a citizen of a country other than the United States, or if the answer to either inquiry is unknown, the Director or other person in charge of such secure facility shall make an immigration query to the Law Enforcement Support Center of U.S. Immigration and Customs Enforcement. If the results of such query confirm that the juvenile or adult is in the United States illegally, the Director or other person in charge of such secure facility shall communicate such results, or shall ensure that such results have been communicated, to U.S. Immigration and Customs Enforcement.

§ 16.1-363. Transfer pursuant to treaty.

When a treaty between the United States and a foreign country provides for the transfer to such foreign country, with the consent of the appropriate state authorities, of adult offenders who are citizens or nationals of such foreign country and who have been adjudicated delinquent and placed in a secure facility, the Governor may, subject to the terms of such treaty, act on behalf of the Commonwealth and consent to the transfer of such adult offenders.

§ 16.1-364. Transfer of residents adjudicated delinquent of certain offenses.

Following a report made pursuant to subsection H of § 16.1-309.1, and upon the request of U.S. Immigration and Customs Enforcement, the Director or other person in charge of a secure facility in which a n adult adjudicated delinquent or found guilty of a violent juvenile felony is confined may enter into an agreement, including provisions relating to reimbursement, with U.S. Immigration and Customs Enforcement to retain custody or supervision of such adult or until U.S. Immigration and Customs Enforcement is able to take physical custody and responsibility for such adult.

§ 16.1-365. Transfer of certain confined adults to U.S. Immigration and Customs Enforcement.

The Director or other person in charge of a secure facility in which an adult adjudicated delinquent or found guilty of a violent juvenile felony is confined may, upon receipt of a detainer from U.S. Immigration and Customs Enforcement, transfer custody of such adult to U.S. Immigration and Customs Enforcement no more than five days prior to the date that he would have otherwise been released from custody.