

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-300, 53.1-40.10, and 53.1-133.03 of the Code of Virginia, relating to*
 3 *behavioral health services; exchange of medical and mental health information and records; correctional*
 4 *facilities.*

5 [S 870]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That §§ 16.1-300, 53.1-40.10, and 53.1-133.03 of the Code of Virginia are amended and reenacted as**
 9 **follows:**10 **§ 16.1-300. Confidentiality of Department records.**11 A. The social, medical, psychiatric, and psychological reports and records of children who are or have
 12 been (i) before the court, (ii) under supervision, (iii) referred to a court service unit, or (iv) receiving services
 13 from a court service unit or who are committed to the Department of Juvenile Justice shall be confidential
 14 and shall be open for inspection only to the following:15 1. The judge, prosecuting attorney, probation officers and professional staff assigned to serve a court
 16 having the child currently before it in any proceeding;17 2. Any public agency, child welfare agency, private organization, facility or person who is treating or
 18 providing services to the child pursuant to a contract with the Department or pursuant to the Virginia Juvenile
 19 Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.);20 3. The child's parent, guardian, legal custodian or other person standing in loco parentis and the child's
 21 attorney;

22 4. Any person who has reached the age of majority and requests access to his own records or reports;

23 5. Any state agency providing funds to the Department of Juvenile Justice and required by the federal
 24 government to monitor or audit the effectiveness of programs for the benefit of juveniles which are financed
 25 in whole or in part by federal funds;26 6. The Department of Social Services or any local department of social services that is providing services
 27 or care for, or has accepted a referral for family assessment or investigation and the provision of services in
 28 accordance with subsection A of § 16.1-277.02 regarding, a juvenile who is the subject of the record and the
 29 Department of Behavioral Health and Developmental Services or any local community services board that is
 30 providing treatment, services, or care for a juvenile who is the subject of the record for a purpose relevant to
 31 the provision of the treatment, services, or care when these local agencies have entered into a formal
 32 agreement with the Department of Juvenile Justice to provide coordinated services to juveniles who are the
 33 subject of the records. Prior to making any report or record open for inspection, the court service unit or
 34 Department of Juvenile Justice shall determine which reports or records are relevant to the treatment,
 35 services, or care of such juvenile and shall limit such inspection to such relevant reports or records. Any local
 36 department of social services or local community services board that inspects any social, medical, psychiatric,
 37 and psychological reports and records of juveniles in accordance with this subdivision shall not disseminate
 38 any information received from such inspection unless such dissemination is expressly required by law;39 7. Any other person, agency or institution, including any law-enforcement agency, school administration,
 40 or probation office by order of the court, having a legitimate interest in the case, the juvenile, or in the work
 41 of the court;42 8. Any person, agency, or institution, in any state, having a legitimate interest (i) when release of the
 43 confidential information is for the provision of treatment or rehabilitation services for the juvenile who is the
 44 subject of the information, (ii) when the requesting party has custody or is providing supervision for a
 45 juvenile and the release of the confidential information is in the interest of maintaining security in a secure
 46 facility, as defined by § 16.1-228 if the facility is located in Virginia, or as similarly defined by the law of the
 47 state in which such facility is located if it is not located in Virginia, or (iii) when release of the confidential
 48 information is for consideration of admission to any group home, residential facility, or postdispositional
 49 facility, and copies of the records in the custody of such home or facility shall be destroyed if the child is not
 50 admitted to the home or facility;51 9. Any attorney for the Commonwealth, any pretrial services officer, local community-based probation
 52 officer and adult probation and parole officer for the purpose of preparing pretrial investigation, including
 53 risk assessment instruments, presentence reports, including those provided in § 19.2-299, discretionary
 54 sentencing guidelines worksheets, including related risk assessment instruments, as directed by the court
 55 pursuant to subsection C of § 19.2-298.01 or any court-ordered post-sentence investigation report;

56 10. Any person, agency, organization or institution outside the Department that, at the Department's

ENROLLED

SB870ER

57 request, is conducting research or evaluation on the work of the Department or any of its divisions; or any
58 state criminal justice agency that is conducting research, provided that the agency agrees that all information
59 received shall be kept confidential, or released or published only in aggregate form;

60 11. With the exception of medical, psychiatric, and psychological records and reports, any full-time or
61 part-time employee of the Department of State Police or of a police department or sheriff's office that is a part
62 of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the
63 enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth, is entitled to any information
64 related to a criminal street gang, including that a person is a member of a criminal street gang as defined in §
65 18.2-46.1. Information shall be provided by the Department to law enforcement without their request to aid in
66 initiating an investigation or assist in an ongoing investigation of a criminal street gang as defined in §
67 18.2-46.1. This information may also be disclosed, at the Department's discretion, to a gang task force,
68 provided that the membership (i) consists of only representatives of state or local government or (ii) includes
69 a law-enforcement officer who is present at the time of the disclosure of the information. The Department
70 shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street
71 gang unless that information relates to a specific criminal act. No person who obtains information pursuant to
72 this subdivision shall divulge such information except in connection with gang-activity intervention and
73 prevention, a criminal investigation regarding a criminal street gang as defined in § 18.2-46.1 that is
74 authorized by the Attorney General or by the attorney for the Commonwealth, or in connection with a
75 prosecution or proceeding in court;

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

78 13. Any state or local correctional facility as defined in § 53.1-1 when such facility has custody of or is
79 providing supervision for a person convicted as an adult who is the subject of the reports and records. The
80 reports and records shall remain confidential and shall be open for inspection only in accordance with this
81 section; ~~and~~

82 14. *The Department of Medical Assistance Services, for record information covering the period prior to*
83 *and up to 30 days following release from commitment, for the purposes of providing pre-release services,*
84 *reentry planning, and post-incarceration placement and services; and*

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

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

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

98 If any person authorized under subsection A to inspect Department records requests to inspect the reports
99 and records and if the Department withholds from inspection any portion of such record or report pursuant to
100 the preceding provisions, the Department shall (a) inform the individual making the request of the action
101 taken to withhold any information and the reasons for such action; (b) provide such individual with as much
102 information as is deemed appropriate under the circumstances; and (c) notify the individual in writing at the
103 time of the request of his right to request judicial review of the Department's decision. The circuit court (1)
104 having jurisdiction over the facility where the child is currently placed or (2) that had jurisdiction over the
105 original proceeding or over an appeal of the juvenile and domestic relations district court final order of
106 disposition concerning the child if such child is no longer in the custody or under the supervision of the
107 Department shall have jurisdiction over petitions filed for review of the Department's decision to withhold
108 reports or records as provided herein.

109 **§ 53.1-40.10. Exchange of medical and mental health information and records.**

110 A. Whenever a person is committed to a state correctional facility, the following shall be entitled to obtain
111 medical and mental health information and records concerning such person from a health care provider, even
112 when such person does not provide consent or consent is not readily obtainable:

113 1. The person in charge of the facility, or his designee, when such information and records are necessary
114 (i) for the provision of health care to the person committed, (ii) to protect the health and safety of the person
115 committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the facility.
116 Such information and records may be exchanged among administrative personnel for the facility in which the
117 person is imprisoned as necessary to maintain the security and safety of the facility, its employees, or other
118 prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that

119 necessary to ensure the security and safety of the facility.

120 2. Members of the Parole Board, as specified in § 53.1-138, in order to conduct the investigation required
121 under § 53.1-155.

122 3. Probation and parole officers for use in parole and probation planning, release, and supervision.

123 4. Officials within the Department for the purpose of formulating recommendations for treatment and
124 rehabilitative programs; classification, security and work assignments; and determining the necessity for
125 medical, dental, and mental health care, treatment, and programs.

126 5. Medical and mental health hospitals and facilities, both public and private, including community
127 services boards, for use in planning for and supervision of post-incarceration medical and mental health care,
128 treatment, and programs.

129 6. The Department for Aging and Rehabilitative Services, *the Department of Medical Assistance Services*,
130 the Department of Social Services, and any local department of social services in the Commonwealth for the
131 purposes of *providing pre-release services*, reentry planning, and post-incarceration placement and services.

132 B. Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse
133 Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section. The disclosure
134 of results of a test for human immunodeficiency virus shall not be permitted except as provided in §
135 32.1-36.1.

136 C. The release of medical and mental health information and records to any other agency or individual
137 shall be subject to all regulations promulgated by the Department that govern confidentiality of such records.
138 Medical and mental health information concerning a prisoner that has been exchanged pursuant to this section
139 may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

140 D. The Department shall develop policies to improve the exchange of medical and mental health
141 information and records of persons committed to a state correctional facility, including policies to improve
142 access to electronic health records and electronic exchange of information and records for the provision of
143 telemedicine and telepsychiatry.

144 **§ 53.1-133.03. Exchange of medical and mental health information and records.**

145 A. Whenever a person is committed to a local or regional correctional facility, the following shall be
146 entitled to obtain medical and mental health information and records concerning such person from a health
147 care provider, even when such person does not provide consent or consent is not readily obtainable:

148 1. The person in charge of the facility, or his designee, when such information and records are necessary
149 (i) for the provision of health care to the person committed, (ii) to protect the health and safety of the person
150 committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the facility.
151 Such information and records of any person committed to jail and transferred to another correctional facility
152 may be exchanged among administrative personnel of the correctional facilities involved and of the
153 administrative personnel within the holding facility when there is reasonable cause to believe that such
154 information is necessary to maintain the security and safety of the holding facility, its employees, or
155 prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that
156 necessary to ensure the security and safety of the facility.

157 2. Members of the Parole Board or its designees, as specified in § 53.1-138, in order to conduct the
158 investigation required under § 53.1-155.

159 3. Probation and parole officers and local probation officers for use in parole and probation planning,
160 release, and supervision.

161 4. Officials of the facilities involved and officials within the holding facility for the purpose of
162 formulating recommendations for treatment and rehabilitative programs; classification, security and work
163 assignments; and determining the necessity for medical, dental and mental health care, treatment and other
164 such programs.

165 5. Medical and mental health hospitals and facilities, both public and private, including community
166 services boards and health departments, for use in treatment while committed to jail or a correctional facility
167 while under supervision of a probation or parole officer.

168 6. *The Department of Medical Assistance Services, the Department of Social Services, and any local*
169 *department of social services for the purposes of providing pre-release services, reentry planning, and post-*
170 *incarceration placement and services.*

171 B. Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse
172 Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section. The disclosure
173 of results of a test for human immunodeficiency virus shall not be permitted except as provided in §§
174 32.1-36.1 and 32.1-116.3.

175 C. The release of medical and mental health information and records to any other agency or individual
176 shall be subject to all regulations promulgated by the State Board of Local and Regional Jails that govern
177 confidentiality of such records. Medical and mental health information concerning a prisoner that has been
178 exchanged pursuant to this section may be used only as provided herein and shall otherwise remain
179 confidential and protected from disclosure.

180 D. Nothing contained in this section shall prohibit the release of records to the Department of Health

181 Professions or health regulatory boards consistent with Subtitle III (§ 54.1-2400 et seq.) of Title 54.1.

182 E. Except for any information and records not subject to this section or not permitted to be disclosed
183 pursuant to subsection B, any health care provider as defined in § 32.1-127.1:03 who has provided services
184 within the last two years to a person committed to a local or regional correctional facility shall, upon request
185 by the local or regional correctional facility, disclose to the local or regional correctional facility where the
186 person is committed any information necessary to ensure the continuity of care of the person committed. Any
187 health care provider who discloses medical and mental health information and records pursuant to this section
188 shall be immune from civil liability resulting from such disclosure, including any liability under the federal
189 Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), absent bad faith or
190 malicious intent.