

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

**DRAFT      DRAFT      DRAFT**

**\*(consensus changes shown in bold)**

A BILL to amend the Code of Virginia by adding sections numbered 2.2-3706.1 and 2.2-3706.2, and to repeal § 2.2-3706 of the Code of Virginia, relating to the Freedom of Information Act; access to law-enforcement records.

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding sections numbered 2.2-3706.1 and 2.2-3706.2, as follows:**

§ 2.2-3706.1. Criminal incident, arrest, charge and investigative records.

A. All public bodies engaged in criminal law enforcement activities shall provide or withhold public records and other information relating to criminal incidents, arrests, charges and investigations in accordance with this section.

B. Information concerning criminal incidents, arrests and charges as described in subdivisions 1, 2, 3 and 4 of this subsection shall be released as soon as possible after a request is made, but in no event later than one **working** day after the request is made. If the information is maintained in a public record, such public record shall be produced in relevant part. If the information is not maintained in a public record, it shall be provided to the requester orally by a representative of the public body.

1. When an alleged crime has been committed, the public body shall make available a general description of the criminal activity reported, the date and general location the alleged crime was committed, the age and gender of each alleged victim, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

2. When any person has called an Emergency 911 number or communicated with any other equivalent reporting system to report an alleged criminal incident, the record of such call shall be made available. The public body may redact from such record identifying information of a personal, medical

25 or financial nature where the release of such information would jeopardize the safety of any person or  
26 any privacy interest protected by law.

27 3. When an adult is arrested in connection with the commission of any crime, the public body  
28 shall make available the name and address of the arrestee and a copy of any photograph of the arrestee  
29 taken in connection with the arrest. When a juvenile age 14 or older is arrested in connection with a  
30 crime that would be a felony if committed by an adult, the public body shall make available the name  
31 and address of the arrestee and a copy of any photograph of the arrestee taken in connection with the  
32 arrest. If an arrested person is maintained in custody, the location at which he or she is being held shall  
33 be disclosed. An arrestee photograph may only be withheld when necessary to avoid jeopardizing an  
34 investigation in a felony case, and must be released promptly when its release will no longer jeopardize  
35 the investigation.

36 4. When an adult is charged with a crime, the public body shall provide the name and address of  
37 the person charged and state with particularity each crime with which he or she is charged, including  
38 reference to all criminal statutes allegedly violated by the person charged. When a juvenile age 14 or  
39 older is arrested in connection with a crime that would be a felony if committed by an adult, the public  
40 body shall provide the name and address of the person charged and state with particularity each crime  
41 with which he or she is charged, including reference to all statutes allegedly violated by the person  
42 charged. All records, including but not limited to any warrant, summons, indictment, or information,  
43 stating the charges against a person referenced in this subsection shall be provided upon request.

44 C. A public body may withhold its records concerning an active criminal investigation, including  
45 witness statements, correspondence, crime scene photographs, forensic reports, memoranda and other  
46 papers generated by law enforcement personnel in connection with such investigation. No record which  
47 is otherwise a public record, including but not limited to any public record subject to the provisions of  
48 this chapter, shall lose its status as a public record when it is obtained or copied by a public body  
49 engaged in law enforcement. For purposes of this subdivision, a criminal investigation is “active” until:

50 1. The Commonwealth has prosecuted all persons connected with the alleged crime, and there is  
51 no likelihood of a further prosecution against an alleged perpetrator of the crime, or

52 2. Three years have passed from the date of the criminal incident, and no prosecution has been  
53 initiated against any person for the crime.

54 D. When releasing public records relating to a criminal investigation, a public body may redact  
55 information from such public records if:

56 1. Disclosure of the information is contrary to the requirements of Va. Code § 19.2-11.2;

57 2. Disclosure of the information identifies or has a real tendency to identify any undercover law  
58 enforcement officer;

59 3. Disclosure of the information identifies or has a real tendency to identify any confidential  
60 informant or any person who has provided information to law enforcement authorities under a promise  
61 that his or her identity will not be disclosed;

62 4. Disclosure of the information identifies or has a real tendency to identify a prospective witness  
63 in a criminal prosecution who has agreed to testify under a promise that his identity will be maintained  
64 in confidence until he is called to testify at trial; or

65 5. Disclosure of the information would impede the investigation of a series of related criminal  
66 activities, such as an ongoing conspiracy to commit a crime or a series of factually-connected crimes.

67 2.2-3706.2. Administrative and tactical records of law enforcement agencies.

68 The following records are excluded from the provisions of this chapter but may be disclosed by  
69 the custodian in his discretion, except where such disclosure is prohibited by law:

70 1. Records, to the extent that they disclose the telephone numbers for cellular telephones, pagers,  
71 or comparable portable communications devices provided to the agency's personnel for use in the  
72 performance of their official duties.

73 2. Records, to the extent that they disclose information related to undercover operations or  
74 protective details that would reveal the staffing, logistics or tactical plans of such undercover operations  
75 or protective details. Nothing in this subdivision shall operate to allow the withholding of information  
76 concerning the costs or expenses associated with undercover operations or protective details.

77 3. Records relating to specific tactical plans, to the extent that the disclosure of which would  
78 jeopardize the safety or security of law-enforcement personnel or the general public.

