



**INNOCENCE  
PROJECT**



MID-ATLANTIC  
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**Virginia Innocence Coalition Testimony  
Virginia Freedom of Information Advisory Council  
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The Innocence Project at University of Virginia (UVA) School of Law, Mid-Atlantic Innocence Project (MAIP) and national Innocence Project make up the Virginia Innocence Coalition, which advocates for policies that address and prevent wrongful convictions. **Our coalition strongly supports this bill and encourages the Virginia Freedom of Information Council to support it.**

The Problem

While the majority of states (32) and the federal government presume public access to inactive criminal investigative files, Virginia's law gives agencies complete discretion on releasing this information. Agencies frequently deny requests, leaving crime victims without closure, police-shooting victims without justice, and wrongfully convicted people without a way to prove innocence.

Proposed Legislation

The proposed legislation is based on the **Federal Freedom of Information Act**, which is the model used in 12 other states. It **presumes public access to criminal investigative files** unless the case is "ongoing," meaning the prosecution has not been finally adjudicated, or law enforcement is continuing to gather evidence and release would jeopardize the investigation.

**Custodians can block release** if a court finds by a preponderance of evidence that any of the following six conditions would result from disclosure.

1. Interference with an ongoing law enforcement investigation or proceeding.
2. Deprivation of the right to a fair trial.
3. Unwarranted invasion of personal privacy.
4. Disclosure of identity of a confidential informant.
5. Disclosure of law enforcement technique or procedure that could risk circumvention of the law.
6. Endangerment of life or safety of an individual.

Why It's Important

- **Exonerating the innocent.** Innocence organizations are regularly denied requests for criminal investigative files, an important source of critical leads and exculpatory information in wrongful conviction cases. For example, a corrupt police officer framed four innocent sailors in the "Norfolk Four" case and is now in federal prison for other crimes. Innocence organizations are unable to review other cases in which the detective may have framed innocent people because requests for investigative files have been rejected by the Norfolk Police Department.

By contrast, Maryland has a robust public records law that has played an important role in overturning wrongful convictions. Last November the "Harlem Park Three" were exonerated of a Baltimore murder after spending 36 years in prison. Through a public records request filed with the Attorney General, one of the men obtained a previously hidden police report that revealed the identity of the actual perpetrator. Without access to this information, the three men would still be in prison.

- **Delivering justice to crime victims.** Victim families have been denied access to investigative records that may answer questions about what happened to their loved ones. The Virginia Beach Police have refused to disclose its investigative files to the families of victims in last year's Virginia Beach mass shooting.
- **Ensuring fair investigations of police-involved killings.** In Virginia, when an officer kills someone, it is investigated by local agencies, state police, or both. There is no way of knowing whether police are adequately investigating their own because agencies can withhold their findings from the public. Transparency will allow for external oversight and enhance justice for victims who were killed or brutalized by officers.