

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3706 and 2.2-3711 of the Code of Virginia, relating to the
2 Freedom of Information Act; access to criminal records.

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

4 **1. That §§ 2.2-3706 and 2.2-3711 of the Code of Virginia are amended and reenacted as follows:**

5 § 2.2-3706. Disclosure of criminal records; limitations.

6 A. As used in this section:

7 "Criminal incident information" means a general description of the criminal activity reported, the
8 date and general location the alleged crime was committed, the identity of the investigating officer, and
9 a general description of any injuries suffered or property damaged or stolen.

10 "Criminal investigative file" means any documents and information including complaints, court
11 orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements,
12 and evidence relating to a criminal investigation or prosecution, other than criminal incident
13 information.

14 ~~B. Law enforcement agencies shall make available upon request criminal incident information~~
15 ~~relating to felony offenses. However, where the release of criminal incident information is likely to~~
16 ~~jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee~~
17 ~~or evade detection; or result in the destruction of evidence, such information may be withheld until the~~
18 ~~above referenced damage is no longer likely to occur from release of the information. Nothing in this~~
19 ~~subsection shall be construed to prohibit the release of those portions of such information that are not~~
20 ~~likely to cause the above referenced damage.~~

21 ~~C. Information in the custody of law enforcement agencies relative to the identity of any~~
22 ~~individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall~~
23 ~~be released.~~

24 ~~D. The identity of any victim, witness or undercover officer, or investigative techniques or~~
25 ~~procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.~~

26 ~~E. The identity of any individual providing information about a crime or criminal activity under a~~
27 ~~promise of anonymity shall not be disclosed.~~

28 ~~F.~~B. The following records are excluded from the provisions of this chapter, but may be
29 disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

- 30 1. Criminal investigative files as defined in subsection A;
- 31 2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony
32 cases until such time as the release of the photograph will no longer jeopardize the investigation;
- 33 3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii)
34 investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public
35 institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
- 36 4. Portions of records of local government crime commissions that would identify individuals
37 providing information about crimes or criminal activities under a promise of anonymity;
- 38 5. Records of local law-enforcement agencies relating to neighborhood watch programs that
39 include the names, addresses, and operating schedules of individual participants in the program that are
40 provided to such agencies under a promise of anonymity;
- 41 6. All records of persons imprisoned in penal institutions in the Commonwealth provided such
42 records relate to the imprisonment;
- 43 7. Records of law-enforcement agencies, to the extent that such records contain specific tactical
44 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
45 the general public;
- 46 8. All records of adult persons under (i) investigation or supervision by a local pretrial services
47 agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation,
48 probation supervision or monitoring by a local community-based probation services agency in
49 accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or
50 supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of
51 Chapter 4 of Title 53.1;

52 9. Records of a law-enforcement agency to the extent that they disclose the telephone numbers
53 for cellular telephones, pagers, or comparable portable communication devices provided to its personnel
54 for use in the performance of their official duties;

55 10. Those portions of any records containing information related to undercover operations or
56 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations
57 or protective details. Nothing in this subdivision shall operate to allow the withholding of information
58 concerning the overall costs or expenses associated with undercover operations or protective details; ~~and~~

59 11. Records of (i) background investigations of applicants for law-enforcement agency
60 employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a
61 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
62 agencies that are made confidential by law;

63 12. The identity of any victim, witness or undercover officer, or investigative techniques or
64 procedures. If disclosure of any victim or witness is prohibited or restricted under § 19.2-11.2, such
65 records shall be withheld; and

66 13. Records of the Sex Offender and Crimes Against Minors Registry maintained by the
67 Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information
68 obtained from state, local and regional officials, except to the extent that information is required to be
69 posted on the Internet pursuant to § 9.1-913.

70 ~~G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the~~
71 ~~provisions of this chapter except that those portions of noncriminal incident or other investigative~~
72 ~~reports or materials that contain identifying information of a personal, medical or financial nature may~~
73 ~~be withheld where the release of such information would jeopardize the safety or privacy of any person.~~

74 ~~H. Records of the Sex Offender and Crimes Against Minors Registry maintained by the~~
75 ~~Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 are excluded from the~~
76 ~~provisions of this chapter, including information obtained from state, local and regional officials, except~~
77 ~~to the extent that information is required to be posted on the Internet pursuant to § 9.1-913.~~

78 I-C. Criminal records required to be released upon request:

79 1. Criminal incident information relating to felony offenses. However, where the release of
80 criminal incident information is likely to jeopardize an ongoing investigation or prosecution or the safety
81 of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such
82 information may be withheld until the above-referenced damage is no longer likely to occur from release
83 of the information. Nothing in this subdivision shall be construed to prohibit the release of those
84 portions of such information that are not likely to cause the above-referenced damage; and

85 2. Information in the custody of law-enforcement agencies relative to the identity of any
86 individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest.

87 D. Access to noncriminal records. Records required to be maintained by law-enforcement
88 agencies pursuant to § 15.2-1722 shall be subject to the provisions of this chapter except that those
89 portions of noncriminal incident or other noncriminal investigative reports or materials that contain
90 identifying information of a personal, medical or financial nature may be withheld where the release of
91 such information would jeopardize the safety or privacy of any person.

92 E. Prohibited release. The identity of any individual providing information about a crime or
93 criminal activity under a promise of anonymity shall not be disclosed.

94 F. Conflict resolution. In the event of conflict between this section as it relates to requests made
95 under this section and other provisions of law, this section shall control.

96 § 2.2-3711. Closed meetings authorized for certain limited purposes.

97 A. Public bodies may hold closed meetings only for the following purposes:

98 1. Discussion, consideration, or interviews of prospective candidates for employment;
99 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
100 specific public officers, appointees, or employees of any public body; and evaluation of performance of
101 departments or schools of public institutions of higher education where such evaluation will necessarily
102 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
103 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
104 that involves the teacher and some student and the student involved in the matter is present, provided the
105 teacher makes a written request to be present to the presiding officer of the appropriate board.

106 2. Discussion or consideration of admission or disciplinary matters or any other matters that
107 would involve the disclosure of information contained in a scholastic record concerning any student of
108 any Virginia public institution of higher education or any state school system. However, any such
109 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
110 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
111 such student, parents, or guardians so request in writing and such request is submitted to the presiding
112 officer of the appropriate board.

113 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
114 disposition of publicly held real property, where discussion in an open meeting would adversely affect
115 the bargaining position or negotiating strategy of the public body.

116 4. The protection of the privacy of individuals in personal matters not related to public business.

117 5. Discussion concerning a prospective business or industry or the expansion of an existing
118 business or industry where no previous announcement has been made of the business' or industry's
119 interest in locating or expanding its facilities in the community.

120 6. Discussion or consideration of the investment of public funds where competition or bargaining
121 is involved, where, if made public initially, the financial interest of the governmental unit would be
122 adversely affected.

123 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
124 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
125 the negotiating or litigating posture of the public body; and consultation with legal counsel employed or
126 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
127 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
128 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
129 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
130 the closure of a meeting merely because an attorney representing the public body is in attendance or is
131 consulted on a matter.

132 8. In the case of boards of visitors of public institutions of higher education, discussion or
133 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
134 for services or work to be performed by such institution. However, the terms and conditions of any such
135 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
136 person and accepted by a public institution of higher education in Virginia shall be subject to public
137 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
138 (i) "foreign government" means any government other than the United States government or the
139 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
140 created under the laws of the United States or of any state thereof if a majority of the ownership of the
141 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
142 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
143 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
144 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

145 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia
146 Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of
147 matters relating to specific gifts, bequests, and grants.

148 10. Discussion or consideration of honorary degrees or special awards.

149 11. Discussion or consideration of tests, examinations, or other records excluded from this
150 chapter pursuant to subdivision 4 of § 2.2-3705.1.

151 12. Discussion, consideration, or review by the appropriate House or Senate committees of
152 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
153 statement filed by the member, provided the member may request in writing that the committee meeting
154 not be conducted in a closed meeting.

155 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement
156 or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the
157 governing body in open meeting finds that an open meeting will have an adverse effect upon the
158 negotiating position of the governing body or the establishment of the terms, conditions and provisions

159 of the siting agreement, or both. All discussions with the applicant or its representatives may be
160 conducted in a closed meeting.

161 14. Discussion by the Governor and any economic advisory board reviewing forecasts of
162 economic activity and estimating general and nongeneral fund revenues.

163 15. Discussion or consideration of medical and mental records excluded from this chapter
164 pursuant to subdivision 1 of § 2.2-3705.5.

165 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
166 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
167 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
168 game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-
169 3705.3 and subdivision 11 of § 2.2-3705.7.

170 17. Those portions of meetings by local government crime commissions where the identity of, or
171 information tending to identify, individuals providing information about crimes or criminal activities
172 under a promise of anonymity is discussed or disclosed.

173 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
174 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
175 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
176 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
177 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

178 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by
179 staff members, legal counsel, or law-enforcement or emergency service officials concerning actions
180 taken to respond to such activity or a related threat to public safety; or discussion of reports or plans
181 related to the security of any governmental facility, building or structure, or the safety of persons using
182 such facility, building or structure.

183 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
184 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of
185 the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings

186 Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or
187 other ownership interest in an entity, where such security or ownership interest is not traded on a
188 governmentally regulated securities exchange, to the extent that such discussion (i) concerns
189 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
190 retirement system or by the Virginia College Savings Plan or provided to the retirement system or the
191 Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership
192 interest or the future financial performance of the entity, and (ii) would have an adverse effect on the
193 value of the investment to be acquired, held or disposed of by the retirement system, the Rector and
194 Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision
195 shall be construed to prevent the disclosure of information relating to the identity of any investment
196 held, the amount invested or the present value of such investment.

197 21. Those portions of meetings in which individual child death cases are discussed by the State
198 Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in
199 which individual child death cases are discussed by a regional or local child fatality review team
200 established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are
201 discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

202 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
203 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
204 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
205 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
206 proprietary, business-related information pertaining to the operations of the University of Virginia
207 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
208 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
209 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
210 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
211 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
212 Medical School, as the case may be.

213 23. In the case of the Virginia Commonwealth University Health System Authority, discussion
214 or consideration of any of the following: the acquisition or disposition of real or personal property where
215 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
216 operational plans that could affect the value of such property, real or personal, owned or desirable for
217 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
218 contracts for services or work to be performed by the Authority; marketing or operational strategies
219 where disclosure of such strategies would adversely affect the competitive position of the Authority;
220 members of its medical and teaching staffs and qualifications for appointments thereto; and
221 qualifications or evaluations of other employees.

222 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
223 within the Department of Health Professions to the extent such discussions identify any practitioner who
224 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

225 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
226 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
227 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid
228 tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title
229 23 is discussed.

230 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
231 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
232 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
233 wireless E-911 service.

234 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
235 Professional and Occupational Regulation, Department of Health Professions, or the Board of
236 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
237 a decision or meetings of health regulatory boards or conference committees of such boards to consider
238 settlement proposals in pending disciplinary actions or modifications to previously issued board orders
239 as requested by either of the parties.

240 28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11
241 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined
242 in § 56-557, or any independent review panel appointed to review information and advise the
243 responsible public entity concerning such records.

244 29. Discussion of the award of a public contract involving the expenditure of public funds,
245 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
246 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
247 the public body.

248 30. Discussion or consideration of grant or loan application records excluded from this chapter
249 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
250 Innovation and Entrepreneurship Investment Authority or a grant allocation committee appointed to
251 advise the Innovation and Entrepreneurship Investment Authority on the grant applications.

252 31. Discussion or consideration by the Commitment Review Committee of records excluded
253 from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to
254 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

255 32. [Expired.]

256 33. Discussion or consideration of confidential proprietary records and trade secrets excluded
257 from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

258 34. Discussion or consideration by a local authority created in accordance with the Virginia
259 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade
260 secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

261 35. Discussion or consideration by the State Board of Elections or local electoral boards of
262 voting security matters made confidential pursuant to § 24.2-625.1.

263 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
264 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records
265 excluded from this chapter pursuant to subdivision ~~F~~B 1 of § 2.2-3706.

266 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program
267 Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision
268 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum
269 scholarship award, review and consider scholarship applications and requests for scholarship award
270 renewal, and cancel, rescind, or recover scholarship awards.

271 38. Discussion or consideration by the Virginia Port Authority of records excluded from this
272 chapter pursuant to subdivision 1 of § 2.2-3705.6.

273 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
274 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-
275 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
276 College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's
277 Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this
278 chapter pursuant to subdivision 25 of § 2.2-3705.7.

279 40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3
280 of § 2.2-3705.6.

281 41. Discussion or consideration by the Board of Education of records relating to the denial,
282 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of §
283 2.2-3705.3.

284 42. Those portions of meetings of the Virginia Military Advisory Council, the Virginia National
285 Defense Industrial Authority, or a local or regional military affairs organization appointed by a local
286 governing body, during which there is discussion of records excluded from this chapter pursuant to
287 subdivision 12 of § 2.2-3705.2.

288 43. Discussion or consideration by the advisory committee for veterans care centers established
289 by the Commissioner of the Virginia Department of Veterans Services pursuant to § 2.2-2004.1 of
290 records excluded from this chapter pursuant to subdivision 28 of § 2.2-3705.7.

291 44. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of
292 records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

293 45. Discussion or consideration by the Virginia Tobacco Indemnification and Community
294 Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-
295 3705.6.

296 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
297 closed meeting shall become effective unless the public body, following the meeting, reconvenes in
298 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,
299 regulation, or motion that shall have its substance reasonably identified in the open meeting.

300 C. Public officers improperly selected due to the failure of the public body to comply with the
301 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
302 they obtain notice of the legal defect in their election.

303 D. Nothing in this section shall be construed to prevent the holding of conferences between two
304 or more public bodies, or their representatives, but these conferences shall be subject to the same
305 procedures for holding closed meetings as are applicable to any other public body.

306 E. This section shall not be construed to (i) require the disclosure of any contract between the
307 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§
308 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
309 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
310 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
311 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
312 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
313 bonds.

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