

INNOCENCE PROJECT

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Innocence Project Testimony Criminal Incident Information Subcommittee of the Virginia Freedom of Information Advisory Council 10/21/2020

The Innocence Project is a national organization that exonerates the wrongfully convicted. We partner with the Innocence Project at the University of Virginia School of Law and Mid-Atlantic Innocence Project on policy changes in Virginia.

Public access to police investigative files is critical for transparency and accountability. While 32 states and the federal government require law enforcement to release these records, Virginia does not. Instead law enforcement agencies have complete discretion over whether or not to disclose this information.

Proposed Legislation

The Innocence Project is proposing legislation based on the federal Freedom of Information Act, which is the model used in 12 other states. The proposal balances the public's right to know with protections for ongoing investigations, privacy and safety. The bill would:

- **Presume public access to criminal investigative files** for law enforcement investigations or proceedings that are not considered “ongoing.”
- **Define an “ongoing” investigation or proceeding** as one in which the case has not been finally adjudicated, evidence continues to be gathered, and the case would be jeopardized with premature release of the information.
- **Allows custodian to 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 Matters

This proposal is critical to meet demands for police accountability and racial justice. It will help victims of police brutality and other crimes to heal, and also build trust between law enforcement and communities by:

- **Ensuring fair investigations of police 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.
- **Addressing wrongful convictions.** Innocence organizations are regularly forced to close wrongful conviction investigations because police agencies deny access to old case files. 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. Mandating release of these records will help overturn wrongful convictions and detect the actual perpetrators.

- **Delivering justice for crime victims.** The Virginia Beach Police Department completed its investigation into last year’s mass shooting that killed 12 people at the city municipal center. The department is denying requests from victims’ families for the complete investigative files. Providing victims with access to this information will help answer questions about what happened to their loved ones.