



**INNOCENCE  
PROJECT**



MID-ATLANTIC  
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**Virginia Innocence Coalition Testimony  
Criminal Incident Information Subcommittee of the Virginia Freedom of Information Advisory Council  
11/17/2020**

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.

While the majority of states (32) and the federal government permit public access to inactive criminal investigative files, Virginia gives police agencies complete discretion about whether to release 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.

The Virginia Innocence Coalition supports the “draft bill for discussion” (LD252D), which is based on the federal Freedom of Information Act. The federal model is used in 12 other states. We request the following amendments to the draft:

1. Page 4, Lines 101-102. Replace with. **“Ongoing case” refers to a case that has not been finally adjudicated, the investigation continues to gather evidence for a possible future criminal case, and the case would be jeopardized by the premature release of that evidence.**

Explanation: The draft states: "Ongoing" refers to a proceeding in which the prosecution has not been finally adjudicated or more than three years have not yet elapsed from when a decision to take no action was made." Law enforcement agencies rarely make a “decision to take no action,” the agencies simply leave cases open and do not act unless new information is revealed. The draft definition would undercut the intent of the law. The recommended language mirrors federal case law *Citizens for Responsibility; Ethics in Washington v. U.S. Dept of Justice*, 746 F.3d 1082, 1098 (D.C. Cir.2014).

2. Page 5, Line 130 (v) would disclose techniques and procedures **if such disclosure could reasonably be expected to risk circumvention of the law.**

Explanation: The bolded language must be added. Otherwise police reports about key evidence from lineups, interrogations or other routine procedures would be exempt.

3. Page 6, Line 137-139. No photographic, audio, video, or other record depicting a victim or allowing for a victim to be readily identified, **except for recorded interviews between crime victims and law enforcement or transcripts thereof,** shall be released to anyone except (i) the victim; (ii) members of the immediate family of the victim, if the victim is deceased; or (iii) the parent or guardian of the victim, if the victim is a minor.

Explanation: Recordings of interviews between victims and law enforcement have been important in overturning wrongful convictions. For example, the recordings/transcripts may reveal if a victim was coerced into making certain statements, or if the victim initially picked a different person in a lineup than in the courtroom. Last March, Winston Scott was granted a writ of actual innocence for a 1975 rape in Reston, Virginia. Taped interviews of the victim expressing doubts about her identification of Scott were critical in overturning his wrongful conviction. The bill already protects victims in active investigations, and these tapes should already be disclosed by the state to defendants under *Brady v. Maryland*.