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HOUSE BILL NO. 724

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact § 2.2-3706 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 9.1-177.1 and 19.2-152.4:2, relating to confidentiality of pretrial records.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3706 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 9.1-177.1 and 19.2-152.4:2 as follows:

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

A. As used in this section:

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

"Law-enforcement official" includes the attorneys for the Commonwealth.

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

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

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

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

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

1. Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;

2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity; ~~and~~

6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment; *and*

7. *All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation program in accordance with Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1.*

G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this chapter except:

1. Those portions of noncriminal incident or other investigative reports or materials containing

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59 identifying information of a personal, medical or financial nature provided to a law-enforcement agency
60 where the release of such information would jeopardize the safety or privacy of any person;

61 2. Those portions of any records containing information related to plans for or resources dedicated to
62 undercover operations; or

63 3. Records of background investigations of applicants for law-enforcement agency employment or
64 other confidential administrative investigations conducted pursuant to law.

65 H. In the event of conflict between this section as it relates to requests made under this section and
66 other provisions of law, this section shall control.

67 § 9.1-177.1. Confidentiality of records of and reports on adult persons under investigation by or
68 placed on probation supervision with a local community-based probation program; no right of review or
69 correction by subject of record or report.

70 A. Any investigation report prepared by a local probation officer is confidential and is exempt from
71 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such reports shall be filed as a part of the
72 case record. Such reports shall be sealed upon receipt by the court and made available only by court
73 order; except that such reports shall be available upon request to (i) any criminal justice agency, as
74 defined in § 9.1-101, of this or any other state or of the United States; (ii) any agency where the
75 accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of the
76 report.

77 B. Any report on the progress of an offender under the supervision or of a local community-based
78 probation agency and any information relative to the identity of or inferring personal characteristics of
79 an accused, including demographic information, diagnostic summaries, records of office visits, medical,
80 substance abuse, psychiatric or psychological records or information, substance abuse screening,
81 assessment and testing information, and other sensitive information not explicitly classified as criminal
82 history record information, is exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
83 nor subject to review and correction of by the subject of the report or record or his counsel. However,
84 such information may be disseminated to criminal justice agencies as defined in § 9.1-101 in the
85 discretion of the custodian of these records.

86 § 19.2-152.4:2. Confidentiality of records of and reports on adult persons under investigation by or
87 in the custody or supervision of a local pretrial services agency; no right of review or correction by
88 subject of record or report.

89 A. Any pretrial investigation report prepared by a local pretrial services officer is confidential and is
90 exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such reports shall be filed as
91 a part of the case record. Such reports shall be sealed upon receipt by the court and made available
92 only by court order; except that such reports shall be available upon request to (i) any criminal justice
93 agency, as defined in § 9.1-101, of this or any other state or of the United States; (ii) any agency where
94 the accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of
95 the report.

96 B. Any report on the progress of an accused under the supervision or custody of a pretrial services
97 agency and any information relative to the identity of or inferring personal characteristics of an
98 accused, including demographic information, diagnostic summaries, records of office visits, medical,
99 substance abuse, psychiatric or psychological records or information, substance abuse screening,
100 assessment and testing information, and other sensitive information not explicitly classified as criminal
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104 discretion of the custodian of these records. #