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## SENATE BILL NO. 711

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology  
on February 10, 2010)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend and reenact § 2.2-3706 of the Code of Virginia, relating to the Freedom of Information Act; disclosure of criminal investigative records.*

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

**1. That § 2.2-3706 of the Code of Virginia is amended and reenacted 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.

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of *specific portions* of criminal incident information is likely to (i) jeopardize an ongoing investigation or prosecution; or the safety of an individual; (ii) cause a suspect to flee or evade detection; or (iii) result in the destruction of evidence, *those portions* of 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~~ *authorize the withholding of* those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement agencies 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, case files or reports, witness statements, and evidence relating to ~~a~~ *an ongoing* criminal investigation or prosecution, other than criminal incident information as defined in subsection A. *Once the ongoing criminal investigation or prosecution has become final or otherwise terminated, the above-referenced records shall be disclosed pursuant to court order except where the disclosure will jeopardize any other criminal investigation or prosecution or the information was provided upon a promise of confidentiality. In any such case, the court may examine in camera any relevant evidence;*

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;

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

7. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

8. 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 services agency in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; 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; and

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

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

65 1. Those portions of noncriminal incident or other investigative reports or materials containing  
66 identifying information of a personal, medical or financial nature provided to a law-enforcement agency  
67 where the release of such information would jeopardize the safety or privacy of any person;

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

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

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

76 I. In the event of conflict between this section as it relates to requests made under this section and  
77 other provisions of law, this section shall control.