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HOUSE BILL NO. 2080

Offered January 9, 2019

Prefiled January 7, 2019

A BILL to amend and reenact § 2.2-3706 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1.2 of Title 19.2 a section numbered 19.2-11.13, relating to Physical Evidence Recovery Kit Tracking System.

Patrons—Watts, Filler-Corn, Hugo and Murphy

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 in Chapter 1.2 of Title 19.2 a section numbered 19.2-11.13 as follows:

§ 2.2-3706. Disclosure of law-enforcement and criminal records; limitations.

A. Records required to be released. All public bodies engaged in criminal law-enforcement activities shall provide the following records when requested in accordance with the provisions of this chapter:

1. Criminal incident information relating to felony offenses, which shall include:

- a. A general description of the criminal activity reported;
- b. The date the alleged crime was committed;
- c. The general location where the alleged crime was committed;
- d. The identity of the investigating officer or other point of contact; and
- e. A general description of any injuries suffered or property damaged or stolen.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision 1.

Where the release of criminal incident information, however, 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 subdivision 1 shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage;

2. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except 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. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest; and

4. Records of completed unattended death investigations to the parent or spouse of the decedent or, if there is no living parent or spouse, to the most immediate family member of the decedent, provided the person is not a person of interest or a suspect. For the purposes of this subdivision, "unattended death" means a death determined to be a suicide, accidental or natural death where no criminal charges will be initiated, and "immediate family" means the decedent's personal representative or, if no personal representative has qualified, the decedent's next of kin in order of intestate succession as set forth in § 64.2-200.

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

1. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with subdivision A 1;

2. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1;

3. 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;

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

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

62 6. All records of adult persons under (i) investigation or supervision by a local pretrial services
63 agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation,
64 probation supervision, or monitoring by a local community-based probation services agency in
65 accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or
66 supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of
67 Chapter 4 of Title 53.1;

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

71 8. Those portions of any records containing information related to undercover operations or
72 protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations
73 or protective details. Nothing in this subdivision shall operate to allow the withholding of information
74 concerning the overall costs or expenses associated with undercover operations or protective details;

75 9. Records of (i) background investigations of applicants for law-enforcement agency employment,
76 (ii) administrative investigations relating to allegations of wrongdoing by employees of a
77 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
78 agencies that are made confidential by law;

79 10. The identity of any victim, witness, or undercover officer, or investigative techniques or
80 procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited
81 or restricted under § 19.2-11.2; and

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

86 C. Prohibited releases. *The following records shall not be disclosed:*

87 1. The identity of any individual providing information about a crime or criminal activity under a
88 promise of anonymity ~~shall not be disclosed~~; and

89 2. *Records of the Physical Evidence Recovery Kit Tracking System maintained by the Department of*
90 *Forensic Science pursuant to § 19.2-11.13.*

91 D. Noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in fire
92 protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing
93 calls for service or other communications to an emergency 911 system or any other equivalent reporting
94 system may withhold those portions of noncriminal incident or other noncriminal investigative reports or
95 materials that contain identifying information of a personal, medical, or financial nature where the
96 release of such information would jeopardize the safety or privacy of any person. Access to personnel
97 records of persons employed by a law-enforcement agency shall be governed by the provisions of
98 subdivision B 9 of this section and subdivision 1 of § 2.2-3705.1, as applicable.

99 E. Records of any call for service or other communication to an emergency 911 system or
100 communicated with any other equivalent reporting system shall be subject to the provisions of this
101 chapter.

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

104 **§ 19.2-11.13. Physical Evidence Recovery Kit Tracking System.**

105 A. *The Department shall maintain a statewide electronic tracking system for physical evidence*
106 *recovery kits. The Physical Evidence Recovery Kit Tracking System (the System) will utilize an assigned*
107 *unique identification number to track each physical evidence recovery kit from its distribution as an*
108 *uncollected kit to the health care provider through to its destruction. The Department shall ensure that*
109 *each physical evidence recovery kit is assigned a unique identification number.*

110 B. *The Department shall provide access to the System to health care providers, law-enforcement*
111 *agencies, the Division, and the Office of the Chief Medical Examiner. All such entities and agencies*
112 *shall be required to update the status and location of each kit in the System whenever such status or*
113 *location changes.*

114 C. *The health care provider shall inform the victim of sexual assault of the unique identification*
115 *number assigned to the physical evidence recovery kit utilized by the health care provider during the*
116 *forensic medical examination and provide the victim with information regarding the System.*

117 D. *Records entered into the System are confidential and are not subject to disclosure under the*
118 *Freedom of Information Act (§ 2.2-3700 et seq.).*

119 **2. That the provisions of this act shall become effective on January 1, 2020.**

120 **3. That information about the use of the Physical Evidence Recovery Kit Tracking System shall be**

121 reported in the Forensic Science Board's annual report that is submitted by November 1 of each
122 year in accordance with subsection B of § 9.1-1110 of the Code of Virginia.

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