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SENATE BILL NO. 107

Offered January 11, 2012

Prefiled January 9, 2012

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

Patron—Edwards

Referred to Committee on General Laws and Technology

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.

"Criminal investigative file" means any documents and information including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a *an active or ongoing* criminal investigation or prosecution, other than criminal incident information. *Nothing in this section shall be construed to require the release of records otherwise exempted in accordance with this chapter.*

B. Law-enforcement agencies 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 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. Criminal investigative files 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. (Effective until July 1, 2012) 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;

3. (Effective July 1, 2012) 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 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;

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SB107

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

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

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

72 11. Records of (i) background investigations of applicants for law-enforcement agency employment,
73 (ii) administrative investigations relating to allegations of wrongdoing by employees of a
74 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
75 agencies that are made confidential by law.

76 G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the
77 provisions of this chapter except that those portions of noncriminal incident or other investigative reports
78 or materials that contain identifying information of a personal, medical or financial nature may be
79 withheld where the release of such information would jeopardize the safety or privacy of any person.

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

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