

**Department of Planning and Budget**  
**2020 Special Session I - Fiscal Impact Statement**

**1. Bill Number:** HB5090H1

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Hurst

**3. Committee:** Courts of Justice

**4. Title:** Virginia Freedom of Information Act; law-enforcement criminal incident information.

**5. Summary:** Adds criminal incident information to the types of law enforcement and criminal records required to be released in accordance with the provisions of the Virginia Freedom of Information Act (FOIA). Such release shall exclude the identity of any victim or witness if such disclosure is prohibited or restricted as clarified elsewhere in the Code. Records to be released includes any information contained in any report, notes, electronic communication, or other document, including filings through the incident-based reporting system, including the date and time the alleged crime was committed; the identity of the investigating officer or other point of contact; and a description of any injuries suffered or property damaged or stolen; any diagrams related to the alleged crime or the location where the alleged crime was committed. Current law requires the release of limited information related to felony offenses only.

Additionally, the bill provides that where a court of record determines upon the petition of a law enforcement agency or Commonwealth's attorney that the release of information is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, reveal the identity of any individual providing information about a crime or criminal activity under a promise of anonymity, or result in the destruction of evidence, such information may be withheld until such consequences are no longer likely to occur from the release of the information. An investigation shall not be considered ongoing for the purposes of this subsection if three or more years have elapsed from when the prosecution was finally adjudicated or a decision to take no action was made.

The bill also adds the race, ethnicity, and gender of any individual, other than a juvenile, who is arrested and charged to the list of information required to be released pursuant to a FOIA request. Agencies are also required to release criminal investigative files relating to a case in which criminal charges have been finally adjudicated or more than three years have elapsed from the time a decision to take no action was made.

**6. Budget Amendment Necessary:** Yes. Items 57 and 427.

**7. Fiscal Impact Estimates:** Preliminary. See below.

- 8. Fiscal Implications:** According to the Department of State Police (VSP), the FOIA section within the agency handled approximately 3,831 FOIA requests and denied an additional 1,145 requests in calendar year 2019. Of the denials, at least 275 were closed cases that would now be required to be released under the proposed legislation. VSP's FOIA office is currently made up of one full-time supervisor and three part-time program support technicians (one part-time position is currently vacant). According to VSP, their average criminal investigation report exceeds 50 pages and contains a combination of investigative documents, video files, and photographs; larger investigations may consist of numerous file cabinets of records, diagrams, statement videos, and thousands of photographs. Each page of each file must be reviewed to comply with FOIA redaction requirements, which takes a minimum of five hours of research and preparation per file. In addition to the normal workload, VSP expects a surge of requests immediately after the passage of the bill from requestors that have previously had their requests denied.

VSP believes it may need two additional program support technicians in its FOIA section to comply with the provisions of the proposed legislation. Each FTE costs \$76,452 annually (prorated to \$63,710 the first year). Additionally, VSP estimates needing \$5,500 annually to cover office space expenses (the current FOIA office at State Police headquarters would be over capacity), \$17,105 in one-time costs for office furniture, information technology expenses of \$23,855 the first year and \$5,207 ongoing, and approximately \$60,000 per year in postage, DVD/thumb drive, and other expenses to process requests.

According to the Office of the Attorney General (OAG), the bill creates a default of disclosure for many criminal investigative files, requiring the law enforcement agency to petition a court to avoid disclosure. OAG estimates that at least two additional attorneys will be needed to represent law enforcement agencies full-time on FOIA matters. Additionally, litigation-related travel for these attorneys may be extensive. OAG estimates the cost per attorney position to be \$149,988 annually (prorated to \$124,990 the first year), plus a total of \$10,000 per year in travel expenses, and an additional \$20,000 in administrative costs.

According to the Office of the State Inspector General (OSIG), any fiscal impact resulting from this bill can be absorbed with current resources.

According to the Sheriff's offices, this bill would be expected to increase requests for investigative information pursuant to FOIA, and would increase the time employees in the sheriff's offices would spend gathering and disclosing the requested information. However, the additional time spent cannot be quantified at this time and any potential fiscal impact is currently indeterminate.

There is no anticipated fiscal impact on the Department of Juvenile Justice (DJJ), the Department of Motor Vehicles (DMV), or the Virginia Alcoholic Beverage Control Authority (ABC), according to those agencies.

Any potential fiscal impact to other state agencies and local law enforcement agencies cannot be determined at this time because information is not available. If information is made available, the fiscal impact statement will be updated as necessary.

**9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, Department of Juvenile Justice, Virginia Alcoholic Beverage Control Authority, Department of Conservation and Recreation, College and University Police Departments, Department of Wildlife Resources, Marine Resources Commission, Department of State Police, Office of the Attorney General, Office of the State Inspector General, Department of Motor Vehicles, Sheriff's offices, Courts, and Commonwealth's Attorneys.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** None.