

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

1. Bill Number: HB5090H3

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

2. Patron: Hurst

3. Committee: House Appropriations

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 when a court of record determines upon the petition of a law enforcement agency or attorney for the Commonwealth by a preponderance of the evidence that 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, disclose any information prohibited from release by the bill, or result in the destruction of evidence, such information may be withheld until such damage is no longer likely to occur from release of the information. An investigation shall not be considered ongoing for purposes of this section if the prosecution was finally adjudicated, or more than three years have elapsed from the date the alleged crime was committed if no prosecution was made. Venue for such petition shall be in the locality in which the crime is being investigated.

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 date the alleged crime was committed if no prosecution was made. With respect to the latter, if the public body engaged in criminal law enforcement activities investigating the alleged crime determines that the release of a criminal investigative file will jeopardize the

possibility of future prosecution in a cold case, it may petition the circuit court wherein the public body is located to enjoin the release of the file.

The bill also provides that no photographic, audio, video, or other record depicting a victim or allowing for a victim to be readily identified shall be released to anyone except the victim, his immediate family, if the victim is deceased, or the parent or guardian of the victim, if he is a minor.

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 may 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 three additional program support technicians in its FOIA section to comply with the provisions of the amended legislation. Each FTE costs \$72,537 annually (prorated to \$60,448 the first year). Additionally, VSP estimates needing \$63,360 annually to cover office space expenses because the current FOIA office at State Police headquarters would be over capacity VSP estimates \$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. The total estimated cost to OAG is estimated at \$329,976 annually.

There is no anticipated fiscal impact on the Department of Corrections (DOC) as a result of the provisions of the proposed legislation.

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.