Department of Planning and Budget
2022 Fiscal Impact Statement

1. **Bill Number:** HB734

    House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed

    Second House ☐ In Committee ☒ Substitute ☐ Enrolled

2. **Patron:** Robert B. Bell

3. **Committee:** Conference

4. **Title:** Virginia Freedom of Information Act; disclosure of certain criminal records.

5. **Summary:** Provides that criminal investigative files relating to an ongoing criminal investigation or proceeding are excluded from the mandatory disclosure provisions, but may be disclosed by the custodian in his discretion except as provided in subsection E of § 2.2-3706.1 or where such disclosure is prohibited by law. Criminal investigative files related to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian in his discretion except as provided in subsection E of § 2.2-3706.1. Records shall be disclosed by request to (i) the victim, (ii) the victim's immediate family members, if the victim is deceased and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation or proceeding, (iii) the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest, or (iv) an attorney representing a petitioner in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding or pardon; and (v) for the sole purpose of inspection at the location where such records are maintained by the public body that is the custodian of the records (a) an attorney or his agent when such attorney is considering representing a petitioner in a post-conviction proceeding or pardon, (b) an attorney who provides a sworn declaration that the attorney has been retained by an individual for purposes of pursuing a civil or criminal action and has a good faith basis to believe that the records being requested are material to such action.

    Provides that no criminal investigative file or portion thereof shall be disclosed to any requester except (i) the victim; (ii) the victim's immediate family members, if the victim is deceased and the immediate family member to be notified is not a person of interest or a suspect in the criminal investigation or proceeding; or (iii) the victim's parent or guardian, if the victim is a minor and the parent or guardian to be notified is not a person of interest or a suspect in the criminal investigation or proceeding. Upon receipt of notice that a public body has received a request for criminal investigative files pursuant to this section, such persons shall have 14 days to file in an appropriate court a petition for an injunction to prevent the disclosure of the records as set forth in § 8.01-622.2. The public body shall not respond to the request until at least 14 days has passed from the time notice was received by an individual listed above.

The bill creates § 8.01-622.2, Injunction against disclosure of criminal investigative file materials under the Virginia Freedom of Information Act. Provides an injunction may be awarded to prevent the disclosure of records related to criminal investigative files requested under § 2.2-3706.1 of the Virginia Freedom of Information Act. The bill requires the court to consider certain information in making its determination.

6. **Budget Amendment Necessary**: No.

7. **Fiscal Impact Estimates:** No Impact.

8. **Fiscal Implications:** This bill is not expected to create a fiscal impact to state agencies. According to the Office of the Executive Secretary of the Supreme Court, the proposed bill is not expected to have a material fiscal impact on the operations of the court system.

9. **Specific Agency or Political Subdivisions Affected:** All state agencies and other public bodies covered by the Virginia Freedom of Information Act.

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

11. **Other Comments:**

Date: 3/16/2022