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HOUSE BILL NO. 1354

Offered January 21, 2022

A BILL to amend and reenact § 2.2-3706 of the Code of Virginia, relating to the Virginia Freedom of Information Act; release of probation and parole records.

Patron—Hudson

Committee Referral Pending

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 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. 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;

2. 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

3. 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 not required to be disclosed in accordance with § 2.2-3706.1;

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;

5. 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;

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

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

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

9. Records of (i) background investigations of applicants for law-enforcement agency employment,

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59 (ii) administrative investigations relating to allegations of wrongdoing by employees of a
60 law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement
61 agencies that are made confidential by law;

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

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

69 C. Prohibited releases. The identity of any individual providing information about a crime or criminal
70 activity under a promise of anonymity shall not be disclosed.

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

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

82 F. *Records of adult persons under investigation or supervision by state probation and parole services*
83 *in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1 shall be released, upon*
84 *request, to any criminal justice agency located within the probation and parole district in which the*
85 *public body that is the custodian of the requested records is located.*

86 *For purposes of this subsection, "criminal justice agency" means any:*

- 87 1. *State or local public law-enforcement agency;*
- 88 2. *Sheriff's office;*
- 89 3. *Local and regional jail board;*
- 90 4. *Public, private, or nonprofit pretrial services agency;*
- 91 5. *Public, private, or nonprofit probation services agency;*
- 92 6. *Attorney for the Commonwealth; and*
- 93 7. *Community criminal justice board, as described in § 9.1-178.*

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