

**Key Points in Support of
SB 1563**
Duty to provide discovery in criminal cases

Patron: Sen. Bill Stanley

- Discovery in a criminal case is the formal process by which prosecutors and defense attorneys exchange relevant information prior to trial.
- Open and uniform criminal discovery laws increase fairness and access to justice, save state and attorney resources by limiting discovery disputes, promote efficient case resolution, and reduce the likelihood of wrongful convictions.
- Virginia’s criminal discovery rules are among the most restrictive in the country. Virginia is identified as one of fourteen states that provide criminal defendants with the *least* discovery in the nation.
- In Virginia, defendants are not entitled to police reports, witness lists or witness statements, just to name a few.
- Many Virginia jurisdictions have recognized that the current discovery system does not provide for the most effective and efficient method of achieving justice.
- As a result, those jurisdictions have chosen to voluntarily provide more expansive discovery than what is required under the current rule.
- However, by providing for more expansive discovery at their own discretion, those jurisdictions have created another type of imbalance where the rules are inconsistent across the Commonwealth.
- Inconsistent discovery practices can lead to fundamental and systemic inequality and inequity.
- The reforms included in **SB 1563** reflect the recommendations of the Virginia Supreme Court Special Committee on Criminal Discovery Rules.
- **SB 1563** will expand the current discovery requirements to require the attorney for the Commonwealth to permit the accused to inspect, copy, or photograph all relevant police reports.

- It will also allow the accused access to all relevant reports prepared by an expert witness whom the Commonwealth intends to call no later than 14 days before trial; statements of non-expert witness whom the Commonwealth designates on a witness list; and written lists of names and addresses of all witnesses expected to testify at trial.
- **SB 1563** also provides for reciprocal discovery requirements for the defense. This includes all relevant statements of non-expert witness whom the defense designates on a witness list; written list of names and addresses of all witnesses expected to testify at trial; and all relevant reports prepared by an expert witnesses whom the defense intends to call no later than 7 days before trial.
- **SB 1563** also includes a provision allowing the attorneys for the Commonwealth to withhold or redact any personally identifying information to protect the security of a witness. This includes limiting disclosure to defense counsel only.
- Virginia’s current discovery rules fall short of what is desirable and adequate for due process and fair trails.

Notes:

- *Please personalize to include your individual experiences with seeking discovery (if applicable).*
- *If questioned about the risk of witness intimidation as a result of expanded discovery policy, you can reference a study published in the Washington and Lee Law Review in 2016, “Two Models of Pre-Plea Discovery in Criminal Cases: An Empirical Comparison,” where defense attorneys and prosecutors in Virginia (limited discovery policy) and North Carolina (open-file discovery policy) were surveyed. The authors concluded that “prosecutors in North Carolina tend not to see witness safety as a significant problem with open-file discovery. This finding is consistent with most of the anecdotal evidence from other jurisdictions with liberal discovery practices, which suggests that open-file discovery does not increase the risk of witness intimidation.”*
- *If questioned regarding statistics on the number of wrongful convictions due to the failure to turn over exculpatory evidence:*
 - *Of the 46 Virginia exonerations listed in the National Registry of Exonerations, 19 of them involved information that should have been disclosed to the defense by the Commonwealth, but was not. Those individuals served nearly 160 years in prison for crimes they did not commit. The Commonwealth has spent more than \$5 million to compensate them for that time.*