



Virginia Criminal Sentencing Commission

100 North Ninth Street • Richmond, Virginia 23219 • Tel.: 804.225.4398 • Fax: 804.786.3934

POLICY REGARDING ALL-VIRTUAL MEETINGS AND REMOTE PARTICIPATION IN MEETINGS (as required by § 2.2-3708.3)

General

By enacting Title 2.2, Subtitle II, Part B, Chapter 37 (Freedom of Information Act), the General Assembly establishes policies to ensure the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter must be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings must be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

Pursuant to § 2.2-3708.3(A), public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

As required by § 2.2-3708.3(D), the Virginia Criminal Sentencing Commission (“the Commission”) has established a policy regarding virtual meetings and remote participation in meetings by its members.

Definitions

As used in Title 2.2, Subtitle II, Part B, Chapter 37 (Freedom of Information Act), effective September 1, 2022, unless the context requires a different meaning:

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means,

(ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information," as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (b) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Official public government website" means any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to this chapter on behalf of the public body.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording, or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.).

Statutory Requirements

Pursuant to § 2.2-3708.3, individual members of the Commission may use remote participation instead of attending a public meeting in person *if the body has adopted a policy regarding remote participation and the member notifies the Chair* that:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;
3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

If participation by a member through electronic communication means is approved by the Chair, the Commission must record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved due to a disability or medical condition of the member or a member of his or her family, the Commission is required to include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved due to the distance of the member's residence, the Commission is required to include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved due to a personal matter, the Commission must include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the Commission's policy, such disapproval must be recorded in the minutes with specificity.

Under § 2.2-3708.3(C), the Commission may hold all-virtual public meetings, provided that the agency follows all other requirements for meetings, the agency has adopted the policy required by § 2.2-3708.3(D), and:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which the Commission chooses to meet shall not be changed unless the agency provides a new meeting notice in accordance with the provisions of § 2.2-3707;
2. Public access to the all-virtual public meeting is provided via electronic communication means;
3. The electronic communication means used allows the public to hear all Commission members participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well;
4. A phone number or other live contact information is provided to alert the agency if the audio or video transmission of the meeting provided by the Commission fails, the agency monitors such designated means of communication during the meeting, and the agency takes a recess until public access is restored if the transmission fails for the public;
5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of the Commission for a meeting is made available to the public in electronic format at the same time that such materials are provided to members;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;

8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the Commission votes to certify the closed meeting as required by subsection D of § 2.2-3712;

9. The Commission does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and

10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the adopted policy, such disapproval must be recorded in the minutes with specificity.

The Commission policy regarding all-virtual public meetings and members' remote participation, is to be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

Policy as to Circumstances under which All-Virtual Public Meetings Will Be Allowed

The decision to hold an in-person or all-virtual public meeting will be made by the Commission's Chair. In determining whether to hold an in-person or all-virtual meeting, the Chair should consider the health of members, staff and the public and potential issues with technologies available for remote access by members and the public. The Chair will make the decision to hold an in-person or all-virtual meeting at least one week prior to the scheduled meeting date. Commission staff shall post whether the meeting will be in-person or all-virtual on its website at least one week prior to the scheduled meeting date. In the absence of the Commission's Chair, the Commission's Vice-Chair will make such determinations.

As specified in § 2.2-3708.3(B), the Commission cannot hold an all-virtual public meeting more than two times per calendar year and cannot hold two consecutive all-virtual meetings.

Policy as to Circumstances under which Remote Participation Will Be Allowed

As required by § 2.2-3708.3(B), individual Commission members may use remote participation instead of attending a public meeting in person if the member notifies the Commission Chair in advance of the public meeting and specifies one of the following conditions for which remote participation is permitted by *Code*:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;

3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year.

If remote participation by the member is approved, the minutes of the meeting will specify that the member participated remotely, the location from which the member participated, and the specific condition cited by the member when notifying the Chair of his or her need for remote participation. If a member's participation from a remote location is disapproved because such participation would violate the Commission's policy, such disapproval must be recorded in the minutes with specificity.

Process for Members to Request Remote Participation in a Meeting

Requests by members to participate in a meeting remotely must be submitted in writing or by e-mail to the Commission's Chair or to the Commission's Director, who shall forward the request to the Chair. Approval or disapproval of the request is at the discretion of the Chair. As specified in § 2.2-3708.3(B), a member may not use remote participation due to personal matters more than two meetings per calendar year.

Once the Chair has approved or disapproved the member's request for remote participation, the Chair shall notify the Director of the decision. The Director will keep records of member requests and whether or not the Chair approved or disapproved each request.

In the absence of the Commission's Chair, the Commission's Vice-Chair will make such determinations.

**Approved by Members of the Virginia Criminal Sentencing Commission
by Recorded Vote on November 2, 2022**