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HOUSE BILL NO. 616

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 9.1-500 and 9.1-501 of the Code of Virginia, relating to definition of law-enforcement officer under the Law-Enforcement Officers Procedural Guarantee Act; entitlement to counsel during investigation.

 Patron—Carrico

 Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That §§ 9.1-500 and 9.1-501 of the Code of Virginia are amended and reenacted as follows:****§ 9.1-500. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, or the Department of Motor Vehicles;

b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has ten or more law-enforcement officers; or

c. Any game warden as defined in § 9.1-101.

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Department of Alcoholic Beverage Control; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the State Lottery Department; or (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office. Full-time sworn members of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications shall be deemed to be "law-enforcement officers" when fulfilling their duties pursuant to § 46.2-217.

§ 9.1-501. Conduct of investigation.

The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law-enforcement officer:

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless matters being investigated are of such a nature that immediate action is required.

2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation, and he, at his own expense, shall be given an opportunity to be assisted by counsel.

3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into

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59 two separate containers. One specimen shall be tested while the other is held in a proper manner to
60 preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test
61 positive, the law-enforcement officer shall have the right to require the second specimen be sent to a
62 laboratory of his choice for independent testing in accordance generally with the procedures set forth in
63 §§ 18.2-268.1 through 18.2-268.12. The officer shall notify the chief of his agency in writing of his
64 request within ~~ten~~10 days of being notified of positive specimen results. The laboratory chosen by the
65 officer shall be on the approved list of the Division of Forensic Science.