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SENATE BILL NO. 76

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Marsh
on January 25, 2008)

(Patrons Prior to Substitute—Senators Cuccinelli and Deeds [SB 355])

A BILL to amend and reenact § 9.1-501 of the Code of Virginia, relating to the Law-Enforcement Officers Procedural Guarantee Act.

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-501 of the Code of Virginia is amended and reenacted as follows:

§ 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 an adverse personnel action, limited 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. Any officer under investigation shall be entitled to counsel by an attorney or any other person of the officer's choice, such as an employee representative, as long as the employee representative is not a party to the action being investigated, immediately prior to and during the entire period of any questioning session unless the officer consents in writing to being questioned outside the presence of counsel or representative. The officer under investigation shall pay the cost of any attorney or other representation.

3. An officer under investigation shall be notified at least two hours prior to the commencement of questioning or otherwise being required to provide information to the investigating agency, unless the officer consents in writing to being questioned or to providing a statement immediately. Additional time prior to the commencement of questioning shall be provided when the officer to be questioned resides outside of the jurisdiction where questioning is to take place and the officer is outside of such jurisdiction at the time of notification. If an officer elects to have an attorney or employee representative present during questioning, an additional two hours shall be provided to the officer prior to the commencement of questioning. Such notice shall include the nature and scope of the investigation, a detailed description of any allegation contained in the written complaint, a description of each violation alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that would be subject to disciplinary action, and the name and rank, and command of the investigating officer and of any or individual to be present during the questioning and (ii) the nature of who will be conducting the investigation. In instances where the complainant is the alleged victim of an infraction of policy, the complainant shall not conduct or supervise the investigation or serve as an investigator.

34. 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 two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ 18.2-268.1 through 18.2-268.12. The officer shall notify the chief of his agency in writing of his request within 10 days of being notified of positive specimen results. The laboratory chosen by the officer shall be accredited or certified by one or more of the following bodies: the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the College of American Pathologists (CAP), the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), or the American Board of Forensic Toxicology (ABFT).

5. At the conclusion of the investigation, the officer under investigation shall have the opportunity to review the file prepared by the investigating officer, including, but not limited to, transcripts of interviews by the officer, witnesses, and the complainant. The name and other identifying information of any witness or the complainant shall be redacted prior to the review of the file by the officer under investigation where there exists a foreseeable risk that retaliatory action will be taken against such witness or complainant by or on behalf of the officer under investigation.

6. This section shall not apply to any investigation identified as a criminal investigation.