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SENATE BILL NO. 1541

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 9, 2009)

(Patron Prior to Substitute—Senator Stolle)

A BILL to amend and reenact § 9.1-501 of the Code of Virginia, relating to 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 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. *In any administrative investigation, an officer shall be provided reasonable notice prior to being questioned as long as such notice will not jeopardize the administrative investigation or the safety of the public.*

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.

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 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).

4. *If any of the procedural protections granted an officer under this Act are intentionally denied the officer during the investigative process, the information derived from such intentional denials shall not be used or considered in imposing any disciplinary action against that officer.*

5. *In the event the allegation against the officer is determined to be unfounded, the information derived from the investigation shall not be used or considered in imposing any disciplinary action against that officer. However, should such investigation reveal evidence of additional misconduct other than what was originally alleged, such evidence may be used in any disciplinary action regarding the newly discovered violations against the officer involved.*