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HOUSE BILL NO. 1943

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact § 9.1-102 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-390.03, relating to recording custodial interrogations.

Patron—McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-102 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-390.03 as follows:

§ 9.1-102. Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time required for completion of such training;

3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;

4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;

5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;

6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;

7. Establish compulsory minimum entry-level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120, and to establish the time required for completion of such training;

8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time required for the completion of such training;

9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as deputy sheriffs and jail officers by local criminal justice agencies, correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and juvenile correctional officers employed at a juvenile correctional facility as the term is defined in § 66-25.3;

10. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;

11. Establish compulsory minimum training standards for all auxiliary police officers employed by or in any local or state government agency. Such training shall be graduated and based on the type of duties to be performed by the auxiliary police officers. Such training standards shall not apply to auxiliary police officers exempt pursuant to § 15.2-1731;

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59 12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state
60 and federal governmental agencies, and with universities, colleges, community colleges, and other
61 institutions, whether located in or outside the Commonwealth, concerning the development of police
62 training schools and programs or courses of instruction;

63 13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth,
64 for school operation for the specific purpose of training law-enforcement officers; but this shall not
65 prevent the holding of any such school whether approved or not;

66 14. Establish and maintain police training programs through such agencies and institutions as the
67 Board deems appropriate;

68 15. Establish compulsory minimum qualifications of certification and recertification for instructors in
69 criminal justice training schools approved by the Department;

70 16. Conduct and stimulate research by public and private agencies which shall be designed to
71 improve police administration and law enforcement;

72 17. Make recommendations concerning any matter within its purview pursuant to this chapter;

73 18. Coordinate its activities with those of any interstate system for the exchange of criminal history
74 record information, nominate one or more of its members to serve upon the council or committee of any
75 such system, and participate when and as deemed appropriate in any such system's activities and
76 programs;

77 19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this
78 chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to
79 submit information, reports, and statistical data with respect to its policy and operation of information
80 systems or with respect to its collection, storage, dissemination, and usage of criminal history record
81 information and correctional status information, and such criminal justice agencies shall submit such
82 information, reports, and data as are reasonably required;

83 20. Conduct audits as required by § 9.1-131;

84 21. Conduct a continuing study and review of questions of individual privacy and confidentiality of
85 criminal history record information and correctional status information;

86 22. Advise criminal justice agencies and initiate educational programs for such agencies with respect
87 to matters of privacy, confidentiality, and security as they pertain to criminal history record information
88 and correctional status information;

89 23. Maintain a liaison with any board, commission, committee, or other body which may be
90 established by law, executive order, or resolution to regulate the privacy and security of information
91 collected by the Commonwealth or any political subdivision thereof;

92 24. Adopt regulations establishing guidelines and standards for the collection, storage, and
93 dissemination of criminal history record information and correctional status information, and the privacy,
94 confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and
95 court orders;

96 25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal
97 justice information system, produce reports, provide technical assistance to state and local criminal
98 justice data system users, and provide analysis and interpretation of criminal justice statistical
99 information;

100 26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law
101 enforcement and the administration of criminal justice throughout the Commonwealth, and periodically
102 update that plan;

103 27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the
104 Commonwealth, and units of general local government, or combinations thereof, including planning
105 district commissions, in planning, developing, and administering programs, projects, comprehensive
106 plans, and other activities for improving law enforcement and the administration of criminal justice
107 throughout the Commonwealth, including allocating and subgranting funds for these purposes;

108 28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and
109 activities for the Commonwealth and units of general local government, or combinations thereof, in the
110 Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal
111 justice at every level throughout the Commonwealth;

112 29. Review and evaluate programs, projects, and activities, and recommend, where necessary,
113 revisions or alterations to such programs, projects, and activities for the purpose of improving law
114 enforcement and the administration of criminal justice;

115 30. Coordinate the activities and projects of the state departments, agencies, and boards of the
116 Commonwealth and of the units of general local government, or combination thereof, including planning
117 district commissions, relating to the preparation, adoption, administration, and implementation of
118 comprehensive plans to strengthen and improve law enforcement and the administration of criminal
119 justice;

120 31. Do all things necessary on behalf of the Commonwealth and its units of general local

government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

32. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

33. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

34. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

35. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

36. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

37. Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for determining the predominant physical aggressor in accordance with § 19.2-81.3. The Department shall provide technical support and assistance to law-enforcement agencies in carrying out the requirements set forth in § 9.1-1301 and shall by December 1, 2009, submit a report on the status of implementation of these requirements to the chairmen of the House and Senate Courts of Justice Committees;

38. Establish training standards and publish a model policy for law-enforcement personnel in communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

39. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for biased policing;

40. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs, including sensitivity to and awareness of cultural diversity and the potential for biased policing;

41. Publish and disseminate a model policy or guideline that may be used by state and local agencies to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the potential for biased policing;

42. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

43. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library;

44. Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall

be administered by the Virginia Center for School and Campus Safety pursuant to § 9.1-184. Such training standards shall include, but shall not be limited to, the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of these standards and certification requirements;

45. Establish training standards and publish a model policy and protocols for local and regional sexual assault response teams;

46. License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ 9.1-185 et seq.);

47. License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.);

48. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal justice agencies regarding the investigation, registration, and dissemination of information requirements as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.);

49. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers. Such training standards shall include, but not be limited to, the role and responsibility of campus security officers, relevant state and federal laws, school and personal liability issues, security awareness in the campus environment, and disaster and emergency response. The Department shall provide technical support and assistance to campus police departments and campus security departments on the establishment and implementation of policies and procedures, including but not limited to: the management of such departments, investigatory procedures, judicial referrals, the establishment and management of databases for campus safety and security information sharing, and development of uniform record keeping for disciplinary records and statistics, such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an advisory committee consisting of college administrators, college police chiefs, college security department chiefs, and local law-enforcement officials to assist in the development of the standards and certification requirements and training pursuant to this subdivision;

50. Establish compulsory training standards and publish a model policy for law-enforcement personnel regarding death notification;

51. Assess and report, in accordance with § 9.1-190, the crisis intervention team programs established pursuant to § 9.1-187;

52. Establish, publish, and disseminate a model policy or guideline for law-enforcement personnel for questioning individuals suspected of driving while intoxicated concerning the physical location of that individual's last consumption of an alcoholic beverage and for communicating that information to the Alcoholic Beverage Control Board;

53. Establish training standards and publish a model policy for law-enforcement personnel assigned to vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

54. Establish training standards and publish a model policy for law-enforcement personnel involved in criminal investigations that embody current best practices for conducting photographic and live lineups;

55. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia. The Department shall publish and disseminate a model policy or guideline for law-enforcement personnel involved in criminal investigations or assigned to vehicle or street patrol duties to ensure that law-enforcement personnel are sensitive to and aware of human trafficking offenses and the identification of victims of human trafficking offenses;

56. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of § 46.2-117; and

57. Establish, publish, and disseminate a model policy or guideline for law-enforcement personnel for the recording of custodial interrogations as defined in § 19.2-390.03 of individuals suspected of any crime; and

58. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

§ 19.2-390.03. Recording of custodial interrogations.

A. For purposes of this section:

"Custodial interrogation" means any interview conducted by a law-enforcement officer in such circumstances that would lead a reasonable person to consider himself to be in custody and during which the law-enforcement officer takes actions or asks questions that are calculated to elicit responses from the person that could incriminate him.

244 "Place of detention" means a police station, sheriff's office, detention center, vehicle, or any other
245 location at which persons are or may be held in detention in connection with (i) criminal charges
246 against such persons or (ii) allegations that such persons are delinquent minors.

247 B. If practicable, a law-enforcement officer conducting a custodial interrogation of any person at a
248 place of detention shall cause an audiovisual recording of such custodial interrogation to be made.

249 C. The failure of a law-enforcement officer to cause an audiovisual recording to be made in
250 accordance with subsection B shall not affect the admissibility of the statements made by the subject of
251 the custodial interrogation, but the court shall instruct the jury that such failure shall be considered in
252 determining the weight given to such evidence or, if the court is trying the case without a jury, shall
253 consider such failure in determining the weight given to such evidence.

254 D. Any audiovisual recording made pursuant to this section shall be preserved until such time as the
255 person (i) is acquitted or the charges against the person are otherwise dismissed and further
256 prosecution of such charges is prohibited by law or (ii) if convicted or adjudicated delinquent, has
257 completed service of his sentence and any modification of sentence, including any period or condition of
258 probation, parole, or suspension of sentence.