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SENATE BILL NO. 1217

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 21, 2015)

(Patrons Prior to Substitute—Senators Norment, Reeves, and Stuart [SB 939])

A *BILL to amend and reenact §§ 2.2-3701 and 9.1-101 of the Code of Virginia, relating to private police departments.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701 and 9.1-101 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3701. Definitions.

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

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

"Electronic communication" means any audio or combined audio and visual communication method.

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

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, 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. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

"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 cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors 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. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"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.

§ 9.1-101. Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

60 "Correctional status information" means records and data concerning each condition of a convicted
61 person's custodial status, including probation, confinement, work release, study release, escape, or
62 termination of custody through expiration of sentence, parole, pardon, or court decision.

63 "Criminal history record information" means records and data collected by criminal justice agencies
64 on adult individuals consisting of identifiable descriptions and notations of arrests, detentions,
65 indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall
66 not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title
67 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional
68 status information.

69 "Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof
70 which as its principal function performs the administration of criminal justice and any other agency or
71 subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for
72 the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which,
73 within the context of its criminal justice activities, employs special conservators of the peace appointed
74 under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency
75 requires its officers or special conservators to meet compulsory training standards established by the
76 Criminal Justice Services Board and submits reports of compliance with the training standards and (b)
77 the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only
78 to the extent that the private corporation or agency so designated as a criminal justice agency performs
79 criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities
80 otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil
81 Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

82 "Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to
83 § 18.2-271.2.

84 "Criminal justice agency" includes the Department of Criminal Justice Services.

85 "Criminal justice agency" includes the Virginia State Crime Commission.

86 "Criminal justice information system" means a system including the equipment, facilities, procedures,
87 agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of
88 criminal history record information. The operations of the system may be performed manually or by
89 using electronic computers or other automated data processing equipment.

90 "Department" means the Department of Criminal Justice Services.

91 "Dissemination" means any transfer of information, whether orally, in writing, or by electronic
92 means. The term shall not include access to the information by officers or employees of a criminal
93 justice agency maintaining the information who have both a need and right to know the information.

94 "Law-enforcement officer" means any full-time or part-time employee of a police department or
95 sheriff's office which is a part of or administered by the Commonwealth or any political subdivision
96 thereof, *or any full-time or part-time employee of a private police department*, and who is responsible
97 for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of
98 the Commonwealth, and shall include any (i) special agent of the Department of Alcoholic Beverage
99 Control; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine
100 Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of
101 the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the
102 security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and
103 Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement
104 division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection
105 police officer employed under § 15.2-632; ~~or~~ (ix) campus police officer appointed under Chapter 17
106 (§ 23-232 et seq.) of Title 23; *or (x) private police officer employed by a private police department.*
107 Part-time employees are those compensated officers who are not full-time employees as defined by the
108 employing police department ~~or~~, sheriff's office, *or private police department.*

109 "*Private police department*" means any police department, other than a department that employs
110 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
111 authorized by statute or an act of assembly to establish a private police department. No entity is
112 authorized to operate a private police department or represent that it is a private police department
113 unless such entity has been authorized by statute or an act of assembly. The authority of a private
114 police department shall be limited to real property owned, leased, or controlled by the entity and, if
115 approved by the local chief of police or sheriff, any contiguous property; such authority shall not
116 supersede the authority, duties, or jurisdiction vested by law with the local police department or sheriff's
117 office including as provided in §§ 15.2-1609 and 15.2-1704. Private police departments and private
118 police officers shall be subject to and comply with the Constitution of the United States; the Constitution
119 of Virginia; the laws governing municipal police departments, including the provisions of §§ 9.1-600,
120 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721, and 15.2-1722; and any regulations adopted by the
121 Board that the Department designates as applicable to private police departments. Any person employed

122 *as a private police officer pursuant to this section shall meet all requirements, including the minimum*
123 *compulsory training requirements, for law-enforcement officers pursuant to this chapter. A private police*
124 *officer is not entitled to benefits under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia*
125 *Retirement System, is not a "qualified law enforcement officer" or "qualified retired law enforcement*
126 *officer" within the meaning of the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et*
127 *seq., and shall not be deemed an employee of the Commonwealth or any locality. An authorized private*
128 *police department may use the word "police" to describe its sworn officers and may join a regional*
129 *criminal justice academy created pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2.*
130 *Any private police department in existence on January 1, 2013, that was not otherwise established by*
131 *statute or an act of assembly and whose status as a private police department was recognized by the*
132 *Department at that time is hereby validated and may continue to operate as a private police department,*
133 *provided it complies with the requirements set forth herein.*

134 "School resource officer" means a certified law-enforcement officer hired by the local
135 law-enforcement agency to provide law-enforcement and security services to Virginia public elementary
136 and secondary schools.

137 "School security officer" means an individual who is employed by the local school board for the
138 singular purpose of maintaining order and discipline, preventing crime, investigating violations of school
139 board policies, and detaining students violating the law or school board policies on school property or at
140 school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of
141 all students, faculty, staff, and visitors in the assigned school.

142 **2. That an emergency exists and this act is in force from its passage.**

143 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
144 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**
145 **for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment**
146 **to the custody of the Department of Juvenile Justice.**