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SENATE BILL NO. 734

Offered January 10, 2018

Prefiled January 10, 2018

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 custodial interrogations; length; recording.

 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. [Repealed];

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;

12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and institutions of higher education within or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth,

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59 for school operation for the specific purpose of training law-enforcement officers; but this shall not
60 prevent the holding of any such school whether approved or not;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115 31. Do all things necessary on behalf of the Commonwealth and its units of general local
116 government, to determine and secure benefits available under the Omnibus Crime Control and Safe
117 Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and
118 programs for strengthening and improving law enforcement, the administration of criminal justice, and
119 delinquency prevention and control;

120 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 and periodically update model policies for law-enforcement personnel in the following subjects:

a. 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 subsection A of § 9.1-1301;

b. Communication with and facilitation of the safe return of individuals diagnosed with Alzheimer's disease;

c. Sensitivity to and awareness of cultural diversity and the potential for biased policing;

d. Protocols for local and regional sexual assault response teams;

e. Communication of death notifications;

f. The questioning of individuals suspected of driving while intoxicated concerning the physical location of such individual's last consumption of an alcoholic beverage and the communication of such information to the Virginia Alcoholic Beverage Control Authority;

g. Vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

h. Criminal investigations that embody current best practices for conducting photographic and live lineups;

i. Sensitivity to and awareness of human trafficking offenses and the identification of victims of human trafficking offenses for personnel involved in criminal investigations or assigned to vehicle or street patrol duties; and

j. Missing children, missing adults, and search and rescue protocol; and

k. The recording of custodial interrogations as defined in § 19.2-390.03 of individuals suspected of any crime;

38. 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;

39. 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;

40. 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;

41. 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

182 organizations with specific community policing needs; facilitating continued development and
183 implementation of community policing programs statewide through discussion forums for community
184 policing leaders, development of law-enforcement instructors; promoting a statewide community policing
185 initiative; and serving as a statewide information source on the subject of community policing including,
186 but not limited to periodic newsletters, a website and an accessible lending library;

187 42. Establish, in consultation with the Department of Education and the Virginia State Crime
188 Commission, compulsory minimum standards for employment and job-entry and in-service training
189 curricula and certification requirements for school security officers, which training and certification shall
190 be administered by the Virginia Center for School and Campus Safety (VCSCS) pursuant to § 9.1-184.
191 Such training standards shall include, but shall not be limited to, the role and responsibility of school
192 security officers, relevant state and federal laws, school and personal liability issues, security awareness
193 in the school environment, mediation and conflict resolution, disaster and emergency response, and
194 student behavioral dynamics. The Department shall establish an advisory committee consisting of local
195 school board representatives, principals, superintendents, and school security personnel to assist in the
196 development of the standards and certification requirements in this subdivision. The Department shall
197 require any school security officer who carries a firearm in the performance of his duties to provide
198 proof that he has completed a training course provided by a federal, state, or local law-enforcement
199 agency that includes training in active shooter emergency response, emergency evacuation procedure,
200 and threat assessment;

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

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

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

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

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

222 48. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and
223 attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human
224 trafficking offenses using the common law and existing criminal statutes in the Code of Virginia;

225 49. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of
226 § 46.2-117;

227 50. Administer the activities of the Virginia Sexual and Domestic Violence Program Professional
228 Standards Committee by providing technical assistance and administrative support, including staffing, for
229 the Committee;

230 51. In accordance with § 9.1-102.1, design and approve the issuance of photo-identification cards to
231 private security services registrants registered pursuant to Article 4 (§ 9.1-138 et seq.);

232 52. In consultation with the State Council of Higher Education for Virginia and the Virginia
233 Association of Campus Law Enforcement Administrators, develop multidisciplinary curricula on
234 trauma-informed sexual assault investigation;

235 53. In consultation with the Department of Behavioral Health and Developmental Services, develop a
236 model addiction recovery program that may be administered by sheriffs, deputy sheriffs, jail officers,
237 administrators, or superintendents in any local or regional jail. Such program shall be based on any
238 existing addiction recovery programs that are being administered by any local or regional jails in the
239 Commonwealth. Participation in the model addiction recovery program shall be voluntary, and such
240 program may address aspects of the recovery process, including medical and clinical recovery,
241 peer-to-peer support, availability of mental health resources, family dynamics, and aftercare aspects of
242 the recovery process; and

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

244 duties.

245 **§ 19.2-390.03. Custodial interrogations; duration; recording.**

246 A. For purposes of this section:

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

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

254 B. The length of any custodial interrogation shall not be unreasonable, and a person who is subject
255 to the custodial interrogation shall be permitted reasonable periods for rest and personal necessities.

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

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

263 E. Any audiovisual recording made pursuant to subsection C shall be preserved until such time as (i)
264 the person is acquitted or the charges against the person are otherwise dismissed and further
265 prosecution of such charges is prohibited by law or (ii) if convicted or adjudicated delinquent, the
266 person has completed service of his sentence and any modification of sentence, including any period or
267 condition of probation, parole, or suspension of sentence.