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HOUSE BILL NO. 897

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 9.1-101, 9.1-184, and 22.1-280.2:3 of the Code of Virginia, relating to school resource officers; memorandum of understanding.

Patrons—Guzman, Levine and Samirah

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, 9.1-184, and 22.1-280.2:3 of the Code of Virginia are amended and reenacted as follows:

§ 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.

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

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

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

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

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

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

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

"Department" means the Department of Criminal Justice Services.

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

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision

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59 thereof, or any full-time or part-time employee of a private police department, and who is responsible
60 for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of
61 the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control
62 Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia
63 Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement
64 division of the Department of Game and Inland Fisheries; (v) investigator who is a sworn member of
65 the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation
66 and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement
67 division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection
68 police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under
69 Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit
70 designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal
71 behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations
72 authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the
73 Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3; or (xii) private police officer
74 employed by a private police department. Part-time employees are those compensated officers who are
75 not full-time employees as defined by the employing police department, sheriff's office, or private police
76 department.

77 "Private police department" means any police department, other than a department that employs
78 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
79 authorized by statute or an act of assembly to establish a private police department or such entity's
80 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
81 to operate a private police department or represent that it is a private police department unless such
82 entity has been authorized by statute or an act of assembly or such entity is the successor in interest of
83 an entity that has been authorized pursuant to this section, provided it complies with the requirements
84 set forth herein. The authority of a private police department shall be limited to real property owned,
85 leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous
86 property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the
87 local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The
88 chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum
89 of understanding with the private police department that addresses the duties and responsibilities of the
90 private police department and the chief law-enforcement officer in the conduct of criminal investigations.
91 Private police departments and private police officers shall be subject to and comply with the
92 Constitution of the United States; the Constitution of Virginia; the laws governing municipal police
93 departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721,
94 and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable
95 to private police departments. Any person employed as a private police officer pursuant to this section
96 shall meet all requirements, including the minimum compulsory training requirements, for
97 law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits
98 under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a
99 "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of
100 the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed
101 an employee of the Commonwealth or any locality. An authorized private police department may use the
102 word "police" to describe its sworn officers and may join a regional criminal justice academy created
103 pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in
104 existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and
105 whose status as a private police department was recognized by the Department at that time is hereby
106 validated and may continue to operate as a private police department as may such entity's successor in
107 interest, provided it complies with the requirements set forth herein.

108 "School resource officer" means a certified law-enforcement officer hired by the local
109 law-enforcement agency to provide law-enforcement and security services to Virginia public elementary
110 and secondary schools; *however, such services shall not include investigating or enforcing violations of*
111 *school board policies, including student conduct codes.*

112 "School security officer" means an individual who is employed by the local school board or a private
113 or religious school for the singular purpose of maintaining order and discipline, preventing crime,
114 investigating violations of the policies of the school board or the private or religious school, and
115 detaining students violating the law or the policies of the school board or the private or religious school
116 on school property, school buses, or at school-sponsored events and who is responsible solely for
117 ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned
118 school.

119 "Unapplied criminal history record information" means information pertaining to criminal offenses
120 submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history

record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.

§ 9.1-184. Virginia Center for School and Campus Safety created; duties.

A. From such funds as may be appropriated, the Virginia Center for School and Campus Safety (the Center) is hereby established within the Department. The Center shall:

1. Provide training for Virginia public school personnel in school safety, on evidence-based antibullying tactics based on the definition of bullying in § 22.1-276.01, and in the effective identification of students who may be at risk for violent behavior and in need of special services or assistance;

2. Serve as a resource and referral center for Virginia school divisions by conducting research, sponsoring workshops, and providing information regarding current school safety concerns, such as conflict management and peer mediation, bullying as defined in § 22.1-276.01, school facility design and technology, current state and federal statutory and regulatory school safety requirements, and legal and constitutional issues regarding school safety and individual rights;

3. Maintain and disseminate information to local school divisions on effective school safety initiatives in Virginia and across the nation;

4. Develop a case management tool for the collection and reporting of data by threat assessment teams pursuant to § 22.1-79.4;

5. Collect, analyze, and disseminate various Virginia school safety data, including school safety audit information submitted to it pursuant to § 22.1-279.8, collected by the Department;

6. Encourage the development of partnerships between the public and private sectors to promote school safety in Virginia;

7. Provide technical assistance to Virginia school divisions in the development and implementation of initiatives promoting school safety, including threat assessment-based protocols with such funds as may be available for such purpose;

8. Develop a memorandum of understanding between the Director of the Department of Criminal Justice Services and the Superintendent of Public Instruction to ensure collaboration and coordination of roles and responsibilities in areas of mutual concern, such as school safety audits and crime prevention;

9. Provide training for and certification of school security officers, as defined in § 9.1-101 and consistent with § 9.1-110;

10. Develop, in conjunction with the Department of State Police, the Department of Behavioral Health and Developmental Services, and the Department of Education, a model critical incident response training program for public school personnel and others providing services to schools that shall also be made available to private schools in the Commonwealth;

11. In consultation with the Department of Education, provide schools with a model policy for the establishment of threat assessment teams, including procedures for the assessment of and intervention with students whose behavior poses a threat to the safety of school staff or students; ~~and~~

12. Provide training for school resource officers, as defined in § 9.1-101, subsequent to employment or within 12 months of assignment as a school resource officer, on implicit bias, disability awareness, crisis intervention, restorative justice, and cultural competency; and

~~13. Develop a model memorandum of understanding setting forth the respective roles and responsibilities of local school boards and local law-enforcement agencies regarding the use of school resource officers. Such model memorandum of understanding shall contain provisions that prohibit school resource officers from (i) conducting a search of a student's person or property while on school property, unless such resource officer has probable cause to conduct such a search and either has a judicial warrant authorizing the search or has identified exigent circumstances necessitating a warrantless search; (ii) participating in any request for assistance from a federal agency without a subpoena or warrant; (iii) inquiring as to whether a student was born in a country other than the United States or is a citizen of a country other than the United States, unless such inquiry is in connection with an investigation of a violation of § 18.2-47 or 18.2-59; or (iv) absent exigent circumstances, questioning any student without prior notification to the parent or guardian of such student's right to refuse to be questioned or searched. Such model memorandum of understanding shall also contain provisions regarding the use of translators or appropriate guardians to assist students in responding to questions from a school resource officer. Such model memorandum of understanding may be used by local school boards and local law-enforcement agencies to satisfy the requirements of § 22.1-280.2:3.~~

B. All agencies of the Commonwealth shall cooperate with the Center and, upon request, assist the Center in the performance of its duties and responsibilities.

§ 22.1-280.2:3. School boards; local law-enforcement agencies; memorandums of understanding.

A. The school board in each school division in which the local law-enforcement agency employs

182 school resource officers, as defined in § 9.1-101, shall enter into a memorandum of understanding with
183 such local law-enforcement agency that sets forth (i) the ~~powers and duties~~ *respective roles and*
184 *responsibilities of the school board and the law-enforcement agency* and (ii) *the roles and*
185 *responsibilities* of such school resource officers. The provisions of such memorandum of understanding
186 shall be ~~based on~~ *consistent with* the model memorandum of understanding developed by the Virginia
187 Center for School and Campus Safety pursuant to subdivision A ~~12~~ *13* of § 9.1-184, ~~which may be~~
188 ~~modified by the parties in accordance with their particular needs~~. Each such school board and local
189 law-enforcement agency shall review and amend or affirm such memorandum at least once every ~~five~~
190 *four* years or at any time upon the request of either party. *Such memorandum shall be made available*
191 *for public review and comment at least 30 days prior to its adoption.*

192 *B. Each local school board, in consultation with the local law-enforcement agency employing school*
193 *resource officers, as defined in § 9.1-101, shall develop an independent and confidential complaint,*
194 *investigation, and resolution process for alleged misconduct by school resource officers.*