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HOUSE BILL NO. 5055

Offered August 18, 2020

Prefiled August 18, 2020

A BILL to amend and reenact § 9.1-102 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 6 of Title 9.1 a section numbered 9.1-601, relating to the Department of Criminal Justice Services; law-enforcement civilian review panels.

Patrons—Herring, Carr, Rasoul, Scott, Adams, D.M., Bagby, Bourne, Bulova, Cole, J.G., Convirs-Fowler, Gooditis, Guzman, Hayes, Helmer, Hope, Keam, Kory, Krizek, Levine, Lindsey, Lopez, McQuinn, Murphy, Plum, Price, Samirah, Simonds, Tran, Watts and Willett

Referred to Committee on Public Safety

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 in Chapter 6 of Title 9.1 a section numbered 9.1-601 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 and correctional officers employed by the Department of Corrections under the provisions of Title 53.1. For correctional officers employed by the Department of Corrections, such standards shall include training on the general care of pregnant women, the impact of restraints on pregnant inmates and fetuses, the impact of being placed in restrictive housing or solitary confinement on pregnant inmates, and the impact of body cavity searches on pregnant inmates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 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 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;

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

180 agencies, community groups, public and private organizations and citizens; developing and distributing
181 innovative policing curricula and training tools on general community policing philosophy and practice
182 and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia
183 organizations with specific community policing needs; facilitating continued development and
184 implementation of community policing programs statewide through discussion forums for community
185 policing leaders, development of law-enforcement instructors; promoting a statewide community policing
186 initiative; and serving as a statewide information source on the subject of community policing including,
187 but not limited to periodic newsletters, a website and an accessible lending library;

188 42. Establish, in consultation with the Department of Education and the Virginia State Crime
189 Commission, compulsory minimum standards for employment and job-entry and in-service training
190 curricula and certification requirements for school security officers, including school security officers
191 described in clause (b) of § 22.1-280.2:1, which training and certification shall be administered by the
192 Virginia Center for School and Campus Safety (VCSCS) pursuant to § 9.1-184. Such training standards
193 shall be specific to the role and responsibility of school security officers and shall include (i) relevant
194 state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school
195 environment; (iv) mediation and conflict resolution, including de-escalation techniques such as a physical
196 alternative to restraint; (v) disaster and emergency response; (vi) awareness of cultural diversity and
197 implicit bias; (vii) working with students with disabilities, mental health needs, substance abuse
198 disorders, and past traumatic experiences; and (viii) student behavioral dynamics, including child and
199 adolescent development and brain research. The Department shall establish an advisory committee
200 consisting of local school board representatives, principals, superintendents, and school security
201 personnel to assist in the development of the standards and certification requirements in this subdivision.
202 The Department shall require any school security officer who carries a firearm in the performance of his
203 duties to provide proof that he has completed a training course provided by a federal, state, or local
204 law-enforcement agency that includes training in active shooter emergency response, emergency
205 evacuation procedure, and threat assessment;

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

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

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

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

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

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

230 49. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of
231 § 46.2-117;

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

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

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

240 53. In consultation with the Department of Behavioral Health and Developmental Services, develop a
241 model addiction recovery program that may be administered by sheriffs, deputy sheriffs, jail officers,

administrators, or superintendents in any local or regional jail. Such program shall be based on any existing addiction recovery programs that are being administered by any local or regional jails in the Commonwealth. Participation in the model addiction recovery program shall be voluntary, and such program may address aspects of the recovery process, including medical and clinical recovery, peer-to-peer support, availability of mental health resources, family dynamics, and aftercare aspects of the recovery process;

54. Establish compulsory minimum training standards for certification and recertification of law-enforcement officers serving as school resource officers. Such training shall be specific to the role and responsibility of a law-enforcement officer working with students in a school environment and shall include (i) relevant state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school environment; (iv) mediation and conflict resolution, including de-escalation techniques; (v) disaster and emergency response; (vi) awareness of cultural diversity and implicit bias; (vii) working with students with disabilities, mental health needs, substance abuse disorders, or past traumatic experiences; and (viii) student behavioral dynamics, including current child and adolescent development and brain research;

55. Establish a model policy for the operation of body-worn camera systems as defined in § 15.2-1723.1 that also addresses the storage and maintenance of body-worn camera system records;

56. Establish compulsory minimum training standards for detector canine handlers employed by the Department of Corrections, standards for the training and retention of detector canines used by the Department of Corrections, and a central database on the performance and effectiveness of such detector canines that requires the Department of Corrections to submit comprehensive information on each canine handler and detector canine, including the number and types of calls and searches, substances searched for and whether or not detected, and the number of false positives, false negatives, true positives, and true negatives;

57. Establish compulsory training standards for basic training of law-enforcement officers for recognizing and managing stress, self-care techniques, and resiliency; ~~and~~

58. *Develop guidelines and best practices for the operation of law-enforcement civilian review panels by a locality in order to enhance accountability and transparency of law-enforcement agencies; and*

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

§ 9.1-601. Law-enforcement civilian review panels.

A. For purposes of this section, "locality" means any county or city in the Commonwealth.

B. On or before July 1, 2021, all localities shall establish a law-enforcement civilian review panel to provide oversight of a local law-enforcement agency that serves such locality. The operation of any civilian review panel established pursuant to this section shall be consistent with Virginia law and regulations. The civilian review panel shall be composed of at least three members. Such members shall be appointed in a method determined by the locality, but the membership of the civilian review panel shall include the attorney for the Commonwealth or his designee, a member of a racial justice or civil rights organization, and a mental health practitioner. Efforts should be made to be inclusive of the community at large in appointments to the board.

The civilian review panel shall use the guidelines and best practices established by the Department of Criminal Justice Services pursuant to § 9.1-102. The civilian review panel shall make recommendations for corrective actions to the law-enforcement agency serving under the authority of the locality and to the county or city executive for such locality regarding any instances of gross misconduct, excessive use of force, or criminal offenses committed by the law-enforcement officers of such agency.

Any local law-enforcement agency that serves the locality shall cooperate with the civilian review panel and provide access to all agency records and documents. Any local law-enforcement agency that receives at least three complaints within a five-year period concerning a law-enforcement officer employed by such agency for excessive force or bias based profiling, as defined in § 52-30.1, shall request the panel to review the complaints and make recommendations for corrective actions.

If authorized by the locality, a civilian review panel may hold hearings and if after making a good faith effort to obtain the voluntary attendance of witnesses and production of books, papers, and other evidence necessary to perform its duties the panel is unable to obtain such attendance or production, it may apply to the circuit court for the locality for a subpoena compelling the attendance of such witnesses or the production of such books, papers, and other evidence, and the court may, upon good cause shown, cause the subpoena to be issued. Any person so subpoenaed may apply to the court that issued such subpoena to quash it.

2. That the Department of Criminal Justice Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.