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HOUSE BILL NO. 5065

Offered August 18, 2020

Prefiled August 18, 2020

A BILL to amend and reenact §§ 2.2-511, 2.2-520, and 15.2-1627 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 5 of Title 2.2 a section numbered 2.2-524.1 and by adding in Chapter 6 of Title 9.1 a section numbered 9.1-601, relating to the Attorney General; investigation and prosecution of certain offenses committed by a law-enforcement officer.

Patron—Price

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 2.2-520, and 15.2-1627 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 5 of Title 2.2 a section numbered 2.2-524.1 and by adding in Chapter 6 of Title 9.1 a section numbered 9.1-601 as follows:

§ 2.2-511. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) violations of § 3.2-4212 or 58.1-1008.2, (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (xi) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law listed in clause (x) of this subsection, (xii) with the concurrence of the local attorney for the Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing business, or violations of Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings by information, presentment or indictment, as appropriate, and conduct the same, (xiii) with the concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2, (xiv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of §§ 18.2-186.3 and 18.2-186.4, (xv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of § 18.2-46.2, 18.2-46.3, or 18.2-46.5 when such violations are committed on the grounds of a state correctional facility, and (xvi) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2, and (xvii) violations of felony offenses set forth in Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 committed by a law-enforcement officer as defined in § 9.1-101 in the performance of his official duties.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing, of the date, time and place and of the disposition of any appeal or habeas corpus proceeding involving the cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of

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59 the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim;
60 or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall
61 confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas
62 corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages
63 against the Commonwealth or any of its political subdivisions, the Attorney General or any of his
64 employees or agents, any other officer, employee or agent of the Commonwealth or any of its political
65 subdivisions, or any officer of the court.

66 **§ 2.2-520. Division of Human Rights created; duties.**

67 A. There is created in the Department of Law a Division of Human Rights (the Division) to assist in
68 the prevention of and relief from alleged unlawful discriminatory practices.

69 B. The powers and duties of the Division shall be to:

70 1. Receive, investigate, seek to conciliate, refer to another agency, hold hearings pursuant to the
71 Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations upon
72 complaints alleging unlawful discriminatory practices pursuant to the Virginia Human Rights Act
73 (§ 2.2-3900 et seq.);

74 2. Adopt, promulgate, amend, and rescind regulations consistent with this article and the provisions
75 of the Virginia Human Rights Act (§ 2.2-3900 et seq.) pursuant to the Virginia Administrative Process
76 Act (§ 2.2-4000 et seq.). However, the Division shall not have the authority to adopt regulations on a
77 substantive matter when another state agency is authorized to adopt such regulations;

78 3. Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges of
79 unlawful discrimination under state or federal law and take such action within the Division's authority
80 designed to prevent such acts;

81 4. Seek through appropriate enforcement authorities, prevention of or relief from an alleged unlawful
82 discriminatory practice;

83 5. Appoint and compensate qualified hearing officers from the list of hearing officers maintained by
84 the Executive Secretary of the Supreme Court of Virginia;

85 6. Promote creation of local commissions to aid in effectuating the policies of this article and to
86 enter into cooperative worksharing or other agreements with federal agencies or local commissions,
87 including the deferral of complaints of discrimination to federal agencies or local commissions;

88 7. Make studies and appoint advisory councils to effectuate the purposes and policies of the article
89 and to make the results thereof available to the public;

90 8. Accept public grants or private gifts, bequests, or other payments, as appropriate; ~~and~~

91 9. *Investigate and enforce felony offenses set forth in Chapter 4 (§ 18.2-30 et seq.) of Title 18.2*
92 *committed by a law-enforcement officer as defined in § 9.1-101 in the performance of his official duties;*
93 *and*

94 10. Furnish technical assistance upon request of persons subject to this article to further comply with
95 the article or an order issued thereunder.

96 **§ 2.2-524.1. Authority to enforce certain offenses committed by a law-enforcement officer.**

97 A. *The Division of Human Rights shall exercise the authority granted by §§ 2.2-511 and 2.2-520 to*
98 *investigate, prosecute, and assure the enforcement of any felony offenses set forth in Chapter 4*
99 *(§ 18.2-30 et seq.) of Title 18.2 committed by a law-enforcement officer as defined in § 9.1-101 in the*
100 *performance of his official duties. Upon receiving notice from a law-enforcement agency as required by*
101 *§ 9.1-601 or otherwise becoming aware of the commission of such offense, the Division of Human*
102 *Rights shall cause an investigation to be made as soon as practicable.*

103 B. *Investigators with the Division of Human Rights as designated by the Attorney General shall have*
104 *the same powers as a sheriff or a law-enforcement officer in their investigation of allegations of such*
105 *offenses.*

106 **§ 9.1-601. Certain offenses committed by a law-enforcement officer; investigation.**

107 *Whenever a law-enforcement officer as defined in § 9.1-101 in the performance of his official duties*
108 *commits a felony offense set forth in Chapter 4 (§ 18.2-30 et seq.) of Title 18.2, the employing*
109 *law-enforcement agency shall immediately notify the Division of Human Rights of the Department of*
110 *Law, which shall, as soon as practicable, cause an investigation to be made into the incident as*
111 *required by § 2.2-524.1.*

112 **§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.**

113 A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be required
114 to carry out any duties as a part of his office in civil matters of advising the governing body and all
115 boards, departments, agencies, officials and employees of his county or city; of drafting or preparing
116 county or city ordinances; of defending or bringing actions in which the county or city, or any of its
117 boards, departments or agencies, or officials and employees thereof, shall be a party; or in any other
118 manner of advising or representing the county or city, its boards, departments, agencies, officials and
119 employees, except in matters involving the enforcement of the criminal law within the county or city.

120 B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a part

121 of the department of law enforcement of the county or city in which he is elected or appointed, and
122 shall have the duties and powers imposed upon him by general law, including the duty of prosecuting
123 all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute
124 Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of
125 confinement in jail, or a fine of \$500 or more, or both such confinement and fine. *However, he shall*
126 *not prosecute cases involving felony offenses set forth in Chapter 4 (§ 18.2-30 et seq.) of Title 18.2*
127 *committed by a law-enforcement officer as defined in § 9.1-101 in the performance of his official duties*
128 *as such cases shall be instituted and prosecuted by the Attorney General as required by §§ 2.2-511 and*
129 *2.2-524.1.* He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.2-3126. He
130 may enforce the provisions of § 18.2-250.1, 18.2-268.3, 29.1-738.2, or 46.2-341.26:3.