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HOUSE BILL NO. 5133

Offered August 25, 2020

A BILL to amend and reenact §§ 15.2-1705, 15.2-1707, and 15.2-1709 of the Code of Virginia, relating to police officers, deputy sheriffs, and jail officers; employment and decertification.

Patrons—Bell, Cole, M.L., Cox, Coyner, Edmunds, Fowler, Gilbert, Leftwich, Marshall, Poindexter, Runion, Walker and Wilt

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1705, 15.2-1707, and 15.2-1709 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1705. Minimum qualifications; waiver.

A. The chief of police and all police officers of any locality, all deputy sheriffs and jail officers in this Commonwealth, and all law-enforcement officers as defined in § 9.1-101 who enter upon the duties of such office after July 1, 1994, are required to meet the following minimum qualifications for office. Such person shall (i) be a citizen of the United States; (ii) be required to undergo a background investigation including fingerprint-based criminal history records inquiries to both the Central Criminal Records Exchange and the Federal Bureau of Investigation; (iii) have a high school education or have passed a high school equivalency examination approved by the Board of Education; (iv) possess a valid driver's license if required by the duties of office to operate a motor vehicle; (v) undergo a physical examination, subsequent to a conditional offer of employment, conducted under the supervision of a licensed physician; (vi) be at least eighteen years of age; (vii) not have been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in the Commonwealth; and (viii) not have produced a positive result on a pre-employment drug screening, if such screening is required by the hiring law-enforcement agency or jail, where the positive result cannot be explained to the law-enforcement agency or jail administrator's satisfaction. In addition, all such officers who enter upon the duties of such office on or after July 1, 2013, shall not have been convicted of or pled guilty or no contest to (a) any misdemeanor involving moral turpitude, including but not limited to petit larceny under § 18.2-96, or any offense involving moral turpitude that would be a misdemeanor if committed in the Commonwealth; (b) any misdemeanor sex offense in the Commonwealth, another state, or the United States, including but not limited to sexual battery under § 18.2-67.4 or consensual sexual intercourse with a minor 15 or older under clause (ii) of § 18.2-371; or (c) domestic assault under § 18.2-57.2 or any offense that would be domestic assault under the laws of another state or the United States.

B. In addition, if the police officer, deputy sheriff, or jail officer had been previously employed by another law-enforcement agency or jail, the hiring law-enforcement agency or jail shall request from all prior employing agencies or jails within the last two years any information (i) related to an arrest or prosecution of a former police officer, deputy sheriff, or jail officer; (ii) related to a civil suit regarding a former police officer's, deputy sheriff's, or jail officer's employment or performance of his duties; and (iii) obtained during the course of any internal investigation related to a former police officer's, deputy sheriff's, or jail officer's alleged criminal conduct or use of excessive force. The hiring agency or jail may request this information subsequent to a conditional offer of employment; however, no police officer, deputy sheriff, or jail officer may be employed in such position until the requested information is received from all prior employing agencies in the Commonwealth. Any sheriff or chief of police in the Commonwealth, any director or chief executive of any law-enforcement agency or jail in the Commonwealth, and the Director of the Department of Criminal Justice Services or his designee shall disclose any information requested in accordance with the provisions of this subsection to any hiring agency or jail that requests such information.

C. Upon request of a sheriff or chief of police, or the director or chief executive of any agency or department employing law-enforcement officers as defined in § 9.1-101, or jail officers as defined in § 53.1-1, the Department of Criminal Justice Services is hereby authorized to waive the requirements for qualification as set out in subsection A of this section for good cause shown.

§ 15.2-1707. Decertification of law-enforcement officers.

A. The sheriff, chief of police, or agency administrator shall notify the Criminal Justice Services Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has (i) been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in the Commonwealth, (ii) been convicted of or pled

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58 guilty or no contest to a Class 1 misdemeanor involving moral turpitude or any offense that would be
59 any misdemeanor involving moral turpitude, including but not limited to petit larceny under § 18.2-96,
60 or any offense involving moral turpitude that would be a misdemeanor if committed in the
61 Commonwealth, (iii) been convicted of or pled guilty or no contest to any misdemeanor sex offense in
62 the Commonwealth, another state, or the United States, including but not limited to sexual battery under
63 § 18.2-67.4 or consensual sexual intercourse with a minor 15 or older under clause (ii) of § 18.2-371,
64 (iv) been convicted of or pled guilty or no contest to domestic assault under § 18.2-57.2 or any offense
65 that would be domestic assault under the laws of another state or the United States, (v) failed to comply
66 with or maintain compliance with mandated training requirements, ~~or~~ (vi) refused to submit to a drug
67 screening or has produced a positive result on a drug screening reported to the employing agency, where
68 the positive result cannot be explained to the agency administrator's satisfaction, *or (vii) been dismissed*
69 *because of the use of force, resigned subsequent to a complaint against such employee for the use of*
70 *force, or resigned in advance of being dismissed because of the use of force.* Notification shall also be
71 provided in writing within 48 hours of becoming aware that any employee who resigned or was
72 terminated in advance of being convicted or found guilty of an offense that requires decertification or
73 who resigned or was terminated in advance of a pending drug screening. The notification, where
74 appropriate, shall be accompanied by a copy of the judgment of conviction. Upon receiving such notice
75 from the sheriff, chief of police, or agency administrator, or from an attorney for the Commonwealth,
76 the Criminal Justice Services Board shall immediately decertify such law-enforcement or jail officer.
77 Such officer shall not have the right to serve as a law-enforcement officer within the Commonwealth
78 until his certification has been reinstated by the Board.

79 B. When a conviction has not become final, the Board may decline to decertify the officer until the
80 conviction becomes final, after considering the likelihood of irreparable damage to the officer if such
81 officer is decertified during the pendency of an ultimately successful appeal, the likelihood of injury or
82 damage to the public if the officer is not decertified, and the seriousness of the offense.

83 C. The Department of Criminal Justice Services is hereby authorized to waive the requirements for
84 decertification as set out in subsection A for good cause shown.

85 D. The Criminal Justice Services Board may initiate decertification proceedings against any former
86 law-enforcement or jail officer (i) whom the Board has found to have been convicted of an offense that
87 requires decertification ~~or~~, (ii) who has failed to comply with or maintain compliance with mandated
88 training requirements, *or (iii) whom the Board has found to have been dismissed from a*
89 *law-enforcement agency because of the use of force.*

90 E. Any conviction of a misdemeanor that has been appealed to a court of record shall not be
91 considered a conviction for purposes of this section unless a final order of conviction is entered.

92 **§ 15.2-1709. Employer immunity from liability; disclosure of information regarding former**
93 **deputy sheriffs and law-enforcement officers.**

94 Any sheriff or chief of police, the director or chief executive of any agency or department employing
95 deputy sheriffs or law-enforcement officers as defined in § 9.1-101, or jail officers as defined in § 53.1-1,
96 and the Director of the Department of Criminal Justice Services or his designee who discloses
97 information about a former deputy sheriff's or law-enforcement officer's or jail officer's job performance
98 *or information requested pursuant to subsection B of § 15.2-1705* to a prospective law-enforcement or
99 jail employer of the former appointee or employee is presumed to be acting in good faith and, unless
100 lack of good faith is shown by clear and convincing evidence, is immune from civil liability for such
101 disclosure or its consequences. For purposes of this section, the presumption of good faith is rebutted
102 upon a showing that the information disclosed by the former employer was knowingly false or
103 deliberately misleading, was rendered with malicious purpose, or violated any civil right of the former
104 employee or appointee.