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HOUSE BILL NO. 428

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 9.1-102 of the Code of Virginia, relating to use of confidential informants in drug-related investigations.

Patrons—Willett and Carr

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 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. Such compulsory minimum training standards shall include crisis intervention training in accordance with clause (i) of § 9.1-188;

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;

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

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59 instruction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 31. Do all things necessary on behalf of the Commonwealth and its units of general local
118 government, to determine and secure benefits available under the Omnibus Crime Control and Safe
119 Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and
120 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 systemic and individual racism, cultural diversity, and the potential for racially biased policing and bias-based profiling as defined in § 52-30.1, which shall include recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder, or developmental or cognitive disability;

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;

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

k. The handling and use of tear gas or other gases and kinetic impact munitions, as defined in § 19.2-83.3, that embody current best practices for using such items as a crowd control measure or during an arrest or detention of another person;

38. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure (i) sensitivity to and awareness of systemic and individual racism, cultural diversity, and the potential for racially biased policing and bias-based profiling as defined in § 52-30.1, which shall include recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder, or developmental or cognitive disability; (ii) training in de-escalation techniques; and (iii) training in the lawful use of force, including the use of deadly force, as defined in § 19.2-83.3, only when necessary to protect the law-enforcement officer or another person;

39. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards that strengthen and improve such programs, including sensitivity to and awareness of systemic and individual racism, cultural diversity, and the potential for racially biased policing and bias-based profiling as defined in § 52-30.1, which shall include recognizing implicit biases in interacting with persons who have a mental illness, substance

182 use disorder, or developmental or cognitive disability;

183 40. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with
184 Virginia law-enforcement agencies, provide technical assistance and administrative support, including
185 staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center
186 may provide accreditation assistance and training, resource material, and research into methods and
187 procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia
188 accreditation status;

189 41. Promote community policing philosophy and practice throughout the Commonwealth by
190 providing community policing training and technical assistance statewide to all law-enforcement
191 agencies, community groups, public and private organizations and citizens; developing and distributing
192 innovative policing curricula and training tools on general community policing philosophy and practice
193 and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia
194 organizations with specific community policing needs; facilitating continued development and
195 implementation of community policing programs statewide through discussion forums for community
196 policing leaders, development of law-enforcement instructors; promoting a statewide community policing
197 initiative; and serving as a statewide information source on the subject of community policing including,
198 but not limited to periodic newsletters, a website and an accessible lending library;

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

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

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

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

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

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

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

241 49. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of
242 § 46.2-117;

243 50. Administer the activities of the Virginia Sexual and Domestic Violence Program Professional

Standards Committee by providing technical assistance and administrative support, including staffing, for the Committee;

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

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

53. In consultation with the Department of Behavioral Health and Developmental Services, develop a 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 systemic and individual racism, cultural diversity, and implicit bias; (vii) working with students with disabilities, mental health needs, substance use 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;

58. Establish guidelines and standards for psychological examinations conducted pursuant to subsection C of § 15.2-1705;

59. Establish compulsory in-service training standards, to include frequency of retraining, for law-enforcement officers in the following subjects: (i) relevant state and federal laws; (ii) awareness of cultural diversity and the potential for bias-based profiling as defined in § 52-30.1; (iii) de-escalation techniques; (iv) working with individuals with disabilities, mental health needs, or substance use disorders; and (v) the lawful use of force, including the use of deadly force, as defined in § 19.2-83.3, only when necessary to protect the law-enforcement officer or another person;

60. Develop a uniform curriculum and lesson plans for the compulsory minimum entry-level, in-service, and advanced training standards to be employed by criminal justice training academies approved by the Department when conducting training;

61. Adopt statewide professional standards of conduct applicable to all certified law-enforcement officers and certified jail officers and appropriate due process procedures for decertification based on serious misconduct in violation of those standards;

62. Establish and administer a waiver process, in accordance with §§ 2.2-5515 and 15.2-1721.1, for law-enforcement agencies to use certain military property. Any waivers granted by the Criminal Justice Services Board shall be published by the Department on the Department's website;

63. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to include crisis intervention training in accordance with clause (ii) of § 9.1-188;

64. Advise and assist the Department of Behavioral Health and Developmental Services, and support local law-enforcement cooperation, with the development and implementation of the Marcus alert system, as defined in § 37.2-311.1, including the establishment of local protocols for law-enforcement participation in the Marcus alert system pursuant to § 9.1-193 and for reporting requirements pursuant to §§ 9.1-193 and 37.2-311.1; ~~and~~

65. *Establish a model policy for the use of confidential informants in drug-related investigations.*

305 *Provisions of such model policy shall include that (i) no individual currently on probation may serve as*
306 *a confidential informant without notice to his probation or parole officer, (ii) no individual who has*
307 *recently violated the terms of his probation or parole shall serve as a confidential informant, (iii)*
308 *law-enforcement personnel shall obtain approval from the appropriate local attorney for the*
309 *Commonwealth prior to working with a confidential informant, and (iv) such confidential informant*
310 *shall not unlawfully use or possess any controlled substances; and*
311 66. Perform such other acts as may be necessary or convenient for the effective performance of its
312 duties.