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SENATE BILL NO. 1046

Offered January 11, 2023

Prefiled January 8, 2023

A BILL to amend and reenact § 9.1-101, as it is currently effective and as it shall become effective, and 18.2-31 of the Code of Virginia, relating to definition of law-enforcement officer; fire marshal with police powers.

Patron—McPike

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-101, as it is currently effective and as it shall become effective, and 18.2-31 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-101. (For contingent expiration date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) 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 Criminal Sentencing Commission.

"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

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59 justice agency maintaining the information who have both a need and right to know the information.

60 "Law-enforcement officer" means any full-time or part-time employee of a police department or
61 sheriff's office ~~which~~ *that* is a part of or administered by the Commonwealth or any political subdivision
62 thereof, or any full-time or part-time employee of a private police department, and who is responsible
63 for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of
64 the Commonwealth; and ~~shall include~~ *includes* any (i) special agent of the Virginia Alcoholic Beverage
65 Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the
66 Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the
67 enforcement division of the Department of Wildlife Resources; (v) investigator who is a sworn member
68 of the security division of the Virginia Lottery; (vi) conservation officer of the Department of
69 Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the
70 enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii)
71 animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer
72 appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the
73 investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate
74 allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee
75 with internal investigations authority designated by the Department of Corrections pursuant to
76 subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of
77 § 66-3; ~~or~~ (xii) private police officer employed by a private police department; *or (xiii) fire marshal*
78 *appointed pursuant to § 27-30 when such fire marshal has police powers as set out in §§ 27-34.2 and*
79 *27-34.2:1. Part-time employees are those compensated officers who are not full-time employees as*
80 *defined by the employing police department, sheriff's office, or private police department.*

81 "Private police department" means any police department, other than a department that employs
82 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
83 authorized by statute or an act of assembly to establish a private police department or such entity's
84 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
85 to operate a private police department or represent that it is a private police department unless such
86 entity has been authorized by statute or an act of assembly or such entity is the successor in interest of
87 an entity that has been authorized pursuant to this section, provided it complies with the requirements
88 set forth herein. The authority of a private police department shall be limited to real property owned,
89 leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous
90 property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the
91 local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The
92 chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum
93 of understanding with the private police department that addresses the duties and responsibilities of the
94 private police department and the chief law-enforcement officer in the conduct of criminal investigations.
95 Private police departments and private police officers shall be subject to and comply with the
96 Constitution of the United States; the Constitution of Virginia; the laws governing municipal police
97 departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721,
98 15.2-1721.1, and 15.2-1722; and any regulations adopted by the Board that the Department designates as
99 applicable to private police departments. Any person employed as a private police officer pursuant to
100 this section shall meet all requirements, including the minimum compulsory training requirements, for
101 law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits
102 under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a
103 "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of
104 the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed
105 an employee of the Commonwealth or any locality. An authorized private police department may use the
106 word "police" to describe its sworn officers and may join a regional criminal justice academy created
107 pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in
108 existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and
109 whose status as a private police department was recognized by the Department at that time is hereby
110 validated and may continue to operate as a private police department as may such entity's successor in
111 interest, provided it complies with the requirements set forth herein.

112 "School resource officer" means a certified law-enforcement officer hired by the local
113 law-enforcement agency to provide law-enforcement and security services to Virginia public elementary
114 and secondary schools.

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

school.

"Unapplied criminal history record information" means information pertaining to criminal offenses 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.

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"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~~ *that* is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth; ~~and shall include~~ *includes* any (i) special agent of the Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the

182 enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii)
183 animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer
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185 investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate
186 allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee
187 with internal investigations authority designated by the Department of Corrections pursuant to
188 subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of
189 § 66-3; ~~or~~ (xii) private police officer employed by a private police department; *or (xiii) fire marshal*
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192 *defined by the employing police department, sheriff's office, or private police department.*

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194 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
195 authorized by statute or an act of assembly to establish a private police department or such entity's
196 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
197 to operate a private police department or represent that it is a private police department unless such
198 entity has been authorized by statute or an act of assembly or such entity is the successor in interest of
199 an entity that has been authorized pursuant to this section, provided it complies with the requirements
200 set forth herein. The authority of a private police department shall be limited to real property owned,
201 leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous
202 property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the
203 local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The
204 chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum
205 of understanding with the private police department that addresses the duties and responsibilities of the
206 private police department and the chief law-enforcement officer in the conduct of criminal investigations.
207 Private police departments and private police officers shall be subject to and comply with the
208 Constitution of the United States; the Constitution of Virginia; the laws governing municipal police
209 departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721,
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216 the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an
217 employee of the Commonwealth or any locality. An authorized private police department may use the
218 word "police" to describe its sworn officers and may join a regional criminal justice academy created
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225 law-enforcement agency to provide law-enforcement and security services to Virginia public elementary
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228 or religious school for the singular purpose of maintaining order and discipline, preventing crime,
229 investigating violations of the policies of the school board or the private or religious school, and
230 detaining students violating the law or the policies of the school board or the private or religious school
231 on school property, school buses, or at school-sponsored events and who is responsible solely for
232 ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned
233 school.

234 "Sealing" means (i) restricting dissemination of criminal history record information contained in the
235 Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction, in
236 accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations
237 adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134 and (ii) prohibiting
238 dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is
239 authorized by a court order for one or more of the purposes set forth in § 19.2-392.13.

240 "Unapplied criminal history record information" means information pertaining to criminal offenses
241 submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history
242 record of an arrested or convicted person (i) because such information is not supported by fingerprints
243 or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission

within the content of the submitted information.

§ 18.2-31. Aggravated murder defined; punishment.

A. The following offenses shall constitute aggravated murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy, or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of a law-enforcement officer as defined in § 9.1-101, a fire marshal appointed pursuant to § 27-30 or a deputy or an assistant fire marshal appointed pursuant to § 27-36, when such fire marshal or deputy or assistant fire marshal has police powers as set forth in §§ 27-34.2 and 27-34.2:1, an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, an auxiliary deputy sheriff appointed pursuant to § 15.2-1603, or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States, when such killing is for the purpose of interfering with the performance of his official duties;

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation;

10. The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I of § 18.2-248;

11. The willful, deliberate, and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth;

12. The willful, deliberate, and premeditated killing of a person under the age of 14 by a person age 21 or older;

13. The willful, deliberate, and premeditated killing of any person by another in the commission of or attempted commission of an act of terrorism as defined in § 18.2-46.4;

14. The willful, deliberate, and premeditated killing of a justice of the Supreme Court, a judge of the Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation or under temporary recall, or a substitute judge appointed under § 16.1-69.9:1 when the killing is for the purpose of interfering with his official duties as a judge; and

15. The willful, deliberate, and premeditated killing of any witness in a criminal case after a subpoena has been issued for such witness by the court, the clerk, or an attorney, when the killing is for the purpose of interfering with the person's duties in such case.

B. For a violation of subdivision A 6 where the offender was 18 years of age or older at the time of the offense, the punishment shall be no less than a mandatory minimum term of confinement for life.

C. If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.