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## SENATE BILL NO. 1046

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety  
on February 17, 2023)

(Patron Prior to Substitute—Senator McPike)

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

**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, of the Code of Virginia is 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 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

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

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

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

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

119 "Unapplied criminal history record information" means information pertaining to criminal offenses  
120 submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history  
121 record of an arrested or convicted person (i) because such information is not supported by fingerprints

122 or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission  
123 within the content of the submitted information.

124 **§ 9.1-101. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) Definitions.**

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149 requires its officers or special conservators to meet compulsory training standards established by the  
150 Criminal Justice Services Board and submits reports of compliance with the training standards and (b)  
151 the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only  
152 to the extent that the private corporation or agency so designated as a criminal justice agency performs  
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154 otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil  
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170 sheriff's office which that is a part of or administered by the Commonwealth or any political subdivision  
171 thereof, or any full-time or part-time employee of a private police department, and who is responsible  
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198 leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous  
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200 local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The  
201 chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum  
202 of understanding with the private police department that addresses the duties and responsibilities of the  
203 private police department and the chief law-enforcement officer in the conduct of criminal investigations.  
204 Private police departments and private police officers shall be subject to and comply with the  
205 Constitution of the United States; the Constitution of Virginia; the laws governing municipal police  
206 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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223 and secondary schools.

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225 or religious school for the singular purpose of maintaining order and discipline, preventing crime,  
226 investigating violations of the policies of the school board or the private or religious school, and  
227 detaining students violating the law or the policies of the school board or the private or religious school  
228 on school property, school buses, or at school-sponsored events and who is responsible solely for  
229 ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned  
230 school.

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

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

242 **2. That the provisions of the first enactment of this act shall not become effective unless reenacted**  
243 **by the 2024 Session of the General Assembly.**

244 **3. That the Department of Criminal Justice Services shall convene a work group composed of**

245 representatives from the Department of Fire Programs, Virginia Professional Fire Fighters, the  
246 Virginia Fire Prevention Association, the Virginia Fire Chiefs Association, the Virginia Association  
247 of Chiefs of Police, the Virginia Law Enforcement Sheriffs, the Virginia Sheriffs' Association, a  
248 regional fire marshal's office, and other relevant stakeholders to examine and make  
249 recommendations on the inclusion of fire marshals with police powers in the definition of  
250 law-enforcement officer in § 9.1-101 of the Code of Virginia. The work group shall complete its  
251 work and submit its findings and recommendations to the General Assembly no later than  
252 November 1, 2023.