

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 850

An Act to amend and reenact §§ 9-170 and 15.1-131.8 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.1-131.8:1, 15.1-131.8:2, 15.1-131.8:3 and 15.1-131.8:4, relating to certification of law-enforcement officers.

[S 442]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-170 and 15.1-131.8 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.1-131.8:1, 15.1-131.8:2, 15.1-131.8:3 and 15.1-131.8:4 as follows:

§ 9-170. 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 to:

1. Promulgate regulations, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within this 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 (i) in permanent positions, and (ii) in temporary or probationary status, and establish the time required for completion of such training;

3. 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;

3a. 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;

4. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2 above, prior to assignment of any such officers to undercover investigation work. Failure to complete such training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;

5. 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;

6. 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;

7. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons employed as jailers or custodial officers by local criminal justice agencies and for correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the time required for completion of such training;

8. 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;

9. Consult and cooperate with counties, municipalities, agencies of this Commonwealth, other state and federal governmental agencies, and with universities, colleges, junior colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

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

11. Establish and maintain police training programs through such agencies and institutions as the Board may deem appropriate;

12. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;

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

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

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

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

17. Conduct audits as required by § 9-186;

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

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

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

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

22. The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the regulations of the National Crime Information Center. Notwithstanding any other provision to the contrary in this chapter, the Central Criminal Records Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth, and the Department shall continue to be responsible for the management and operation of such exchange;

23. Operate a statewide criminal justice statistical analysis center, which shall maintain a unified criminal justice data system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

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

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

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

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

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

29. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

30. 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;

31. 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;

32. 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;

33. 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; and

34. Perform such other acts as may be necessary or convenient for the effective performance of its duties; and

35. *Certify and decertify law-enforcement officers in accordance with §§ 15.1-131.8:1 and 15.1-131.8:2.*

§ 15.1-131.8. Minimum qualifications; waiver.

A. The chief of police and all police officers of any county, city or town, all deputy sheriffs in this Commonwealth and all law-enforcement officers as defined in § 9-169 who enter upon the duties of such office after July 1, 1988 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 a fingerprint-based criminal history records ~~inquiry~~ *inquiries to both the Central Criminal Records Exchange and the Federal Bureau of Investigation*, (iii) have a high school education or have passed the General Educational Development exam, (iv) possess a valid Virginia driver's license if required by the duties of office to operate a motor vehicle, and (v) undergo a physical examination, *subsequent to a conditional offer of employment*, conducted under the supervision of a licensed physician, (vi) *be at least 18 years of age*, (vii) *not have been convicted of or plead guilty or no contest to a felony or any offense that would be a felony if committed in Virginia*, 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, where the positive result cannot be explained to the law-enforcement agency administrator's satisfaction.*

B. 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 § 9-169, 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.

§ 15.1-131.8:1. *Certification through training required for all law-enforcement officers.*

All law-enforcement officers as defined in § 9-169 must be certified through the successful completion of training at an approved criminal justice training academy in order to remain eligible for appointment or employment. The appointee's or employee's hiring agency must provide the Department of Criminal Justice Services with verification that law-enforcement officers first hired after July 1, 1994, have met the minimum standards set forth in § 15.1-131.8.

§ 15.1-131.8:2. *Decertification of law-enforcement officers.*

Upon written notification from the sheriff, chief of police or agency administrator that any certified law-enforcement officer 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 Virginia, (ii) failed to comply with or maintain compliance with mandated training requirements, or (iii) refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employing agency, where the positive result cannot be explained to the agency administrator's satisfaction, which notification, where appropriate, shall be accompanied by a copy of the judgment of conviction, the Criminal Justice Services Board shall decertify such law-enforcement officer. Such officer shall not have the right to serve as a law-enforcement officer within this Commonwealth until his certification has been reinstated by the Board.

The clerk of any court in which a conviction of a felony is made who has knowledge that a law-enforcement officer has been convicted shall have a duty to report these findings promptly to the employing agency.

When a conviction has not become final, the Board may decline to decertify the officer until the conviction becomes final, after considering the likelihood of irreparable damage to the officer if such officer is decertified during the pendency of an ultimately successful appeal, the likelihood of injury or

damage to the public if the officer is not decertified, and the seriousness of the offense.

§ 15.1-131.8:3. Notice of decertification.

A. Service of notice. The Board shall, within ten days of decertification, serve notice upon an affected officer, in person or by certified mail, and upon the law-enforcement agency employing said officer, by certified mail, specifying the action taken and remedies available. The Board shall stay final action until the period for requesting a hearing expires.

B. Decertification hearing. Any law-enforcement officer who has been decertified may, within thirty days of receipt of notice served by the Board, request, by certified mail, a hearing which shall be granted by the Board. Upon receipt of such request, the Board shall set a date, time, and place for the hearing within sixty days and serve notice by certified mail upon the affected officer. The Board, or a committee thereof, shall conduct such hearing. The affected officer may be represented by counsel. In the absence of a request for hearing, decertification shall, without further proceedings, become final thirty days after the initial notice.

C. Standard of review. The decertification of a law-enforcement officer under § 15.1-131.8:2 shall be sustained by the Board unless such law-enforcement officer shows, by a preponderance of the evidence, good cause for his certification to be reinstated.

D. Final decision after hearing. The Board shall render a final decision within thirty days after the conclusion of the hearing.

E. Notice of final action. The Board shall, within ten days of final action, notify the officer and the law-enforcement agency involved, by certified mail, of the final action regarding decertification.

F. Reinstatement after decertification. Any officer who is decertified may, after a period of not less than five years, petition the Board to be considered for reinstatement of certification.

§ 15.1-131.8:4. Employer immunity from liability; disclosure of information regarding former deputy sheriffs and law-enforcement officers.

Any sheriff or chief of police, the director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers as defined § 9-169, and the Director of the Department of Criminal Justice Services or his designee who discloses information about a former deputy sheriff's or law-enforcement officer's job performance to a prospective law-enforcement employer of the former appointee or employee is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith is rebutted upon a showing that the information disclosed by the former employer was knowingly false or deliberately misleading, was rendered with malicious purpose, or violated any civil right of the former employee or appointee.