

# VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

## CHAPTER 112

*An Act to amend and reenact §§ 10.1-1453, 15.1-131.8 through 15.1-131.8:4, 15.1-136.2, 19.2-59.1, 23-7.1:01, and 53.1-119 of the Code of Virginia, relating to regional jails.*

[H 1780]

Approved March 8, 1995

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-1453, 15.1-131.8 through 15.1-131.8:4, 15.1-136.2, 19.2-59.1, 23-7.1:01 and 53.1-119 of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-1453. Exceptions.

This article shall not apply to regular military or naval forces of the United States, the duly authorized militia of any state or territory thereof, police or fire departments, *or sheriff's offices and regional jails* of this Commonwealth, provided the same are acting within their official capacity and in the performance of their duties, or to the transportation of hazardous radioactive materials in accordance with § 44-146.30.

§ 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 *and jail officers* in this Commonwealth, and all law-enforcement officers as defined in § 9-169 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 the General Educational Development exam, (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 ~~18~~ *eighteen* years of age, (vii) not have been convicted of or ~~plead~~ *pleaded* 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 *or jail*, where the positive result cannot be explained to the law-enforcement agency *or jail* 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, *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.

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

All law-enforcement officers as defined in § 9-169 *and all jail officers as defined in § 53.1-1*, 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 *or jail* 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 and jail officers.

Upon written notification from the sheriff, chief of police or agency administrator that any certified law-enforcement *or jail* 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 *or jail* officer. Such officer shall not have the right to serve as a law-enforcement *or jail* 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 *or jail* 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. Decertification; notice; hearing; standard of review; final decision; reinstatement.

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

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

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

F. 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 *or jail* 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 in § 9-169, *or jail officers as defined in § 53.1-1*, 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 *or jail officer's* job performance to a prospective law-enforcement *or jail* 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.

§ 15.1-136.2. Definitions.

For the purposes of this article the following words shall have the meanings herein ascribed to them:

"Deceased" shall mean any person whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1 and 65.2-402, as a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; *a regional jail or jail farm superintendent*; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any agent, investigator, or inspector vested with the power to arrest pursuant to § 56-334; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Beneficiary" shall mean the spouse of the deceased and such person or persons as are entitled to take under the will of the deceased if testate, or as his heir at law if intestate.

§ 19.2-59.1. Strip searches prohibited; exceptions; how strip searches conducted.

A. No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a violation of a city, county, or town ordinance, which is punishable by no more than thirty days in jail shall be strip searched unless there is reasonable cause to believe on the part of a law-enforcement officer authorizing the search that the individual is concealing a weapon. All strip searches conducted under this section shall be performed by persons of the same sex as the person arrested and on premises where the search cannot be observed by persons not physically conducting the search.

B. *A regional jail superintendent* or the chief of police or the sheriff of the county or city shall develop a written policy regarding strip searches.

C. A search of any body cavity must be performed under sanitary conditions and a search of any body cavity, other than the mouth, shall be conducted either by or under the supervision of medically

trained personnel.

D. Strip searches authorized pursuant to the exceptions stated in ~~paragraph~~ *subsection A* of this section shall be conducted by a law-enforcement officer as defined in § 9-169, subdivision 9 of the Code.

E. The provisions of this section shall not apply when the person is taken into custody by or remanded to a law-enforcement officer pursuant to a circuit or district court order.

F. For purposes of this section, "strip search" shall mean having an arrested person remove or arrange some or all of his clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of such person.

G. Nothing in this section shall prohibit a sheriff *or a regional jail superintendent* from requiring that inmates take hot water and soap showers and be subjected to visual inspection upon assignment to the general population area of the jail or upon determination by the sheriff *or regional jail superintendent* that the inmate must be held at the jail by reason of his inability to post bond after reasonable opportunity to do so.

§ 23-7.1:01. Free tuition and required fees for children and spouses of certain law-enforcement officers, correctional and jail personnel, sheriffs, deputy sheriffs, members of the Virginia National Guard, firefighters, and members of rescue squads.

Any child between the ages of sixteen and twenty-five whose parent or any person whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, a firefighter, a member of a rescue squad, a sworn law-enforcement officer, a special agent of the Department of Alcoholic Beverage Control, a state correctional, regional or local jail officer, *a regional jail or jail farm superintendent*, a sheriff, a deputy sheriff, or a member of the Virginia National Guard while such member is serving in the Virginia National Guard or as a member of the United States Armed Forces, shall be entitled to free undergraduate tuition and required fees at any public institution of higher education in Virginia under the following conditions:

1. The chief administrative officer of the Alcoholic Beverage Control Board, emergency medical services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer or a firefighter or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to a public institution of higher education. Any child or spouse who believes he is eligible shall apply to the public institution of higher education to which he has been admitted. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition and required fees for the applicants shall be waived by the institution accepting the students.

For the purposes of this section, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required fees, educational and auxiliary, shall be waived along with tuition.

§ 53.1-119. Court duties of sheriff.

The sheriff shall provide officers to attend the courts within his jurisdiction while such courts are in session as the respective judges may require. ~~He~~ *The sheriff, or the superintendent of a regional jail or jail farm*, shall receive into the jail *facility* all persons committed by the order of such courts, or under process issuing therefrom, and all persons committed by any other lawful authority.