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SENATE BILL NO. 112

Offered January 10, 1996

A BILL to amend and reenact §§ 9-170, 18.2-57.2, 19.2-81 and 19.2-81.3 of the Code of Virginia, relating to arrest without a warrant; family or household member assault.

Patrons—Howell, Couric, Houck, Lucas, Maxwell and Woods; Delegates: Brickley, Cranwell, Cunningham, Fisher, Hall, Kilgore, Puller, Rhodes and Van Landingham

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-170, 18.2-57.2, 19.2-81 and 19.2-81.3 of the Code of Virginia are amended and reenacted 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

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- 60 prevent the holding of any such school whether approved or not;
- 61 11. Establish and maintain police training programs through such agencies and institutions as the
62 Board may deem appropriate;
- 63 12. Establish compulsory minimum qualifications of certification and recertification for instructors in
64 criminal justice training schools approved by the Department;
- 65 13. Conduct and stimulate research by public and private agencies which shall be designed to
66 improve police administration and law enforcement;
- 67 14. Make recommendations concerning any matter within its purview pursuant to this chapter;
- 68 15. Coordinate its activities with those of any interstate system for the exchange of criminal history
69 record information, nominate one or more of its members to serve upon the council or committee of any
70 such system, and participate when and as deemed appropriate in any such system's activities and
71 programs;
- 72 16. Conduct inquiries and investigations it deems appropriate to carry out its functions under this
73 chapter and, in conducting such inquiries and investigations shall have the authority to require any
74 criminal justice agency to submit information, reports, and statistical data with respect to its policy and
75 operation of information systems or with respect to its collection, storage, dissemination, and usage of
76 criminal history record information and correctional status information, and such criminal justice
77 agencies shall submit such information, reports, and data as are reasonably required;
- 78 17. Conduct audits as required by § 9-186;
- 79 18. Conduct a continuing study and review of questions of individual privacy and confidentiality of
80 criminal history record information and correctional status information;
- 81 19. Advise criminal justice agencies and initiate educational programs for such agencies with respect
82 to matters of privacy, confidentiality, and security as they pertain to criminal history record information
83 and correctional status information;
- 84 20. Maintain a liaison with any board, commission, committee, or other body which may be
85 established by law, executive order, or resolution to regulate the privacy and security of information
86 collected by the Commonwealth or any political subdivision thereof;
- 87 21. Issue regulations establishing guidelines and standards for the collection, storage, and
88 dissemination of criminal history record information and correctional status information, and the privacy,
89 confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and
90 court orders;
- 91 22. The Department of State Police shall be the control terminal agency for the Commonwealth and
92 perform all functions required of a control terminal agency by the regulations of the National Crime
93 Information Center. Notwithstanding any other provision to the contrary in this chapter, the Central
94 Criminal Records Exchange and the Department of State Police shall remain the central repository for
95 criminal history record information in the Commonwealth, and the Department shall continue to be
96 responsible for the management and operation of such exchange;
- 97 23. Operate a statewide criminal justice statistical analysis center, which shall maintain a unified
98 criminal justice data system, produce reports, provide technical assistance to state and local criminal
99 justice data system users, and provide analysis and interpretation of criminal justice statistical
100 information;
- 101 24. Develop a comprehensive statewide long-range plan for strengthening and improving law
102 enforcement and the administration of criminal justice throughout the Commonwealth, and periodically
103 update that plan;
- 104 25. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the
105 Commonwealth, and units of general local government, or combinations thereof, including planning
106 district commissions, in planning, developing, and administering programs, projects, comprehensive
107 plans, and other activities for improving law enforcement and the administration of criminal justice
108 throughout the Commonwealth, including allocating and subgranting funds for these purposes;
- 109 26. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and
110 activities for the Commonwealth and units of general local government, or combinations thereof, in the
111 Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal
112 justice at every level throughout the Commonwealth;
- 113 27. Review and evaluate programs, projects, and activities, and recommend, where necessary,
114 revisions or alterations to such programs, projects, and activities for the purpose of improving law
115 enforcement and the administration of criminal justice;
- 116 28. Coordinate the activities and projects of the state departments, agencies, and boards of the
117 Commonwealth and of the units of general local government, or combination thereof, including planning
118 district commissions, relating to the preparation, adoption, administration, and implementation of
119 comprehensive plans to strengthen and improve law enforcement and the administration of criminal
120 justice;
- 121 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;

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;

35. *Establish compulsory minimum entry level, in-service and advanced training standards for law-enforcement personnel in the handling of domestic violence cases, including the determination of the primary physical aggressor; and*

36. *Perform such other acts as may be necessary or convenient for the effective performance of its duties.*

§ 18.2-57.2. Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor.

B. On a third or subsequent conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i) such person has been previously convicted twice of assault and battery against a family or household member, or of a similar offense under the law of any other jurisdiction, within ten years of the third or subsequent offense, and that (ii) each such assault and battery occurred on different dates, such person shall be guilty of a Class 6 felony.

C. As used in this section, "family or household member" means (i) *whether or not he or she resides in the same home with the defendant*, the defendant's spouse, ~~whether or not he or she resides in the same home with the defendant~~, (ii) the defendant's former spouse, ~~whether or not he or she resides in the same home with the defendant~~, (iii) the defendant's parents, stepparents, children, stepchildren, brothers and sisters, grandparents and grandchildren ~~who reside in the same home with the defendant~~, (iv) the defendant's , mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law ~~who reside in the same home with the defendant~~, (v) , (ii) any person who has a child in common with the defendant, whether or not the defendant and that person have been married or have resided together at any time, or (vi) (iii) any individual who cohabits or who, within the previous twelve months, cohabited with the defendant, and any children of either of them then residing in the same home with the defendant.

§ 19.2-81. Arrest without warrant authorized in certain cases.

The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth, ~~the sheriffs~~

2. *Sheriffs* of the various counties and cities, and their deputies, ~~the members~~

3. *Members* of any county police force, ~~the members of~~ or any duly constituted police force of any city or town of the Commonwealth, ~~the~~

4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900, ~~regular~~

5. *Regular* game wardens appointed pursuant to § 29.1-200,

183 6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and
184 petty officers authorized under § 29.1-205 to make arrests, and ~~the~~

185 7. *The* special policemen of the counties as provided by § 15.1-144, provided such officers are in
186 uniform, or displaying a badge of office; .

187 *Such officers* may arrest, without a warrant, any person who commits any crime in the presence of
188 ~~such~~ *the* officer and any person whom he has reasonable grounds or probable cause to suspect of
189 having committed a felony not in his presence.

190 Any such officer may arrest without a warrant any person whom the officer has probable cause to
191 suspect of operating a watercraft or motor boat while intoxicated in violation of subsection B of
192 § 29.1-738, in his presence, and ~~such officer~~ may thereafter transfer custody of the person suspected of
193 the violation to another officer, who may obtain a warrant based upon statements made to him by the
194 arresting officer.

195 Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined
196 in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved in such
197 accident has been transported, or in the apprehension of any person charged with the theft of any motor
198 vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe,
199 based upon personal investigation, including information obtained from eyewitnesses, that a crime has
200 been committed by any person then and there present, apprehend such person without a warrant of
201 arrest.

202 Such officers may arrest, without a warrant, persons duly charged with a crime in another jurisdiction
203 upon receipt of a photocopy of a warrant, telegram, computer printout, facsimile printout, a radio,
204 telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile
205 printout, radio, telephone or teletype message shall be given the name or a reasonably accurate
206 description of such person wanted and the crime alleged.

207 Such officers may arrest, without a warrant, for an alleged misdemeanor not committed in his
208 presence when the officer receives a radio message from his department or other law-enforcement
209 agency within the Commonwealth that a warrant for such offense is on file.

210 Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their
211 presence involving (i) shoplifting in violation of § 18.2-96 or § 18.2-103 or a similar local ordinance, (ii)
212 carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery or (iv)
213 destruction of property in violation of § 18.2-137, when such property is located on premises used for
214 business or commercial purposes, or a similar local ordinance, when any such arrest is based on
215 probable cause upon reasonable complaint of the person who observed the alleged offense. *Any arrest*
216 *for assault and battery against a family or household member in violation of § 18.2-57.2 or arrest for a*
217 *violation of any provision of a protective order the punishment for which is prescribed in § 16.1-253.2*
218 *shall be governed § 19.2-81.3.* The arresting officer may issue a summons to any person arrested under
219 this section for a misdemeanor violation involving shoplifting.

220 § 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or
221 household member; procedure, etc.

222 A. Any law-enforcement officer may arrest *and, if an arrest is made shall take into custody, pending*
223 *release upon terms and conditions specified by order of an appropriate judicial officer,* in the same
224 manner as provided in § 19.2-81, persons for crimes involving a violation of § 18.2-57.2 *or for a*
225 *violation of any provision of a protective order the punishment for which is prescribed in § 16.1-253.2 .*
226 *The terms or conditions of release of any person taken into custody pursuant to this section shall*
227 *include issuance of a preliminary protective order pursuant to § 16.1-253.1.*

228 A law-enforcement officer having probable cause to believe that family or household member assault
229 and battery has occurred shall arrest and take into custody the person he reasonably believes was the
230 primary physical aggressor, with or without a warrant and without regard to whether the offense was
231 committed in the officer's presence or whether complaint is made by a person suspected of being
232 abused.

233 B. A law-enforcement officer investigating any complaint of family abuse, including but not limited
234 to assault and battery against a family or household member, ~~may~~*shall*, upon request, transport or
235 provide for transportation of an abused person to a hospital, safe shelter, or magistrate.

236 C. A law-enforcement officer who has reasonable grounds to believe that ~~assault and battery against~~
237 ~~a family or household member has occurred~~ *family abuse has occurred, whether or not an arrest is*
238 *made, shall identify the primary physical aggressor upon consideration of the circumstances then*
239 *existing and (i) the intent of the law to protect persons from continuing violence, (ii) the comparative*
240 *extent of the injuries inflicted and whether any alleged injuries were inflicted in self defense and (iii) if*
241 *reasonably ascertainable, any history of violence between the persons involved. In addition, the*
242 *law-enforcement officer shall file a written report of the incident with his department and make available*
243 *a copy to the alleged victim and provide to the victim, both orally and in writing, information*
244 *regarding the remedies and services available to the victim.*

245 D. Any law-enforcement officer may, with or without a warrant, take the following course of action
246 where the officer has reasonable grounds to believe that a person committed assault and battery against
247 a family or household member, whether or not that assault and battery occurred in his presence:

248 1. The law-enforcement officer may make reasonable inquiry of the family or household member
249 who the officer believes is the victim of assault and battery and other witnesses as there may be.

250 2. If a law-enforcement officer has reasonable grounds to believe that there is probable danger of
251 further ~~assault and battery~~ *acts of family abuse* by a person upon a family or household member, the
252 law-enforcement officer ~~may~~ *shall* petition for an emergency protective order pursuant to § 16.1-253.4.

253 E. As used in this section, "family or household member" means (i) *whether or not he or she resides*
254 *in the same home with the person*, the person's spouse, ~~whether or not he or she resides in the same~~
255 ~~home with the person~~, (ii) the person's former spouse, ~~whether or not he or she resides in the same~~
256 ~~home with the person~~, (iii) the person's parents, stepparents, children, stepchildren, brothers and sisters,
257 grandparents and grandchildren ~~who reside in the same home with the person~~, (iv) the person's ,
258 mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law ~~who reside~~
259 ~~in the same home with the person~~, (v) *(ii)* any person who has a child in common with the defendant,
260 ~~whether or not the person and that person have been married or have resided together at any time~~, or
261 ~~(vi) (iii)~~ any individual who cohabits or who, within the previous twelve months, cohabited with the
262 person, and any children of either of them then residing in the same home with the defendant.

263 F. As used in this section, a "law-enforcement officer" means (i) any full-time or part-time employee
264 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
265 political subdivision thereof, and who is responsible for the prevention and detection of crime and the
266 enforcement of the penal, traffic or highway laws of this Commonwealth and (ii) any member of an
267 auxiliary police force established pursuant to subsection B of § 15.1-159.2. Part-time employees are
268 compensated officers who are not full-time employees as defined by the employing police department or
269 sheriff's office.