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SENATE BILL NO. 112

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 11, 1996)

(Patron Prior to Substitute—Senator Howell)

*A BILL to amend and reenact §§ 8.01-195.3, 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; immunity.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-195.3, 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:**

§ 8.01-195.3. Commonwealth, transportation district or locality liable for damages in certain cases.

Subject to the provisions of this article, the Commonwealth shall be liable for claims for money only accruing on or after July 1, 1982, and any transportation district shall be liable for claims for money only accruing on or after July 1, 1986, on account of damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth or transportation district, if a private person, would be liable to the claimant for such damage, loss, injury or death. However, except to the extent that a transportation district contracts to do so pursuant to § 15.1-1358, neither the Commonwealth nor any transportation district shall be liable for interest prior to judgment or for punitive damages. The amount recoverable by any claimant shall not exceed (i) \$25,000 for causes of action accruing prior to July 1, 1988, \$75,000 for causes of action accruing on or after July 1, 1988, or \$100,000 for causes of action accruing on or after July 1, 1993, or (ii) the maximum limits of any liability policy maintained to insure against such negligence or other tort, if such policy is in force at the time of the act or omission complained of, whichever is greater, exclusive of interest and costs.

Notwithstanding any provision hereof, the individual immunity of judges, the Attorney General, attorneys for the Commonwealth, and other public officers, their agents and employees from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized. Any recovery based on the following claims are hereby excluded from the provisions of this article:

1. Any claim against the Commonwealth based upon an act or omission which occurred prior to July 1, 1982.

1a. Any claim against a transportation district based upon an act or omission which occurred prior to July 1, 1986.

2. Any claim based upon an act or omission of the General Assembly or district commission of any transportation district, or any member or staff thereof acting in his official capacity, or to the legislative function of any agency subject to the provisions of this article.

3. Any claim based upon an act or omission of any court of the Commonwealth, or any member thereof acting in his official capacity, or to the judicial functions of any agency subject to the provisions of this article.

4. Any claim based upon an act or omission of an officer, agent or employee of any agency of government in the execution of a lawful order of any court.

5. Any claim arising in connection with the assessment or collection of taxes.

6. Any claim arising out of the institution or prosecution of any judicial or administrative proceeding, even if without probable cause.

7. Any claim by an inmate of a state correctional facility, as defined in § 53.1-1, unless the claimant verifies under oath, by affidavit, that he has exhausted his remedies under the adult institutional inmate grievance procedures promulgated by the Department of Corrections; provided, that this exemption is applicable only if the Attorney General of the United States has certified under 42 U.S.C. § 1997e (c) (1) that those procedures are in substantial compliance with the minimal standards promulgated under 28 C.F.R. § 40 (1988), as may be amended from time to time. The time for filing the notice of tort claim shall be tolled during the pendency of the grievance procedure.

8. Any claim based upon an act or omission of any law-enforcement officer, agent or employee of any governmental agency arising out of an arrest or failure to arrest pursuant to subsection A2 of § 19.2-81.3 and any local policy established as provided therein,

Nothing contained herein shall operate to reduce or limit the extent to which the Commonwealth or any transportation district, agency or employee was deemed liable for negligence as of July 1, 1982, nor shall any provision of this article be applicable to any county, city or town in the Commonwealth or be so construed as to remove or in any way diminish the sovereign immunity of any county, city or town in the Commonwealth.

§ 9-170. Powers and duties of the Board and the Department.

60 The Department, under the direction of the Board, which shall be the policy-making body for
61 carrying out the duties and powers hereunder, shall have the power to:

62 1. Promulgate regulations, pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), for the
63 administration of this chapter including the authority to require the submission of reports and
64 information by law-enforcement officers within this Commonwealth. Any proposed regulations
65 concerning the privacy, confidentiality, and security of criminal justice information shall be submitted
66 for review and comment to any board, commission, or committee or other body which may be
67 established by the General Assembly to regulate the privacy, confidentiality, and security of information
68 collected and maintained by the Commonwealth or any political subdivision thereof;

69 2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement
70 officer (i) in permanent positions, and (ii) in temporary or probationary status, and establish the time
71 required for completion of such training;

72 3. Establish compulsory minimum curriculum requirements for in-service and advanced courses and
73 programs for schools, whether located in or outside the Commonwealth, which are operated for the
74 specific purpose of training law-enforcement officers;

75 3a. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize
76 radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in
77 § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum
78 qualifications for certification and recertification of instructors who provide such training;

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

86 5. Establish compulsory minimum entry level, in-service and advanced training standards for those
87 persons designated to provide courthouse and courtroom security pursuant to the provisions of
88 § 53.1-120, and to establish the time required for completion of such training;

89 6. Establish compulsory minimum entry level, in-service and advanced training standards for deputy
90 sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time
91 required for the completion of such training;

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

96 8. Establish compulsory minimum training standards for all dispatchers employed by or in any local
97 or state government agency, whose duties include the dispatching of law-enforcement personnel. Such
98 training standards shall apply only to dispatchers hired on or after July 1, 1988;

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

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

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

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

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

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

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

117 16. Conduct inquiries and investigations it deems appropriate to carry out its functions under this
118 chapter and, in conducting such inquiries and investigations shall have the authority to require any
119 criminal justice agency to submit information, reports, and statistical data with respect to its policy and
120 operation of information systems or with respect to its collection, storage, dissemination, and usage of
121 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;

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 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,

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

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

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

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

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

arrest.

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

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

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

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

A 1. Any law-enforcement officer may arrest and, if an arrest is made shall take into custody, pending release upon terms and conditions specified by order of an appropriate judicial officer, in the same manner as provided in § 19.2-81, persons for crimes involving a violation of § 18.2-57.2 or for a violation of any provision of a protective order the punishment for which is prescribed in § 16.1-253.2. The terms or conditions of release of any person taken into custody pursuant to this section shall include issuance of a preliminary protective order pursuant to § 16.1-253.1.

A2. A law-enforcement officer having probable cause to believe that (i) family or household member assault and battery has occurred; (ii) a violation of a protective order, the punishment for which is prescribed in § 16.1-253.2, has occurred; or (iii) an imminent threat of physical injury exists; shall arrest and take into custody the person he has probable cause to believe was the primary physical aggressor, with or without a warrant and without regard to whether the offense was committed in the officer's presence or whether complaint is made by a person suspected of being abused unless the officer has good cause for failing to arrest. Each local police and each sheriff's department shall establish an arrest policy which, at a minimum corresponds to the requirements of this subsection but this subsection shall not preclude any such department from prescribing additional bases for requiring arrest in cases of family abuse. A law-enforcement officer, acting in good faith and without malicious purpose in the performance of his duties, shall not be civilly liable for making an arrest or failing to make an arrest or for any other act or omission performed pursuant to this subsection or policy established by the local department. Acts or omissions by a law-enforcement officer employed by any county, city or town performed pursuant to this subsection or established local policy are for a public or governmental purpose and all immunities enjoyed by a county, city or town when acting through its employees shall inure to its benefit.

B. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member may, upon request, transport an abused person to a hospital, safe shelter, or magistrate. Any local law-enforcement agency may adopt a policy requiring an investigating officer to transport or arrange for transportation of an abused person as provided in this subsection.

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

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

1. The law-enforcement officer may make reasonable inquiry of the family or household member

306 who the officer believes is the victim of assault and battery and other witnesses as there may be.

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

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

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

327 2. That the provisions of this act shall become effective on January 1, 1997.