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**HOUSE BILL NO. 5013**

Offered August 18, 2020

Prefiled August 14, 2020

*A BILL to amend the Code of Virginia by adding sections numbered 8.01-42.6 through 8.01-42.9, relating to civil action for deprivation of rights; duties and liabilities of certain employers in employing or contracting for the services of law-enforcement officers.*

Patrons—Bourne, Jones, Carr, Aird, Ayala, Carroll Foy, Cole, J.G., Jenkins, Kory, Levine, McQuinn, Plum, Price, Rasoul and Scott; Senator: Lucas

Referred to Committee for Courts of Justice

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

**1. That the Code of Virginia is amended by adding sections numbered 8.01-42.6 through 8.01-42.9 as follows:**

**§ 8.01-42.6. Civil action for deprivation of rights.**

*A. Any law-enforcement officer, as defined in § 9.1-101, who, under color of law, subjects or causes to be subjected, including failing to intervene, any other person to the deprivation of any rights, privileges, or immunities granted to such person under the constitutions and laws of the United States and the Commonwealth, shall be liable to the injured party for compensatory damages, punitive damages, and equitable relief. If the plaintiff prevails in such an action, in addition to any monetary or injunctive relief, the court may award reasonable attorney fees and costs. If the defendant prevails in such an action, the court may award reasonable attorney fees and costs if the court finds the claims to have been frivolous.*

*B. Sovereign immunity and any other statutory immunities or limitations on liability or damages shall not apply to claims brought pursuant to this section. Qualified immunity is not a defense to liability imposed by this section.*

*C. No action shall be commenced under this section more than two years after the most recent conduct prohibited by this section.*

*D. Nothing in this section shall prevent an aggrieved individual from pursuing any other cause of action available to him for the conduct giving rise to a cause of action under this section.*

**§ 8.01-42.7. Duty to control conduct of law-enforcement officer.**

*A. For the purposes of this section:*

*"Employer" means (i) the Commonwealth or any locality, or any agent thereof, or any person acting on behalf of the Commonwealth or any locality; (ii) a private police department; or (iii) a campus police department of any institution of higher education employing, or contracting for the services of, a law-enforcement officer, as defined in § 9.1-101.*

*B. An employer is under a duty to exercise reasonable care to control a law-enforcement officer it employs or contracts for the services of, while the officer is acting outside the scope of such officer's employment or contract for services, so as to prevent such officer from intentionally harming third parties or from conducting himself so as to create an unreasonable risk of bodily harm to such third parties, if the law-enforcement officer is (i) upon a premises in possession or control of the employer, (ii) is at any premises or location because of or incidental to work being done for such employer, or (iii) is using chattel of such employer.*

*C. Nothing in this section shall operate to limit or abrogate the vicarious liability of an employer for acts or omissions committed within the course and scope of the employment of, or contracting for services for, a law-enforcement officer.*

**§ 8.01-42.8. Negligent supervision.**

*A. An employer, as defined in § 8.01-42.7, owes a duty of reasonable care to third parties in the supervision and training of law-enforcement officers, as defined by § 9.1-101, it employs or contracts for the services of.*

*B. Sovereign and governmental immunity shall not be a defense to any cause of action brought under this section.*

**§ 8.01-42.9. Liability to vulnerable victims.**

*A. For the purposes of this section:*

*"Vulnerable victim" means an individual who, by virtue of the circumstances, including such individual's physical or mental condition or characteristics, was at a substantial disadvantage relative to a law-enforcement officer, as defined by § 9.1-101. Whether one qualifies as a vulnerable victim shall be a question of fact on which a plaintiff bears the burden of proof, but as a matter of law includes (i)*

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58 individuals who are the subject of a stop, detention, arrest, custodial interrogation, or imprisonment and  
59 (ii) persons under a disability as defined by subdivision 6 of § 8.01-2.

60 B. An employer, as defined in § 8.01-42.7, shall be liable to a vulnerable victim for the tortious or  
61 criminal conduct of a law-enforcement officer it employs or contracts for the services of, regardless of  
62 whether or not such conduct occurred within the course and scope of such employment or contract, if  
63 such conduct (i) proximately causes injury or damage to a vulnerable victim and (ii) occurs at a place  
64 and time when the employer knew or should have known that such officer could be in contact with a  
65 vulnerable victim.

66 C. Sovereign and governmental immunity shall not be a defense to any cause of action brought  
67 under this section.