

20201183D

HOUSE BILL NO. 5051**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on the Judiciary
on September 16, 2020)

(Patron Prior to Substitute—Delegate Simon)

*A BILL to amend and reenact §§ 9.1-102, and 15.2-1707 of the Code of Virginia, relating to decertification of law-enforcement officer.***Be it enacted by the General Assembly of Virginia:****1. That §§ 9.1-102 and 15.2-1707 of the Code of Virginia are amended and reenacted as follows:****§ 9.1-102. 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 and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the 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 in (i) permanent positions, and (ii) temporary or probationary status, and establish the time required for completion of such training;

3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;

4. 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;

5. 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;

6. [Repealed];

7. 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;

8. 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;

9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as deputy sheriffs and jail officers by local criminal justice agencies and correctional officers employed by the Department of Corrections under the provisions of Title 53.1. For correctional officers employed by the Department of Corrections, such standards shall include training on the general care of pregnant women, the impact of restraints on pregnant inmates and fetuses, the impact of being placed in restrictive housing or solitary confinement on pregnant inmates, and the impact of body cavity searches on pregnant inmates;

10. 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;

11. Establish compulsory minimum training standards for all auxiliary police officers employed by or in any local or state government agency. Such training shall be graduated and based on the type of duties to be performed by the auxiliary police officers. Such training standards shall not apply to auxiliary police officers exempt pursuant to § 15.2-1731;

12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and institutions of higher education within or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

13. 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;

- 60 14. Establish and maintain police training programs through such agencies and institutions as the
61 Board deems appropriate;
- 62 15. Establish compulsory minimum qualifications of certification and recertification for instructors in
63 criminal justice training schools approved by the Department;
- 64 16. Conduct and stimulate research by public and private agencies which shall be designed to
65 improve police administration and law enforcement;
- 66 17. Make recommendations concerning any matter within its purview pursuant to this chapter;
- 67 18. Coordinate its activities with those of any interstate system for the exchange of criminal history
68 record information, nominate one or more of its members to serve upon the council or committee of any
69 such system, and participate when and as deemed appropriate in any such system's activities and
70 programs;
- 71 19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this
72 chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to
73 submit information, reports, and statistical data with respect to its policy and operation of information
74 systems or with respect to its collection, storage, dissemination, and usage of criminal history record
75 information and correctional status information, and such criminal justice agencies shall submit such
76 information, reports, and data as are reasonably required;
- 77 20. Conduct audits as required by § 9.1-131;
- 78 21. Conduct a continuing study and review of questions of individual privacy and confidentiality of
79 criminal history record information and correctional status information;
- 80 22. Advise criminal justice agencies and initiate educational programs for such agencies with respect
81 to matters of privacy, confidentiality, and security as they pertain to criminal history record information
82 and correctional status information;
- 83 23. Maintain a liaison with any board, commission, committee, or other body which may be
84 established by law, executive order, or resolution to regulate the privacy and security of information
85 collected by the Commonwealth or any political subdivision thereof;
- 86 24. Adopt regulations establishing guidelines and standards for the collection, storage, and
87 dissemination of criminal history record information and correctional status information, and the privacy,
88 confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and
89 court orders;
- 90 25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal
91 justice information system, produce reports, provide technical assistance to state and local criminal
92 justice data system users, and provide analysis and interpretation of criminal justice statistical
93 information;
- 94 26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law
95 enforcement and the administration of criminal justice throughout the Commonwealth, and periodically
96 update that plan;
- 97 27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the
98 Commonwealth, and units of general local government, or combinations thereof, including planning
99 district commissions, in planning, developing, and administering programs, projects, comprehensive
100 plans, and other activities for improving law enforcement and the administration of criminal justice
101 throughout the Commonwealth, including allocating and subgranting funds for these purposes;
- 102 28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and
103 activities for the Commonwealth and units of general local government, or combinations thereof, in the
104 Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal
105 justice at every level throughout the Commonwealth;
- 106 29. Review and evaluate programs, projects, and activities, and recommend, where necessary,
107 revisions or alterations to such programs, projects, and activities for the purpose of improving law
108 enforcement and the administration of criminal justice;
- 109 30. Coordinate the activities and projects of the state departments, agencies, and boards of the
110 Commonwealth and of the units of general local government, or combination thereof, including planning
111 district commissions, relating to the preparation, adoption, administration, and implementation of
112 comprehensive plans to strengthen and improve law enforcement and the administration of criminal
113 justice;
- 114 31. Do all things necessary on behalf of the Commonwealth and its units of general local
115 government, to determine and secure benefits available under the Omnibus Crime Control and Safe
116 Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and
117 programs for strengthening and improving law enforcement, the administration of criminal justice, and
118 delinquency prevention and control;
- 119 32. Receive, administer, and expend all funds and other assistance available to the Board and the
120 Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe
121 Streets Act of 1968, as amended;

33. 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;

34. 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;

35. 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;

36. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

37. Establish training standards and publish and periodically update model policies for law-enforcement personnel in the following subjects:

a. The handling of family abuse, domestic violence, sexual assault, and stalking cases, including standards for determining the predominant physical aggressor in accordance with § 19.2-81.3. The Department shall provide technical support and assistance to law-enforcement agencies in carrying out the requirements set forth in subsection A of § 9.1-1301;

b. Communication with and facilitation of the safe return of individuals diagnosed with Alzheimer's disease;

c. Sensitivity to and awareness of cultural diversity and the potential for biased policing;

d. Protocols for local and regional sexual assault response teams;

e. Communication of death notifications;

f. The questioning of individuals suspected of driving while intoxicated concerning the physical location of such individual's last consumption of an alcoholic beverage and the communication of such information to the Virginia Alcoholic Beverage Control Authority;

g. Vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

h. Criminal investigations that embody current best practices for conducting photographic and live lineups;

i. Sensitivity to and awareness of human trafficking offenses and the identification of victims of human trafficking offenses for personnel involved in criminal investigations or assigned to vehicle or street patrol duties; and

j. Missing children, missing adults, and search and rescue protocol;

38. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for biased policing;

39. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs, including sensitivity to and awareness of cultural diversity and the potential for biased policing;

40. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

41. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including,

183 but not limited to periodic newsletters, a website and an accessible lending library;

184 42. Establish, in consultation with the Department of Education and the Virginia State Crime
185 Commission, compulsory minimum standards for employment and job-entry and in-service training
186 curricula and certification requirements for school security officers, including school security officers
187 described in clause (b) of § 22.1-280.2:1, which training and certification shall be administered by the
188 Virginia Center for School and Campus Safety (VCSCS) pursuant to § 9.1-184. Such training standards
189 shall be specific to the role and responsibility of school security officers and shall include (i) relevant
190 state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school
191 environment; (iv) mediation and conflict resolution, including de-escalation techniques such as a physical
192 alternative to restraint; (v) disaster and emergency response; (vi) awareness of cultural diversity and
193 implicit bias; (vii) working with students with disabilities, mental health needs, substance abuse
194 disorders, and past traumatic experiences; and (viii) student behavioral dynamics, including child and
195 adolescent development and brain research. The Department shall establish an advisory committee
196 consisting of local school board representatives, principals, superintendents, and school security
197 personnel to assist in the development of the standards and certification requirements in this subdivision.
198 The Department shall require any school security officer who carries a firearm in the performance of his
199 duties to provide proof that he has completed a training course provided by a federal, state, or local
200 law-enforcement agency that includes training in active shooter emergency response, emergency
201 evacuation procedure, and threat assessment;

202 43. License and regulate property bail bondsmen and surety bail bondsmen in accordance with
203 Article 11 (§ 9.1-185 et seq.);

204 44. License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.);

205 45. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal
206 justice agencies regarding the investigation, registration, and dissemination of information requirements
207 as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.);

208 46. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula,
209 and (iii) certification requirements for campus security officers. Such training standards shall include, but
210 not be limited to, the role and responsibility of campus security officers, relevant state and federal laws,
211 school and personal liability issues, security awareness in the campus environment, and disaster and
212 emergency response. The Department shall provide technical support and assistance to campus police
213 departments and campus security departments on the establishment and implementation of policies and
214 procedures, including but not limited to: the management of such departments, investigatory procedures,
215 judicial referrals, the establishment and management of databases for campus safety and security
216 information sharing, and development of uniform record keeping for disciplinary records and statistics,
217 such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an
218 advisory committee consisting of college administrators, college police chiefs, college security
219 department chiefs, and local law-enforcement officials to assist in the development of the standards and
220 certification requirements and training pursuant to this subdivision;

221 47. Assess and report, in accordance with § 9.1-190, the crisis intervention team programs established
222 pursuant to § 9.1-187;

223 48. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and
224 attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human
225 trafficking offenses using the common law and existing criminal statutes in the Code of Virginia;

226 49. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of
227 § 46.2-117;

228 50. Administer the activities of the Virginia Sexual and Domestic Violence Program Professional
229 Standards Committee by providing technical assistance and administrative support, including staffing, for
230 the Committee;

231 51. In accordance with § 9.1-102.1, design and approve the issuance of photo-identification cards to
232 private security services registrants registered pursuant to Article 4 (§ 9.1-138 et seq.);

233 52. In consultation with the State Council of Higher Education for Virginia and the Virginia
234 Association of Campus Law Enforcement Administrators, develop multidisciplinary curricula on
235 trauma-informed sexual assault investigation;

236 53. In consultation with the Department of Behavioral Health and Developmental Services, develop a
237 model addiction recovery program that may be administered by sheriffs, deputy sheriffs, jail officers,
238 administrators, or superintendents in any local or regional jail. Such program shall be based on any
239 existing addiction recovery programs that are being administered by any local or regional jails in the
240 Commonwealth. Participation in the model addiction recovery program shall be voluntary, and such
241 program may address aspects of the recovery process, including medical and clinical recovery,
242 peer-to-peer support, availability of mental health resources, family dynamics, and aftercare aspects of
243 the recovery process;

244 54. Establish compulsory minimum training standards for certification and recertification of

law-enforcement officers serving as school resource officers. Such training shall be specific to the role and responsibility of a law-enforcement officer working with students in a school environment and shall include (i) relevant state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school environment; (iv) mediation and conflict resolution, including de-escalation techniques; (v) disaster and emergency response; (vi) awareness of cultural diversity and implicit bias; (vii) working with students with disabilities, mental health needs, substance abuse disorders, or past traumatic experiences; and (viii) student behavioral dynamics, including current child and adolescent development and brain research;

55. Establish a model policy for the operation of body-worn camera systems as defined in § 15.2-1723.1 that also addresses the storage and maintenance of body-worn camera system records;

56. Establish compulsory minimum training standards for detector canine handlers employed by the Department of Corrections, standards for the training and retention of detector canines used by the Department of Corrections, and a central database on the performance and effectiveness of such detector canines that requires the Department of Corrections to submit comprehensive information on each canine handler and detector canine, including the number and types of calls and searches, substances searched for and whether or not detected, and the number of false positives, false negatives, true positives, and true negatives;

57. Establish compulsory training standards for basic training of law-enforcement officers for recognizing and managing stress, self-care techniques, and resiliency; ~~and~~

58. *Adopt statewide professional standards of conduct applicable to all certified law-enforcement officers and certified jail officers and appropriate due process procedures for decertification based on serious misconduct in violation of those standards; and*

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

§ 15.2-1707. Decertification of law-enforcement officers.

A. The sheriff, chief of police, or agency administrator shall notify the Criminal Justice Services Board (*the Board*) in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency 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 the Commonwealth; (ii) been convicted of or pled guilty or no contest to a Class 1 misdemeanor involving moral turpitude or any offense that would be any misdemeanor involving moral turpitude, including but not limited to petit larceny under § 18.2-96, or any offense involving moral turpitude that would be a misdemeanor if committed in the Commonwealth; (iii) been convicted of or pled guilty or no contest to any misdemeanor sex offense in the Commonwealth, another state, or the United States, including but not limited to sexual battery under § 18.2-67.4 or consensual sexual intercourse with a minor 15 *years of age* or older under clause (ii) of § 18.2-371; (iv) been convicted of or pled guilty or no contest to domestic assault under § 18.2-57.2 or any offense that would be domestic assault under the laws of another state or the United States; (v) failed to comply with or maintain compliance with mandated training requirements; or (vi) 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.

~~Notification shall also be provided~~ B. *The sheriff, chief of police, or agency administrator shall notify the Board in writing within 48 hours of becoming aware that any employee who resigned or was if any certified law-enforcement or jail officer currently employed by his agency (i) is terminated or resigns in advance of being convicted or found guilty of an offense set forth in clause (i) of subsection A that requires decertification or who resigned or was, (ii) is terminated or resigns in advance of a pending drug screening, (iii) is terminated or resigns for a violation of state or federal law, (iv) is terminated or resigns for engaging in serious misconduct as defined in statewide professional standards of conduct adopted by the Board, (v) is terminated or resigns while such officer is the subject of a pending internal investigation involving serious misconduct as defined in statewide professional standards of conduct adopted by the Board, or (vi) is terminated or resigns for an act committed while in the performance of his duties that compromises an officer's credibility, integrity, honesty, or other characteristics that constitute exculpatory or impeachment evidence in a criminal case.*

C. The notification, where appropriate, shall be accompanied by a copy of the judgment of conviction.

D. Upon receiving such notice from the sheriff, chief of police, or agency administrator, or from an attorney for the Commonwealth, the ~~Criminal Justice Services~~ Board shall immediately decertify such law-enforcement or jail officer. Such officer shall not have the right to serve as a law-enforcement officer within the Commonwealth until his certification has been reinstated by the Board.

~~B.~~ E. 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

306 officer is decertified during the pendency of an ultimately successful appeal, the likelihood of injury or
307 damage to the public if the officer is not decertified, and the seriousness of the offense.

308 ~~C. F.~~ The Department of Criminal Justice Services is hereby authorized to waive the requirements
309 for decertification as set out in subsection A for good cause shown.

310 ~~D. G.~~ The ~~Criminal Justice Services~~ Board may initiate decertification proceedings against any
311 ~~current or~~ former law-enforcement or jail officer ~~whom if~~ the Board has found ~~to have been convicted~~
312 ~~of an offense that requires that any basis for the officer's~~ decertification ~~or who has failed to comply~~
313 ~~with or maintain compliance with mandated training requirements set forth in subsection A or B exists.~~

314 ~~E. H.~~ Any conviction of a misdemeanor that has been appealed to a court of record shall not be
315 considered a conviction for purposes of this section unless a final order of conviction is entered. *Any*
316 *finding of misconduct listed in subsection B will not be considered final until all grievances or appeals*
317 *have been exhausted or waived and the finding of misconduct is made final.*

318 **2. That the Department of Criminal Justice Services (the Department) shall promulgate regulations**
319 **to implement the provisions of § 15.2-1707 of the Code of Virginia, as amended by this act, within**
320 **280 days of the effective date of this act. The Department shall report to the Chairman of the**
321 **Senate Committee on the Judiciary and the Chairman of the House Committee for Courts of**
322 **Justice by November 1, 2021, on the status of the regulations.**

323 **3. That the provisions of § 15.2-1707 of the Code of Virginia, as amended by this act, shall apply**
324 **only to offenses or misconduct committed after the effective date of this act.**