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SENATE BILL NO. 5035

Offered August 18, 2020

Prefiled August 14, 2020

A BILL to amend and reenact §§ 2.2-3002, 9.1-300, 15.2-1507, 30-34.2:1, 40.1-51.4:4, and 44-123.3 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 6 of Title 9.1 a section numbered 9.1-601; and to repeal Chapter 5 (§§ 9.1-500 through 9.1-507) of Title 9.1 and § 15.2-723 of the Code of Virginia, relating to law-enforcement civilian review boards.

Patrons—Hashmi, McClellan, Boysko, Ebbin, Favola, Morrissey and Surovell; Delegates: Carr and Kory

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3002, 9.1-300, 15.2-1507, 30-34.2:1, 40.1-51.4:4, and 44-123.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 6 of Title 9.1 a section numbered 9.1-601 as follows:

§ 2.2-3002. Exemptions from chapter.

The provisions of this chapter shall not apply to:

1. Appointees of elected groups or individuals except as provided in subsection B of § 2.2-3001;
2. Agency heads or chief executive officers of government agencies and public institutions of higher education appointed by boards and commissions; and
3. ~~Law-enforcement officers as defined in § 9.1-500 whose grievances are subject to Chapter 5 (§ 9.1-500 et seq.) and who have elected to resolve such grievances under those provisions; and~~
4. Employees in positions designated in § 2.2-2905 as exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.).

§ 9.1-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Emergency medical services personnel" means any person who holds a valid certificate issued by the Commissioner and who is employed solely within the fire department, emergency medical services agency, or public safety department of an employing agency as a full-time emergency medical services personnel whose primary responsibility is the provision of emergency care to the sick and injured, using either basic or advanced techniques. Emergency medical services personnel may also provide fire protection services and assist in the enforcement of the fire prevention code.

"Employing agency" means any municipality of the Commonwealth or any political subdivision thereof, including authorities and special districts, that employs firefighters and emergency medical services personnel.

"Firefighter" means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of local and state fire prevention codes and laws pertaining to the prevention and control of fires.

"Interrogation" means any questioning of a formal nature as ~~used in Chapter 4 (§ 9.1-500 et seq.)~~ that could lead to dismissal, demotion, or suspension for punitive reasons of a firefighter or emergency medical services personnel.

§ 9.1-601. Law-enforcement civilian review boards.

A. As used in this section, unless context requires a different meaning:

"Law-enforcement agency" means the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing a law-enforcement officer.

"Law-enforcement officer" means any person, other than a chief of police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of the police department, bureau, or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau, or force has three or more law-enforcement officers.

For the purposes of this section, "law-enforcement officer" shall not include the sheriff's department of any city or county.

B. A locality may establish a law-enforcement civilian review board, which may have the following duties:

1. To receive, investigate, and issue findings on complaints from civilians regarding conduct of law-enforcement officers and civilian employees of a law-enforcement agency serving under the authority of the locality;

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59 2. To investigate and issue findings on incidents, including the use of force by a law-enforcement
60 officer, death or serious injury to any person held in custody, serious abuse of authority or misconduct,
61 allegedly discriminatory stops, and other incidents regarding the conduct of law-enforcement officers or
62 civilian employees of a law-enforcement agency serving under the authority of the locality;

63 3. Concordant with any investigation conducted pursuant to subdivisions B 1 and 2 and after
64 consultation with such officer or employee's direct supervisor or commander, to make binding
65 disciplinary determinations in cases that involve serious breaches of departmental and professional
66 standards, as defined by the locality. Such disciplinary determinations may include letters of reprimand,
67 suspension without pay, suspension with pay, demotion within the department, reassignment within the
68 department, termination, involuntary restitution, or mediation to be implemented by the local government
69 employee with ultimate supervisory authority over officers or employees of law-enforcement agencies
70 under the authority of the locality;

71 4. To investigate policies, practices, and procedures of law-enforcement agencies under the authority
72 of the locality and to make recommendations regarding changes to such policies, practices, and
73 procedures of law-enforcement agencies under the authority of the locality. If the law-enforcement
74 agency declines to implement any recommended changes from the board, such law-enforcement agency
75 may be required to create a written record, which shall be made available to the public, of its rationale
76 for declining to implement recommendations of the board;

77 5. To review all investigations conducted internally by law-enforcement agencies under the authority
78 of the locality, including internal investigations of civilians employed by such law-enforcement agencies,
79 and to issue findings regarding the accuracy, completeness, and impartiality of such investigations and
80 the sufficiency of any discipline resulting from such investigations;

81 6. To request reports of the annual expenditures of the law-enforcement agencies under the authority
82 of the locality and to make budgetary recommendations to the local government body concerning future
83 appropriations;

84 7. To make public reports on the activities of the board, including investigations, hearings, findings,
85 recommendations, determinations, and oversight activities; and

86 8. To undertake any other duties as reasonably necessary for the board to effectuate its lawful
87 purpose as provided for in this section to effectively oversee the law-enforcement agencies as authorized
88 by the locality.

89 C. The locality shall establish the policies and procedures for the performance of duties by the board
90 as set forth in this section. The board may hold hearings and, if after making a good faith effort to
91 obtain, voluntarily, the attendance of witnesses and the production of books, papers, and other evidence
92 necessary to perform its duties the board or auditor is unable to obtain such attendance or production,
93 it may apply to the circuit court for the locality for a subpoena compelling the attendance of such
94 witness or the production of such books, papers, and other evidence, and the court may, upon good
95 cause shown, cause the subpoena to be issued. Any person so subpoenaed may apply to the court that
96 issued such subpoena to quash it.

97 D. Any person currently employed by a law-enforcement agency is ineligible to serve on a civilian
98 review board established pursuant to this section.

99 E. A law-enforcement officer who is subject to a binding disciplinary determination may file a
100 grievance requesting a final hearing in accordance with § 15.2-1507, provided that such matter is a
101 qualifying grievance under the locality's grievance procedures.

102 F. A civilian review board may retain legal counsel to represent the board in all cases, hearings,
103 controversies, or matters involving the interests of the board. Such counsel shall be paid from the funds
104 of the locality.

105 **§ 15.2-1507. Provision of grievance procedure; training programs.**

106 A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to
107 certify it as provided in this section, the local governing body shall be deemed to have adopted a
108 grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2
109 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The
110 locality shall provide its employees with copies of the applicable grievance procedure upon request. The
111 term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or
112 fringe benefits.

113 Each grievance procedure, and each amendment thereto, in order to comply with this section, shall
114 be certified in writing to be in compliance by the city, town, or county attorney, and the chief
115 administrative officer of the locality, and such certification filed with the clerk of the circuit court
116 having jurisdiction in the locality in which the procedure is to apply. Local government grievance
117 procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter,
118 unless certified and filed as provided above within a shorter time period.

119 Each grievance procedure shall include the following components and features:

120 1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to

his employment, including (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in clause (iii) of subdivision 2; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, or status as a veteran; and (iv) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of clause (iv), there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification, or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity that may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means, and personnel by which work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment, and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi), the action shall be upheld upon a showing by the local government that (a) there was a valid business reason for the action and (b) the employee was notified of the reason in writing prior to the effective date of the action.

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

- (1) Appointees of elected groups or individuals;
- (2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
- (3) Deputies and executive assistants to the chief administrative officer of a locality;
- (4) Agency heads or chief executive officers of government operations;
- (5) Employees whose terms of employment are limited by law;
- (6) Temporary, limited term and seasonal employees;
- (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 § 9.1-601

whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance relates to a binding disciplinary determination of a law-enforcement civilian review board established pursuant to § 9.1-601, except as permitted by subsection E of § 9.1-601.

b. Notwithstanding the exceptions set forth in subdivision a, local governments, at their sole discretion, may voluntarily include employees in any of the excepted categories within the coverage of their grievance procedures.

c. The chief administrative officer of each local government, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

4. Grievance procedure availability and coverage for employees of community services boards, redevelopment and housing authorities, and regional housing authorities. Employees of community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance procedure established and administered by the department, board or authority that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations promulgated pursuant thereto. If a department, board or authority fails to establish a grievance procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure that is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant

182 thereto for so long as it remains in noncompliance.

183 5. General requirements for procedures.

184 a. Each grievance procedure shall include not more than four steps for airing complaints at
185 successively higher levels of local government management, and a final step providing for a panel
186 hearing or a hearing before an administrative hearing officer upon the agreement of both parties.

187 b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to
188 submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

189 c. Nothing contained in this section shall prohibit a local government from granting its employees
190 rights greater than those contained herein, provided such grant does not exceed or violate the general
191 law or public policy of the Commonwealth.

192 6. Time periods.

193 a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability
194 of the parties to prepare for a fair consideration of the issues of concern.

195 b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event
196 giving rise to the grievance, but local governments may, at their option, allow a longer time period.

197 c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant
198 than the time that is allowed for local government response in each comparable situation.

199 d. Time frames may be extended by mutual agreement of the local government and the grievant.

200 7. Compliance.

201 a. After the initial filing of a written grievance, failure of either party to comply with all substantial
202 procedural requirements of the grievance procedure, including the panel or administrative hearing,
203 without just cause shall result in a decision in favor of the other party on any grievable issue, provided
204 the party not in compliance fails to correct the noncompliance within five workdays of receipt of written
205 notification by the other party of the compliance violation. Such written notification by the grievant shall
206 be made to the chief administrative officer, or his designee.

207 b. The chief administrative officer, or his designee, at his option, may require a clear written
208 explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his
209 designee, shall determine compliance issues. Compliance determinations made by the chief
210 administrative officer shall be subject to judicial review by filing petition with the circuit court within
211 30 days of the compliance determination.

212 8. Management steps.

213 a. The first step shall provide for an informal, initial processing of employee complaints by the
214 immediate supervisor through a nonwritten, discussion format.

215 b. Management steps shall provide for a review with higher levels of local government authority
216 following the employee's reduction to writing of the grievance and the relief requested on forms
217 supplied by the local government. Personal face-to-face meetings are required at all of these steps.

218 c. With the exception of the final management step, the only persons who may normally be present
219 in the management step meetings are the grievant, the appropriate local government official at the level
220 at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be
221 present only while actually providing testimony. At the final management step, the grievant, at his
222 option, may have present a representative of his choice. If the grievant is represented by legal counsel,
223 local government likewise has the option of being represented by counsel.

224 9. Qualification for panel or administrative hearing.

225 a. Decisions regarding grievability and access to the procedure shall be made by the chief
226 administrative officer of the local government, or his designee, at any time prior to the panel hearing, at
227 the request of the local government or grievant, within 10 calendar days of the request. No city, town,
228 or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of
229 grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative
230 officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction
231 in the locality in which the grievant is employed for a hearing on the issue of whether the grievance
232 qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or
233 his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative
234 officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all
235 other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall
236 transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief
237 administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished
238 to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his
239 designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the
240 grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on
241 or before a certain date.

242 b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear
243 the appeal on the record transmitted by the chief administrative officer or his designee and such

additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the chief administrative officer or his designee, or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

10. Final hearings.

a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative hearing officer, as set forth in the locality's grievance procedure, as described below:

(1) If the grievance procedure adopted by the local governing body provides that the final step shall be an impartial panel hearing, the panel may, with the exception of those local governments covered by subdivision a (2) of this subsection, consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

(2) If the grievance procedure adopted by the local governing body provides for the final step to be an impartial panel hearing, local governments may retain the panel composition method previously approved by the Department of Human Resource Management and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) When a local government elects to use an administrative hearing officer rather than a three-person panel for the final step in the grievance procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the local government may request the appointment of an administrative hearing officer from the Department of Human Resource Management. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) When the local government uses a panel in the final step of the procedure, there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or hearing officer without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel or hearing officer shall be final and binding and shall be consistent with provisions of law and written policy.

(7) The question of whether the relief granted by a panel or hearing officer is consistent with written policy shall be determined by the chief administrative officer of the local government, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending.

b. Rules for panel and administrative hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules that are promulgated shall include the following provisions:

(1) That neither the panels nor the hearing officer have authority to formulate policies or procedures or to alter existing policies or procedures;

(2) That panels and the hearing officer have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private;

(3) That the local government provide the panel or hearing officer with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel

305 or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing,
306 shall be allowed access to and copies of all relevant files intended to be used in the grievance
307 proceeding;

308 (4) That panels and hearing officers have the authority to determine the admissibility of evidence
309 without regard to the burden of proof, or the order of presentation of evidence, so long as a full and
310 equal opportunity is afforded to all parties for the presentation of their evidence;

311 (5) That all evidence be presented in the presence of the panel or hearing officer and the parties,
312 except by mutual consent of the parties;

313 (6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing
314 officer in advance of the hearing;

315 (7) That the majority decision of the panel or the decision of the hearing officer, acting within the
316 scope of its or his authority, be final, subject to existing policies, procedures and law;

317 (8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

318 (9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that
319 the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do
320 not necessarily apply.

321 11. Implementation of final hearing decisions.

322 Either party may petition the circuit court having jurisdiction in the locality in which the grievant is
323 employed for an order requiring implementation of the hearing decision.

324 B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under
325 the provisions of this section that would result in the reinstatement of any employee of a sheriff's office,
326 who has been terminated for cause may be reviewed by the circuit court for the locality upon the
327 petition of the locality. The review of the circuit court shall be limited to the question of whether the
328 decision of the panel or hearing officer was consistent with provisions of law and written policy.

329 **§ 30-34.2:1. Powers, duties and functions of Capitol Police.**

330 A. The Capitol Police may exercise within the limits of the Capitol Square, when assigned to any
331 other property owned, leased, or controlled by the Commonwealth or any agency, department,
332 institution, or commission thereof, and pursuant to the provisions of §§ 15.2-1724, 15.2-1726, and
333 15.2-1728 all the powers, duties, and functions that are exercised by the police of the city or the police
334 or sheriff of the county within which such property is located.

335 B. The jurisdiction of the Capitol Police shall further extend 300 feet beyond the boundary of any
336 property they are required to protect, such jurisdiction to be concurrent with that of other
337 law-enforcement officers of the locality in which such property is located.

338 C. The Capitol Police shall also have concurrent jurisdiction with law-enforcement officers of the
339 City of Richmond. In addition, a Capitol Police officer who is a detector canine handler shall have
340 concurrent jurisdiction with the law-enforcement officers of any city or county that has requested the
341 assistance of the Capitol Police in the detection of firearms, ammunition, explosives, propellants, or
342 incendiaries.

343 D. In any case involving the theft or misappropriation of the personal property of any member or
344 employee of the General Assembly, the Capitol Police shall have concurrent jurisdiction with
345 law-enforcement officers of any county contiguous to the City of Richmond. Members of the Capitol
346 Police when assigned to accompany the Governor or Governor-elect, members of the Governor's family,
347 the Lieutenant Governor or Lieutenant Governor-elect, the Attorney General or Attorney General-elect,
348 members of the General Assembly, or members of the Supreme Court or Court of Appeals of Virginia,
349 or when directed to serve a summons issued by the Clerk of the Senate or the Clerk of the House of
350 Delegates, a joint committee or commission thereof, or any committee of either house, shall be vested
351 with all the powers and authority of a law-enforcement officer of any city or county in which they are
352 required to be. All members of the Capitol Police shall be subject to the provisions of § 2.2-1202.1 and
353 Chapter 5 (§ 9.1-500 et seq.) of Title 9.1.

354 E. The assignment of jurisdiction to any property pursuant to this section shall be approved by the
355 Legislative Support Commission.

356 F. The Division of Capitol Police shall have the authority to enter into contracts or agreements
357 necessary or incidental to the performance of its duties.

358 **§ 40.1-51.4:4. Prohibition of use of polygraphs in certain employment situations.**

359 A. As used in this section, the term "lie detector test" means any test utilizing a polygraph or any
360 other device, mechanism or instrument which is operated, or the results of which are used or interpreted
361 by an examiner for the purpose of purporting to assist in or enable the detection of deception, the
362 verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an
363 individual.

364 B. Notwithstanding the provisions of § 40.1-2.1, it shall be unlawful for any law-enforcement agency
365 as defined in § 9.1-500 the Department of State Police, the Division of Capitol Police, the Virginia
366 Marine Resources Commission, the Virginia Port Authority, the Department of Wildlife Resources, the

Virginia Alcoholic Beverage Control Authority, the Department of Conservation and Recreation, or the Department of Motor Vehicles or the police department of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth or a regional jail to require any employee to submit to a lie detector test, or to discharge, demote, or otherwise discriminate against any employee for refusal or failure to take a lie detector test, except that the chief executive officer of a law-enforcement agency or the superintendent of a regional jail may, by written directive, require an employee to submit to a lie detector test related to a particular internal administrative investigation concerning allegations of misconduct or criminal activity. No employee required to submit to a lie detector test shall be discharged, demoted or otherwise discriminated against solely on the basis of the results of the lie detector test.

C. Any person who believes that he has been discharged, demoted or otherwise discriminated against by any person in violation of this section may, within 90 days after such alleged violation occurs, file a complaint with the Commissioner. Upon a finding by the Commissioner of a violation of this section, the Commissioner shall order, in the event of discharge or demotion, reinstatement of such person to his former position with back pay plus interest at a rate not to exceed eight percent per annum. Such orders of the Commissioner which have become final under the Virginia Administrative Process Act (§ 2.2-4000 et seq.) may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. The Commissioner, or his authorized representative, shall have the right to petition circuit court for injunctive or such other relief as may be necessary for enforcement of this section. No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of the complaint, pleadings, or other papers in any action authorized by this section.

D. The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be submitted, referenced, referred to, offered or presented in any manner in any proceeding conducted pursuant to § 2.2-1202.1 or conducted by any county, city or town except as to disciplinary or other actions taken against a polygrapher.

§ 44-123.3. Fort Pickett Police; powers; duties; functions.

There is hereby established within the Department of Military Affairs the Fort Pickett Police Department. The Fort Pickett Police may exercise within the limits of the Fort Pickett Reservation and, when assigned to any other property owned or controlled by the Commonwealth or any agency, department, institution or commission thereof, all the powers, duties and functions that are exercised by the police of the city, or the police or sheriff of the county within which said property is located. The jurisdiction of the Fort Pickett Police shall further extend 300 feet beyond the boundary of any property they are required to protect, such jurisdiction to be concurrent with that of other law-enforcement officers of the locality in which such property is located. The Fort Pickett Police shall refer any complaint which alleges a felony violation to the Virginia State Police or the sheriff of the appropriate jurisdiction who, in cooperation with the Fort Pickett Police, shall conduct an investigation if an investigation is warranted. All members of the Fort Pickett Police shall be subject to the provisions of § 2.2-1202.1 and Chapter 5 (§ 9.1-500 et seq.) of Title 9.1. The Fort Pickett Police Department shall be under the supervision of the Adjutant General, or his designee. The pay structure for the officers and supervisors of the Fort Pickett Police Department shall be the same as that set by the Compensation Board for sheriffs' offices.

2. That Chapter 5 (§§ 9.1-500 through 9.1-507) of Title 9.1 and § 15.2-723 of the Code of Virginia are repealed.