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HOUSE BILL NO. 1941

Offered January 13, 2021

Prefiled January 11, 2021

A BILL to amend and reenact §§ 2.2-3713 and 16.1-77 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 6 of Title 9.1 a section numbered 9.1-602, relating to required release of video or audio recording; discharge of firearm or use of stun weapon or chemical irritant by law-enforcement officer.

Patrons—Rasoul, Adams, D.M., Aird, Carter, Cole, J.G., Hope, Kory, Plum, Samirah, Scott and Simon;
Senator: Lucas

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3713 and 16.1-77 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 9.1-602 as follows:

§ 2.2-3713. Proceedings for enforcement.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter *or* § 9.1-602 may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. However, if the petition or the affidavit supporting the petition for mandamus or injunction alleges violations of the open meetings requirements of this chapter, the three-day notice to the party against whom the petition is brought shall not be required. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter *or* § 9.1-602. A single instance of denial of the rights and privileges conferred by this chapter *or* § 9.1-602 shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter *or* § 9.1-602, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorney fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter *or* § 9.1-602, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

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58 F. Failure by any person to request and receive notice of the time and place of meetings as provided
59 in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this
60 chapter.

61 **§ 9.1-602. Required release of video or audio recording; discharge of firearm or use of stun**
62 **weapon or chemical irritant by law-enforcement officer.**

63 A. As used in this section, "chemical irritant" includes tear gas, mustard gas, phosgene gas, or other
64 noxious or nauseating gases or mixtures of chemicals designed to produce, and capable of producing,
65 vile or injurious or nauseating odors or gases.

66 B. Whenever a law-enforcement officer as defined in § 9.1-101 (i) discharges a firearm or (ii) uses a
67 stun weapon as defined in § 18.2-308.1 or chemical irritant on a person resulting in death or serious
68 bodily injury, any video or audio recording that relates to such incident produced or obtained by a
69 law-enforcement officer shall be open to inspection and available for release and posted on a website
70 that is maintained by the law-enforcement agency or on any other website on which the law-enforcement
71 agency generally posts information and that is available to the public or that clearly describes how the
72 public may access such data within 15 days of producing or obtaining such video or audio recording,
73 unless:

74 1. The release of the video or audio recording is likely to jeopardize an ongoing investigation or
75 prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the
76 destruction of evidence, in which case such video or audio recording may be withheld until such
77 damage is no longer likely to occur from release of the video or audio recording.

78 2. The release of the video or audio recording would jeopardize the safety or privacy of any person
79 depicted in the recording, in which case the law-enforcement agency shall, if possible, use redaction
80 technology, including blurring or distorting images or audio, to obscure those specific portions of the
81 recording that jeopardize any person's safety or privacy. However, the redaction shall not interfere with
82 the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording,
83 and the recording shall not otherwise be edited or altered. If the safety or privacy of a person depicted
84 in the recording cannot adequately be protected through redaction and the interest in protecting such
85 person's safety or privacy outweighs the public interest in release, such video or audio recording may
86 be withheld.

87 3. The release of the video or audio recording would result in disclosure of information prohibited
88 or restricted under § 19.2-11.2.

89 C. Any person denied the rights and privileges conferred by this section may proceed to enforce such
90 rights and privileges by filing a petition for mandamus or injunction pursuant to § 2.2-3713 of the
91 Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

92 **§ 16.1-77. Civil jurisdiction of general district courts; amending amount of claim.**

93 Except as provided in Article 5 (§ 16.1-122.1 et seq.), each general district court shall have, within
94 the limits of the territory it serves, civil jurisdiction as follows:

95 (1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or
96 other money, or to damages for breach of contract or for injury done to property, real or personal, or for
97 any injury to the person that would be recoverable by action at law or suit in equity, when the amount
98 of such claim does not exceed \$4,500 exclusive of interest and any attorney fees, and concurrent
99 jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the
100 amount thereof exceeds \$4,500 but does not exceed \$25,000, exclusive of interest and any attorney fees.
101 However, this \$25,000 limit shall not apply with respect to distress warrants under the provisions of
102 § 8.01-130.4, cases involving liquidated damages for violations of vehicle weight limits pursuant to §
103 46.2-1135, nor cases involving forfeiture of a bond pursuant to § 19.2-143. While a matter is pending in
104 a general district court, upon motion of the plaintiff seeking to increase the amount of the claim, the
105 court shall order transfer of the matter to the circuit court that has jurisdiction over the amended amount
106 of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and
107 the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by
108 the transfer. Except for good cause shown, no such order of transfer shall issue unless the motion to
109 amend and transfer is made at least 10 days before trial. The plaintiff shall pay filing and other fees as
110 otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall
111 process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of
112 transfer to the transferring court for entry, after which time the case shall be removed from the pending
113 docket of the transferring court and the order of transfer placed among its records. The plaintiff shall
114 provide a certified copy of the transfer order to the receiving court.

115 (2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not
116 exceed \$25,000 exclusive of interest and any attorney fees.

117 (3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.)
118 of Chapter 3 of Title 8.01, and in Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1, and the maximum
119 jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or

cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code.

(5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the disposition of an earnest money deposit pursuant to a real estate purchase contract. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment, by warrant in debt, or by other uniform court form established by the Supreme Court of Virginia. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), *including cases to enforce rights and privileges conferred by § 9.1-602*, or § 2.2-3809 of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), for writs of mandamus or for injunctions.

(7) Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate habitual offenders pursuant to the provisions of Article 9 (§ 46.2-355.1 et seq.) of Chapter 3 of Title 46.2.

(8) Jurisdiction to try and decide any cases pursuant to § 55.1-1819 of the Property Owners' Association Act (§ 55.1-1800 et seq.) or § 55.1-1959 of the Virginia Condominium Act (§ 55.1-1900 et seq.).

(9) Concurrent jurisdiction with the circuit courts to submit matters to arbitration pursuant to Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 where the amount in controversy is within the jurisdictional limits of the general district court. Any party that disagrees with an order by a general district court granting an application to compel arbitration may appeal such decision to the circuit court pursuant to § 8.01-581.016.

For purposes of this section, the territory served by a county general district court expressly authorized by statute to be established in a city includes the general district court courtroom.