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HOUSE BILL NO. 845**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Appropriations
on February 7, 2020)

(Patron Prior to Substitute—Delegate Krizek)

A BILL to amend and reenact §§ 9.1-101 and 9.1-400 of the Code of Virginia and to amend the Code of Virginia by adding in Title 33.2 a chapter numbered 31.02, consisting of a section numbered 33.2-3100.2, relating to definition of law-enforcement officer; certain employees of the Washington Metropolitan Area Transit Authority.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101 and 9.1-400 of the Code of Virginia are amended and reenacted and that the Code of Virginia be amended by adding in Title 33.2 a chapter numbered 31.02, consisting of a section numbered 33.2-3100.2, as follows:

§ 9.1-101. Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision

60 thereof, or any full-time or part-time employee of a private police department, and who is responsible
61 for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of
62 the Commonwealth, and ~~shall include~~ *includes* any (i) special agent of the Virginia Alcoholic Beverage
63 Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the
64 Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the
65 enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a sworn
66 member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of
67 Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the
68 enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii)
69 animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer
70 appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the
71 investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate
72 allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee
73 with internal investigations authority designated by the Department of Corrections pursuant to
74 subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of
75 § 66-3; ~~or~~ (xii) private police officer employed by a private police department; *or (xiii) special agent*
76 *employed by the Washington Metropolitan Area Transit Authority Office of the Inspector General.*
77 Part-time employees are those compensated officers who are not full-time employees as defined by the
78 employing police department, sheriff's office, or private police department.

79 "Private police department" means any police department, other than a department that employs
80 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
81 authorized by statute or an act of assembly to establish a private police department or such entity's
82 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
83 to operate a private police department or represent that it is a private police department unless such
84 entity has been authorized by statute or an act of assembly or such entity is the successor in interest of
85 an entity that has been authorized pursuant to this section, provided it complies with the requirements
86 set forth herein. The authority of a private police department shall be limited to real property owned,
87 leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous
88 property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the
89 local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The
90 chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum
91 of understanding with the private police department that addresses the duties and responsibilities of the
92 private police department and the chief law-enforcement officer in the conduct of criminal investigations.
93 Private police departments and private police officers shall be subject to and comply with the
94 Constitution of the United States; the Constitution of Virginia; the laws governing municipal police
95 departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721,
96 and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable
97 to private police departments. Any person employed as a private police officer pursuant to this section
98 shall meet all requirements, including the minimum compulsory training requirements, for
99 law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits
100 under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a
101 "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of
102 the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an
103 employee of the Commonwealth or any locality. An authorized private police department may use the
104 word "police" to describe its sworn officers and may join a regional criminal justice academy created
105 pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in
106 existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and
107 whose status as a private police department was recognized by the Department at that time is hereby
108 validated and may continue to operate as a private police department as may such entity's successor in
109 interest, provided it complies with the requirements set forth herein.

110 "School resource officer" means a certified law-enforcement officer hired by the local
111 law-enforcement agency to provide law-enforcement and security services to Virginia public elementary
112 and secondary schools.

113 "School security officer" means an individual who is employed by the local school board or a private
114 or religious school for the singular purpose of maintaining order and discipline, preventing crime,
115 investigating violations of the policies of the school board or the private or religious school, and
116 detaining students violating the law or the policies of the school board or the private or religious school
117 on school property, school buses, or at school-sponsored events and who is responsible solely for
118 ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned
119 school.

120 "Unapplied criminal history record information" means information pertaining to criminal offenses
121 submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history

record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.

§ 9.1-400. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

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

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, in the line of duty as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, 65.2-402, and 65.2-402.1 if his position is covered by the applicable statute, as a law-enforcement officer of the Commonwealth or any of its political subdivisions, except employees designated pursuant to § 53.1-10 to investigate allegations of criminal behavior affecting the operations of the Department of Corrections, employees designated pursuant to § 66-3 to investigate allegations of criminal behavior affecting the operations of the Department of Juvenile Justice, *special agents employed by the Washington Metropolitan Area Transit Authority Office of the Inspector General*, and members of the investigations unit of the State Inspector General designated pursuant to § 2.2-311 to investigate allegations of criminal behavior affecting the operations of a state or nonstate agency; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or emergency medical services agency that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town, including a person with a recognized membership status with such fire company or department who is enrolled in a Fire Service Training course offered by the Virginia Department of Fire Programs or any fire company or department training required in pursuit of qualification to become a certified firefighter; a member of any fire company providing fire protection services for facilities of the Virginia National Guard or the Virginia Air National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Authority; any regular or special conservation police officer who receives compensation from a county, city, or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28; any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § 44-146.16, that has been or is later declared to exist under the authority of the Governor in accordance with § 44-146.28 or a local emergency, as defined in § 44-146.16, declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217.

"Disabled person" means any individual who has been determined to be mentally or physically incapacitated so as to prevent the further performance of his duties at the time of his disability where such incapacity is likely to be permanent, and whose incapacity occurs in the line of duty as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, 65.2-402, and 65.2-402.1 if his position is covered by the applicable statute, in any position listed in the definition of deceased person in this section. "Disabled person" does not include any individual who has been determined to be no longer disabled pursuant to subdivision A 2 of § 9.1-404. "Disabled person" includes any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Eligible dependent" for purposes of continued health insurance pursuant to § 9.1-401 means the natural or adopted child or children of a deceased person or disabled person or of a deceased or disabled person's eligible spouse, provided that any such natural child is born as the result of a pregnancy that occurred prior to the time of the employee's death or disability and that any such adopted child is (i) adopted prior to the time of the employee's death or disability or (ii) adopted after the employee's death

183 or disability if the adoption is pursuant to a preadoptive agreement entered into prior to the death or
184 disability. Eligibility will continue until the end of the year in which the eligible dependent reaches age
185 26 or when the eligible dependent ceases to be eligible based on the Virginia Administrative Code or
186 administrative guidance as determined by the Department of Human Resource Management.

187 "Eligible spouse" for purposes of continued health insurance pursuant to § 9.1-401 means the spouse
188 of a deceased person or a disabled person at the time of the death or disability. Eligibility will continue
189 until the eligible spouse dies, ceases to be married to a disabled person, or in the case of the spouse of a
190 deceased person, dies, remarries on or after July 1, 2017, or otherwise ceases to be eligible based on the
191 Virginia Administrative Code or administrative guidance as determined by the Department of Human
192 Resource Management.

193 "Employee" means any person who would be covered or whose spouse, dependents, or beneficiaries
194 would be covered under the benefits of this chapter if the person became a disabled person or a
195 deceased person.

196 "Employer" means (i) the employer of a person who is a covered employee or (ii) in the case of a
197 volunteer who is a member of any fire company or department or rescue squad described in the
198 definition of "deceased person," the county, city, or town that by ordinance or resolution recognized
199 such fire company or department or rescue squad as an integral part of the official safety program of
200 such locality.

201 "Fund" means the Line of Duty Death and Health Benefits Trust Fund established pursuant to
202 § 9.1-400.1.

203 "Line of duty" means any action the deceased or disabled person was obligated or authorized to
204 perform by rule, regulation, condition of employment or service, or law.

205 "LODA Health Benefit Plans" means the separate health benefits plans established pursuant to
206 § 9.1-401.

207 "Nonparticipating employer" means any employer that is a political subdivision of the
208 Commonwealth that elected to directly fund the cost of benefits provided under this chapter and not
209 participate in the Fund.

210 "Participating employer" means any employer that is a state agency or is a political subdivision of
211 the Commonwealth that did not make an election to become a nonparticipating employer.

212 "VRS" means the Virginia Retirement System.

213 *CHAPTER 31.02.*

214 *SPECIAL AGENTS OF THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY OFFICE OF*
215 *THE INSPECTOR GENERAL.*

216 **§ 33.2-3100.2. Law-enforcement authority of certain agents.**

217 *In their capacity as law-enforcement officers, special agents employed by the Washington*
218 *Metropolitan Area Transit Authority Office of the Inspector General shall have the same authority and*
219 *power as sheriffs throughout the Commonwealth to enforce the laws of the Commonwealth.*