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SENATE BILL NO. 1361

Offered January 13, 2021

Prefiled January 13, 2021

A BILL to amend and reenact § 9.1-601, as it shall become effective, of the Code of Virginia, relating to law-enforcement civilian oversight bodies.

Patron—Reeves

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-601, as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 9.1-601. (Effective July 1, 2021) Law-enforcement civilian oversight bodies.

A. 1. As used in this section, unless the context requires a different meaning:

"Law-enforcement agency" means a police department established pursuant to § 15.2-1701 or a campus police department of any public institution of higher education of the Commonwealth employing a law-enforcement officer established pursuant to § 23.1-809.

"Law-enforcement officer" means any person, other than a chief of police, who in his official capacity (i) is authorized by law to make arrests and (ii) is a nonprobationary officer of a police department, bureau, or force of any political subdivision, or a 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. "Law-enforcement officer" does not include a sheriff or deputy sheriff or any law-enforcement officer who has rights afforded to him pursuant to the provisions of Chapter 5 (§ 9.1-500 et seq.).

"Locality" shall be construed to mean a county or city as the context may require.

2. For the purposes of this section, a "law-enforcement agency serving under the authority of the locality" shall be construed to mean any law-enforcement agency established within the boundaries of a locality, including any town police departments or any campus police departments of any public institution of higher education of the Commonwealth established within such boundaries.

B. The governing body of a locality may establish a law-enforcement civilian oversight body. Any law-enforcement civilian oversight body established by the governing body of a locality shall reflect the demographic diversity of the locality.

C. A law-enforcement civilian oversight body established pursuant to this section may have the following duties regarding any law-enforcement agency established within the boundaries of such locality:

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

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

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

4. To investigate policies, practices, and procedures of law-enforcement agencies serving under the authority of the locality and to make recommendations regarding changes to such policies, practices, and procedures. If the law-enforcement agency declines to implement any changes recommended by the law-enforcement civilian oversight body, such law-enforcement civilian oversight body may require the law-enforcement agency to create a written record, which shall be made available to the public, of its rationale for declining to implement a recommendation of the law-enforcement civilian oversight body;

5. To review all investigations conducted internally by law-enforcement agencies serving under the authority of the locality, including internal investigations of civilians employed by such law-enforcement

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59 agencies, and to issue findings regarding the accuracy, completeness, and impartiality of such
60 investigations and the sufficiency of any discipline resulting from such investigations;

61 6. To request reports of the annual expenditures of the law-enforcement agencies serving under the
62 authority of the locality and to make budgetary recommendations to the governing body of the locality
63 concerning future appropriations;

64 7. To make public reports on the activities of the law-enforcement civilian oversight body, including
65 investigations, hearings, findings, recommendations, determinations, and oversight activities; and

66 8. To undertake any other duties as reasonably necessary for the law-enforcement civilian oversight
67 body to effectuate its lawful purpose as provided for in this section to effectively oversee the
68 law-enforcement agencies serving under the authority of the locality; *however, a law-enforcement*
69 *civilian oversight body shall not have the authority to award or order financial restitution.*

70 D. The governing body of the locality shall establish the policies and procedures for the performance
71 of duties by the law-enforcement civilian oversight body as set forth in this section, *including the*
72 *redaction of personal identifying information for law-enforcement personnel from all public reports*
73 *made by the law-enforcement civilian oversight body.* The law-enforcement civilian oversight body may
74 hold hearings and, if after making a good faith effort to obtain, voluntarily, the attendance of witnesses
75 and the production of books, papers, and other evidence necessary to perform its duties the
76 law-enforcement civilian oversight body is unable to obtain such attendance or production, it may apply
77 to the circuit court for the locality for a subpoena compelling the attendance of such witness or the
78 production of such books, papers, and other evidence, and the court may, upon good cause shown, cause
79 the subpoena to be issued. Any person so subpoenaed may apply to the court that issued such subpoena
80 to quash it.

81 E. *Any person appointed to a law-enforcement civilian oversight body shall be a citizen of the United*
82 *States, shall reside in the jurisdiction that he is appointed to serve, and shall not have a criminal*
83 *record. Such persons appointed shall be required to complete (i) a Citizen's Law Enforcement or Police*
84 *Academy with a basic firearms instruction course conducted by an accredited law-enforcement agency*
85 *and (ii) one daytime and one nighttime ride-along with each agency that serves under the authority of*
86 *the locality.*

87 A law-enforcement civilian oversight body shall include at least two members who have specialized
88 knowledge in law-enforcement activities or operations. Such members may be retired law-enforcement
89 officers appointed in accordance with subsection F.

90 F. Any person currently employed as a law-enforcement officer as defined in § 9.1-101 is ineligible
91 to serve on a law-enforcement civilian oversight body established pursuant to this section; however, a
92 retired law-enforcement officer may serve on such law-enforcement civilian oversight body as an
93 advisory, nonvoting ex officio member. Such retired law-enforcement officer shall not have been
94 previously employed as a law-enforcement officer by a law-enforcement agency established within the
95 boundaries of such locality but shall have been employed as a law-enforcement officer as defined in
96 § 9.1-101 in a locality that is similar to the locality that established such law-enforcement civilian
97 oversight body.

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

101 G. H. A law-enforcement civilian oversight body may retain legal counsel to represent such oversight
102 body in all cases, hearings, controversies, or matters involving the interests of the oversight body. Such
103 counsel shall be paid from funds appropriated by the locality.