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HOUSE BILL NO. 1501

House Amendments in [] - January 25, 2023

A BILL to amend and reenact § 9.1-601 of the Code of Virginia, relating to law-enforcement civilian oversight bodies; requirements.

Patron Prior to Engrossment—Delegate Runion

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-601 of the Code of Virginia is amended and reenacted as follows:

§ 9.1-601. 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. If any law-enforcement agency declines to implement a disciplinary determination recommended by the law-enforcement civilian oversight body, such law-enforcement agency shall be required to create a written record, which shall be made available to the public within 30 days from the date such recommendation was reported to such law-enforcement agency, of its rationale for declining to implement such recommendation;

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;

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

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

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

68 8. To undertake any other duties as reasonably necessary for the law-enforcement civilian oversight
69 body to effectuate its lawful purpose as provided for in this section to effectively oversee the
70 law-enforcement agencies serving under the authority of the locality.

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

80 E. Any person currently employed as a law-enforcement officer as defined in § 9.1-101 is ineligible
81 to serve on a law-enforcement civilian oversight body established pursuant to this section; ~~however, a~~
82 *At least one* retired law-enforcement officer ~~may~~ *shall* serve on such law-enforcement civilian oversight
83 body as ~~an advisory, nonvoting ex officio~~ *a voting* member. Such retired law-enforcement officer shall
84 not have been previously employed as a law-enforcement officer by a law-enforcement agency
85 established within the boundaries of such locality but shall have been employed as a law-enforcement
86 officer as defined in § 9.1-101 in a locality that is similar to the locality that established such
87 law-enforcement civilian oversight body.

88 F. A law-enforcement officer who is subject to a [~~binding~~] disciplinary determination may file a
89 grievance requesting a final hearing in accordance with § 15.2-1507, provided that such matter is a
90 qualifying grievance under the locality's grievance procedures.

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

94 *H. Any person serving as a voting member of a civilian oversight body shall be required to observe*
95 *a law-enforcement officer as defined in § 9.1-101 who is employed by a law-enforcement agency*
96 *established within the boundaries of the locality that established such law-enforcement civilian oversight*
97 *body while such law-enforcement officer is engaged in his official duties. Such observation shall (i)*
98 *occur within 90 days of the member's appointment to the civilian oversight body, (ii) total no fewer than*
99 *24 hours, and (iii) include a ride-along with a law-enforcement officer in the performance of his official*
100 *duties.*