

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 9.1-102 of the Code of Virginia, relating to use of confidential informants in drug-related investigations.

[H 1140]

Approved

Be it enacted by the General Assembly of Virginia:**1. That § 9.1-102 of the Code of Virginia is amended and reenacted as follows:****§ 9.1-102. Powers and duties of the Board and the Department.**

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions and (ii) temporary or probationary status and establish the time required for completion of such training. Such compulsory minimum training standards shall include crisis intervention training in accordance with clause (i) of § 9.1-188;

3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;

4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;

5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;

6. [Repealed];

7. Establish compulsory minimum entry-level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120, and to establish the time required for completion of such training;

8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time required for the completion of such training;

9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as deputy sheriffs and jail officers by local criminal justice agencies and correctional officers employed by the Department of Corrections under the provisions of Title 53.1. For deputy sheriffs and jail officers who are employees of local or regional correctional facilities and correctional officers employed by the Department of Corrections, such standards shall include training on the general care of pregnant women, the impact of restraints on pregnant inmates and fetuses, the impact of being placed in restrictive housing or solitary confinement on pregnant inmates, and the impact of body cavity searches on pregnant inmates;

10. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988. Such training shall include training in the identification of, communication with, and facilitation of the safe return of individuals diagnosed with Alzheimer's disease and dementia, which shall include (i) techniques for respectful and effective communication with individuals with Alzheimer's disease and dementia and their caregivers; (ii) techniques for addressing the behavioral symptoms of Alzheimer's disease and dementia, including alternatives to physical restraint; (iii) protocols for identifying and reporting incidents of abuse, neglect, and exploitation of individuals with Alzheimer's disease and dementia to adult protective services; (iv) protocols for contacting caregivers when an individual with Alzheimer's disease or dementia is found wandering or during an emergency or crisis situation; (v) a reference list of local resources available for individuals with Alzheimer's

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disease and dementia; and (vi) a reference list of local and national organizations that assist law-enforcement personnel with locating missing and wandering individuals with Alzheimer's disease and dementia and returning them to their caregivers;

11. Establish compulsory minimum training standards for all auxiliary police officers employed by or in any local or state government agency. Such training shall be graduated and based on the type of duties to be performed by the auxiliary police officers. Such training standards shall not apply to auxiliary police officers exempt pursuant to § 15.2-1731;

12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and institutions of higher education within or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

14. Establish and maintain police training programs through such agencies and institutions as the Board deems appropriate;

15. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training academies approved by the Department;

16. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

17. Make recommendations concerning any matter within its purview pursuant to this chapter;

18. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;

19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

20. Conduct audits as required by § 9.1-131;

21. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

22. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

23. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

24. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

29. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

30. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning

district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

31. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

32. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

33. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

34. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

35. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

36. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707 and provide for a decertification review process in accordance with § 15.2-1708;

37. Establish training standards and publish and periodically update model policies for law-enforcement personnel in the following subjects:

a. The handling of family abuse, domestic violence, sexual assault, and stalking cases, including standards for determining the predominant physical aggressor in accordance with § 19.2-81.3. The Department shall provide technical support and assistance to law-enforcement agencies in carrying out the requirements set forth in subsection A of § 9.1-1301;

b. The identification of, communication with, and facilitation of the safe return of individuals diagnosed with Alzheimer's disease and dementia, which shall include (i) techniques for respectful and effective communication with individuals with Alzheimer's disease and dementia and their caregivers; (ii) techniques for addressing the behavioral symptoms of Alzheimer's disease and dementia, including alternatives to physical restraint; (iii) protocols for identifying and reporting incidents of abuse, neglect, and exploitation of individuals with Alzheimer's disease and dementia to adult protective services; (iv) protocols for contacting caregivers when an individual with Alzheimer's disease or dementia is found wandering or during an emergency or crisis situation; (v) a reference list of local resources available for individuals with Alzheimer's disease and dementia; and (vi) a reference list of local and national organizations that assist law-enforcement personnel with locating missing and wandering individuals with Alzheimer's disease and dementia and returning them to their caregivers;

c. Sensitivity to and awareness of systemic and individual racism, cultural diversity, and the potential for racially biased policing and bias-based profiling as defined in § 52-30.1, which shall include recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder, or developmental or cognitive disability;

d. Protocols for local and regional sexual assault and human trafficking response teams;

e. Communication of death notifications;

f. The questioning of individuals suspected of driving while intoxicated concerning the physical location of such individual's last consumption of an alcoholic beverage and the communication of such information to the Virginia Alcoholic Beverage Control Authority;

g. Vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

h. Criminal investigations that embody current best practices for conducting photographic and live lineups;

i. Sensitivity to and awareness of human trafficking offenses and the identification of victims of human trafficking offenses for personnel involved in criminal investigations or assigned to vehicle or street patrol duties;

j. The recognition, prevention, and reporting of human trafficking;

k. Missing children, missing adults, and search and rescue protocol;

1. The handling and use of tear gas or other gases and kinetic impact munitions, as defined in § 19.2-83.3, that embody current best practices for using such items as a crowd control measure or during an arrest or detention of another person; and

m. The use of naloxone or other opioid antagonists to prevent opioid overdose deaths, in coordination with statewide naloxone training programs developed by the Department of Behavioral Health and Developmental Services and the Virginia Department of Health;

38. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure (i) sensitivity to and awareness of systemic and individual racism, cultural diversity, and the potential for racially biased policing and bias-based profiling as defined in § 52-30.1, which shall include recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder, or developmental or cognitive disability; (ii) training in de-escalation techniques; and (iii) training in the lawful use of force, including the use of deadly force, as defined in § 19.2-83.3, only when necessary to protect the law-enforcement officer or another person;

39. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards that strengthen and improve such programs, including sensitivity to and awareness of systemic and individual racism, cultural diversity, and the potential for racially biased policing and bias-based profiling as defined in § 52-30.1, which shall include recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder, or developmental or cognitive disability;

40. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

41. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library;

42. Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, including school security officers described in clause (b) of § 22.1-280.2:1, which training and certification shall be administered by the Virginia Center for School and Campus Safety (VCSCS) pursuant to § 9.1-184. Such training standards shall be specific to the role and responsibility of school security officers and shall include (i) relevant state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school environment; (iv) mediation and conflict resolution, including de-escalation techniques such as a physical alternative to restraint; (v) disaster and emergency response; (vi) awareness of systemic and individual racism, cultural diversity, and implicit bias; (vii) working with students with disabilities, mental health needs, substance use disorders, and past traumatic experiences; and (viii) student behavioral dynamics, including child and adolescent development and brain research. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of the standards and certification requirements in this subdivision. The Department shall require any school security officer who carries a firearm in the performance of his duties to provide proof that he has completed a training course provided by a federal, state, or local law-enforcement agency that includes training in active shooter emergency response, emergency evacuation procedure, and threat assessment;

43. License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ 9.1-185 et seq.);

44. License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.);

45. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal justice agencies regarding the investigation, registration, and dissemination of information requirements as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.);

46. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers. Such training standards shall include, but not be limited to, the role and responsibility of campus security officers, relevant state and federal laws, school and personal liability issues, security awareness in the campus environment, and disaster and emergency response. The Department shall provide technical support and assistance to campus police departments and

campus security departments on the establishment and implementation of policies and procedures, including but not limited to: the management of such departments, investigatory procedures, judicial referrals, the establishment and management of databases for campus safety and security information sharing, and development of uniform record keeping for disciplinary records and statistics, such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an advisory committee consisting of college administrators, college police chiefs, college security department chiefs, and local law-enforcement officials to assist in the development of the standards and certification requirements and training pursuant to this subdivision;

47. Assess and report, in accordance with § 9.1-190, the crisis intervention team programs established pursuant to § 9.1-187;

48. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia;

49. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of § 46.2-117;

50. Administer the activities of the Virginia Sexual and Domestic Violence Program Professional Standards Committee by providing technical assistance and administrative support, including staffing, for the Committee;

51. In accordance with § 9.1-102.1, design and approve the issuance of photo-identification cards to private security services registrants registered pursuant to Article 4 (§ 9.1-138 et seq.);

52. In consultation with the State Council of Higher Education for Virginia and the Virginia Association of Campus Law Enforcement Administrators, develop multidisciplinary curricula on trauma-informed sexual assault investigation;

53. In consultation with the Department of Behavioral Health and Developmental Services, develop a model addiction recovery program that may be administered by sheriffs, deputy sheriffs, jail officers, administrators, or superintendents in any local or regional jail. Such program shall be based on any existing addiction recovery programs that are being administered by any local or regional jails in the Commonwealth. Participation in the model addiction recovery program shall be voluntary, and such program may address aspects of the recovery process, including medical and clinical recovery, peer-to-peer support, availability of mental health resources, family dynamics, and aftercare aspects of the recovery process;

54. Establish compulsory minimum training standards for certification and recertification of law-enforcement officers serving as school resource officers. Such training shall be specific to the role and responsibility of a law-enforcement officer working with students in a school environment and shall include (i) relevant state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school environment; (iv) mediation and conflict resolution, including de-escalation techniques; (v) disaster and emergency response; (vi) awareness of systemic and individual racism, cultural diversity, and implicit bias; (vii) working with students with disabilities, mental health needs, substance use disorders, or past traumatic experiences; and (viii) student behavioral dynamics, including current child and adolescent development and brain research;

55. Establish a model policy for the operation of body-worn camera systems as defined in § 15.2-1723.1 that also addresses the storage and maintenance of body-worn camera system records;

56. Establish compulsory minimum training standards for detector canine handlers employed by the Department of Corrections, standards for the training and retention of detector canines used by the Department of Corrections, and a central database on the performance and effectiveness of such detector canines that requires the Department of Corrections to submit comprehensive information on each canine handler and detector canine, including the number and types of calls and searches, substances searched for and whether or not detected, and the number of false positives, false negatives, true positives, and true negatives;

57. Establish compulsory training standards for basic training of law-enforcement officers for recognizing and managing stress, self-care techniques, and resiliency;

58. Establish guidelines and standards for psychological examinations conducted pursuant to subsection C of § 15.2-1705;

59. Establish compulsory in-service training standards, to include frequency of retraining, for law-enforcement officers in the following subjects: (i) relevant state and federal laws; (ii) awareness of cultural diversity and the potential for bias-based profiling as defined in § 52-30.1; (iii) de-escalation techniques; (iv) working with individuals with disabilities, mental health needs, or substance use disorders; and (v) the lawful use of force, including the use of deadly force, as defined in § 19.2-83.3, only when necessary to protect the law-enforcement officer or another person;

60. Develop a model curriculum and lesson plans for the compulsory minimum entry-level, in-service, and advanced training standards to be employed by criminal justice training academies approved by the Department when conducting training;

61. Adopt statewide professional standards of conduct applicable to all certified law-enforcement officers and certified jail officers and appropriate due process procedures for decertification based on serious

misconduct in violation of those standards and provide for a decertification review process in accordance with § 15.2-1708;

62. Establish and administer a waiver process, in accordance with §§ 2.2-5515 and 15.2-1721.1, for law-enforcement agencies to use certain military property. Any waivers granted by the Criminal Justice Services Board shall be published by the Department on the Department's website;

63. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to include crisis intervention training in accordance with clause (ii) of § 9.1-188;

64. Advise and assist the Department of Behavioral Health and Developmental Services, and support local law-enforcement cooperation, with the development and implementation of the Marcus alert system, as defined in § 37.2-311.1, including the establishment of local protocols for law-enforcement participation in the Marcus alert system pursuant to § 9.1-193 and for reporting requirements pursuant to §§ 9.1-193 and 37.2-311.1;

65. Develop an online course to train hotel proprietors and their employees to recognize and report instances of suspected human trafficking;

66. Develop an online course to train unarmed security officers, armed security officers, couriers, security canine handlers, and alarm respondents to recognize and report instances of suspected human trafficking to meet the compulsory minimum, entry-level, and in-service training standards as required by § 9.1-141;

67. Establish standards and procedures for when the Board may grant a petition for reinstatement of certification of a decertified officer pursuant to subsection E of § 15.2-1708;

68. Establish compulsory minimum and in-service training standards for law-enforcement officers on communicating with individuals with an intellectual disability or a developmental disability as defined in § 37.2-100, such as autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, which shall include (i) an overview and behavioral recognition of autism spectrum disorder, (ii) best practices for crisis prevention and de-escalation techniques, (iii) an objective review of any relevant tools and technology available to assist in communication, and (iv) education on law-enforcement agency and community resources for the autism community on future crisis prevention. Such training standards shall be established in consultation with at least one individual with autism spectrum disorder, one family member of an individual with autism spectrum disorder, one specialist who works with individuals with autism spectrum disorder, one representative from the Department of Behavioral Health and Developmental Services, and one representative from a state or local law-enforcement agency;

69. Develop an online course for the Virginia Alcoholic Beverage Control Authority to offer to retail licensees and their employees to train such licensees and employees to recognize and report instances of suspected human trafficking;

70. Establish a model policy for best practices for law-enforcement officers responding to or investigating an overdose, when prescriber information has been obtained during the course of such response or investigation, to notify the prescriber of any controlled substance found to be in the possession of or believed to have been ingested by the victim that such prescription of a controlled substance was involved in an overdose. Such model policy shall include that a notification to a prescriber of a controlled substance shall not be required if such notification would jeopardize an active law-enforcement investigation;

71. Establish a training curriculum for law-enforcement agencies, law-enforcement officers, and special conservators of the peace on the discretion such officers can exercise regarding arrests as provided in Chapter 7 (§ 19.2-71 et seq.) of Title 19.2. Such training shall include (i) instruction on the scope and nature of law-enforcement officer discretion in arrest decisions, with particular emphasis on encounters with individuals experiencing a mental health crisis, including individuals currently subject to an emergency custody order pursuant to § 37.2-808, a temporary detention order pursuant to § 37.2-809, or an involuntary admission order pursuant to § 37.2-817, and (ii) instruction on the immediate and long-term effects of arrests on individuals in need of mental health services due to a mental health crisis, including impacts on treatment outcomes as identified in substantially accepted peer-reviewed research literature;

72. Establish a model policy for the provision of security at nonprofit institutions that serve individuals and communities at risk of hate crimes as defined in § 52-8.5 within the Commonwealth, incorporating relevant information about various traditions, services, or activities that any law-enforcement officer, unarmed security officer, or armed security officer providing such security may encounter; ~~and~~

73. Establish a model policy for the use of confidential informants as defined in subsection B of § 18.2-64.2 in drug-related investigations. Provisions of such model policy shall include that (i) no individual currently on probation or pretrial may serve as a confidential informant without notice to his probation, pretrial services, or parole officer; ; (ii) no individual who has, within the last six months, been found to have violated the terms of his probation or parole shall serve as a confidential informant; whose testimony may be necessary in the prosecution of a criminal matter in the courts of the Commonwealth; (iii) law-enforcement personnel shall obtain approval from the appropriate local attorney for the Commonwealth prior to working with a confidential informant; and (iv) such confidential informant shall not unlawfully use or possess any controlled substances; and

366 74. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

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