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HOUSE BILL NO. 2448

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Avoli)

A BILL to amend and reenact §§ 9.1-101, as it is currently effective and as it may become effective, and 19.2-81 of the Code of Virginia, relating to arrest without warrant authorized in certain cases; powers of arrest; private police officers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, as it is currently effective and as it may become effective, and 19.2-81 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-101. (For contingent expiration date, see Acts 2021, Sp. Sess. I, cc. 524 and 542)

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.

26 "Criminal history record information" means records and data collected by criminal justice
27 agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions,
28 indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall
29 not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title
30 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional
31 status information.

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

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

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

48 "Criminal justice agency" includes the Virginia Criminal Sentencing Commission.

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

50 "Criminal justice information system" means a system including the equipment, facilities,
51 procedures, agreements, and organizations thereof, for the collection, processing, preservation, or

52 dissemination of criminal history record information. The operations of the system may be performed
53 manually or by using electronic computers or other automated data processing equipment.

54 "Department" means the Department of Criminal Justice Services.

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

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

77 "Private police department" means any police department, other than a department that employs
78 police agents under the provisions of § 56-353, that employs private police officers operated by an entity

79 authorized by statute or an act of assembly to establish a private police department or such entity's
80 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
81 to operate a private police department or represent that it is a private police department unless such entity
82 has been authorized by statute or an act of assembly or such entity is the successor in interest of an entity
83 that has been authorized pursuant to this section, provided it complies with the requirements set forth
84 herein. The authority of a private police department shall ~~be limited to real property owned, leased, or~~
85 ~~controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property;~~
86 ~~such authority shall~~ not supersede the authority, duties, or jurisdiction vested by law with the local police
87 department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of police or
88 sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding
89 with the private police department that addresses the duties and responsibilities of the private police
90 department and the chief law-enforcement officer in the conduct of criminal investigations. Private police
91 departments and private police officers shall be subject to and comply with the Constitution of the United
92 States; the Constitution of Virginia; the laws governing municipal police departments, including the
93 provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721, 15.2-1721.1, and 15.2-
94 1722; and any regulations adopted by the Board that the Department designates as applicable to private
95 police departments. ~~Any person employed as a private police officer pursuant to this section shall meet all~~
96 ~~requirements, including the minimum compulsory training requirements, for law enforcement officers~~
97 ~~pursuant to this chapter. A private police officer is not entitled to benefits under the Line of Duty Act (§~~
98 ~~9.1-400 et seq.) or under the Virginia Retirement System, is not a "qualified law enforcement officer" or~~
99 ~~"qualified retired law enforcement officer" within the meaning of the federal Law Enforcement Officers~~
100 ~~Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the Commonwealth or any~~
101 ~~locality.~~ An authorized private police department may use the word "police" to describe its sworn officers
102 and may join a regional criminal justice academy created pursuant to Article 5 (§ 15.2-1747 et seq.) of
103 Chapter 17 of Title 15.2. Any private police department in existence on January 1, 2013, that was not
104 otherwise established by statute or an act of assembly and whose status as a private police department was
105 recognized by the Department at that time is hereby validated and may continue to operate as a private

106 police department as may such entity's successor in interest, provided it complies with the requirements
107 set forth herein.

108 "Private police officer" means a law-enforcement officer who is employed by a private police
109 department and who is deemed a police officer of a locality who may exercise the power and duties
110 conferred by law upon such police officers (i) on real property owned, leased, or controlled by the
111 employing entity and, if approved by the local chief of police or sheriff, any contiguous property; (ii)
112 pursuant to a mutual aid agreement for the purposes set forth in § 15.2-1724; or (iii) in close pursuit of a
113 person as provided in § 19.2-77. Any person employed as a private police officer pursuant to this section
114 shall meet all requirements, including the minimum compulsory training requirements, for law-
115 enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits under the
116 Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a "qualified law
117 enforcement officer" or "qualified retired law enforcement officer" within the meaning of the federal Law
118 Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the
119 Commonwealth or any locality.

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

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

129 "Unapplied criminal history record information" means information pertaining to criminal
130 offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history
131 record of an arrested or convicted person (i) because such information is not supported by fingerprints or

132 other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within
133 the content of the submitted information.

134 § 9.1-101. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542)

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155 which as its principal function performs the administration of criminal justice and any other agency or
156 subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the
157 purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within
158 the context of its criminal justice activities, employs special conservators of the peace appointed under

159 Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires
160 its officers or special conservators to meet compulsory training standards established by the Criminal
161 Justice Services Board and submits reports of compliance with the training standards and (b) the private
162 corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent
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164 activities; ~~and~~ (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted
165 under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually
166 Violent Predators Act (§ 37.2-900 et seq.); and (iv) any private police department.

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175 manually or by using electronic computers or other automated data processing equipment.

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179 agency maintaining the information who have both a need and right to know the information.

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181 sheriff's office which is a part of or administered by the Commonwealth or any political subdivision
182 thereof, or any full-time or part-time employee of a private police department, and who is responsible for
183 the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the
184 Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control
185 Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine

186 Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of
187 the Department of Wildlife Resources; (v) investigator who is a sworn member of the security division of
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190 Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer
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194 operations of a state or nonstate agency; (xi) employee with internal investigations authority designated
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196 Justice pursuant to subdivision A 7 of § 66-3; or (xii) private police officer employed by a private police
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198 defined by the employing police department, sheriff's office, or private police department.

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201 authorized by statute or an act of assembly to establish a private police department or such entity's
202 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
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209 department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of police or
210 sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding
211 with the private police department that addresses the duties and responsibilities of the private police
212 department and the chief law-enforcement officer in the conduct of criminal investigations. Private police

213 departments and private police officers shall be subject to and comply with the Constitution of the United
214 States; the Constitution of Virginia; the laws governing municipal police departments, including the
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229 set forth herein.

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231 department and who is deemed a police officer of a locality who may exercise the power and duties
232 conferred by law upon such police officers (i) on real property owned, leased, or controlled by the
233 employing entity, and, if approved by the local chief of police or sheriff, any contiguous property; (ii)
234 pursuant to a mutual aid agreement for the purposes set forth in § 15.2-1724; or (iii) in close pursuit of a
235 person as provided in § 19.2-77. Any person employed as a private police officer pursuant to this section
236 shall meet all requirements, including the minimum compulsory training requirements, for law-
237 enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits under the
238 Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a "qualified law
239 enforcement officer" or "qualified retired law enforcement officer" within the meaning of the federal Law

240 Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the
241 Commonwealth or any locality.

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

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

251 "Sealing" means (i) restricting dissemination of criminal history record information contained in
252 the Central Criminal Records Exchange, including any records relating to an arrest, charge, or conviction,
253 in accordance with the purposes set forth in § 19.2-392.13 and pursuant to the rules and regulations
254 adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134 and (ii) prohibiting
255 dissemination of court records related to an arrest, charge, or conviction, unless such dissemination is
256 authorized by a court order for one or more of the purposes set forth in § 19.2-392.13.

257 "Unapplied criminal history record information" means information pertaining to criminal
258 offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history
259 record of an arrested or convicted person (i) because such information is not supported by fingerprints or
260 other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within
261 the content of the submitted information.

262 **§ 19.2-81. Arrest without warrant authorized in certain cases.**

263 A. The following officers shall have the powers of arrest as provided in this section:

- 264 1. Members of the State Police force of the Commonwealth;
265 2. Sheriffs of the various counties and cities, and their deputies;

266 3. Members of any county police force or any duly constituted police force of any city or town of
267 the Commonwealth;

268 4. The Commissioner, members and employees of the Marine Resources Commission granted the
269 power of arrest pursuant to § 28.2-900;

270 5. Regular conservation police officers appointed pursuant to § 29.1-200;

271 6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and
272 petty officers authorized under § 29.1-205 to make arrests;

273 7. Conservation officers appointed pursuant to § 10.1-115;

274 8. Full-time sworn members of the enforcement division of the Department of Motor Vehicles
275 appointed pursuant to § 46.2-217;

276 9. Special agents of the Virginia Alcoholic Beverage Control Authority;

277 10. Campus police officers appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title
278 23.1;~~and~~

279 11. Members of the Division of Capitol Police; and

280 12. Private police officers employed by a private police department as defined in § 9.1-101.

281 B. Such officers may arrest without a warrant any person who commits any crime in the presence
282 of the officer and any person whom he has reasonable grounds or probable cause to suspect of having
283 committed a felony not in his presence.

284 Such officers may arrest without a warrant any person whom the officer has probable cause to
285 suspect of operating any watercraft or motorboat while (i) intoxicated in violation of subsection B of §
286 29.1-738 or a substantially similar ordinance of any county, city, or town in the Commonwealth or (ii) in
287 violation of an order issued pursuant to § 29.1-738.4 and may thereafter transfer custody of the person
288 arrested to another officer, who may obtain a warrant based upon statements made to him by the arresting
289 officer.

290 C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as
291 defined in § 29.1-733.2 or motorboat, or at any hospital or medical facility to which any person involved
292 in such accident has been transported, or in the apprehension of any person charged with the theft of any

293 motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to
294 believe, based upon personal investigation, including information obtained from eyewitnesses, that a
295 crime has been committed by any person then and there present, apprehend such person without a warrant
296 of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable location
297 where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement
298 officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.

299 D. Such officers may, within three hours of the alleged offense, arrest without a warrant at any
300 location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle,
301 watercraft or motorboat while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or
302 subsection B of § 29.1-738; or a substantially similar ordinance of any county, city, or town in the
303 Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may,
304 within three hours of the alleged offense, arrest without a warrant at any location any person whom the
305 officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued
306 pursuant to § 29.1-738.4, whether or not the offense was committed in such officer's presence.

307 E. Such officers may arrest, without a warrant or a *capias*, persons duly charged with a crime in
308 another jurisdiction upon receipt of a photocopy of a warrant or a *capias*, telegram, computer printout,
309 facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram,
310 computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a
311 reasonably accurate description of such person wanted and the crime alleged.

312 F. Such officers may arrest, without a warrant or a *capias*, for an alleged misdemeanor not
313 committed in his presence when the officer receives a radio message from his department or other law-
314 enforcement agency within the Commonwealth that a warrant or *capias* for such offense is on file.

315 G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in
316 their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance,
317 (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv)
318 brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of § 18.2-137,
319 when such property is located on premises used for business or commercial purposes, or a similar local

320 ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who
321 observed the alleged offense. The arresting officer may issue a summons to any person arrested under this
322 section for a misdemeanor violation involving shoplifting.

323 #