

SENATE BILL NO. 1046

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety

on _____)

(Patron Prior to Substitute--Senator McPike)

A BILL to amend and reenact § 9.1-101, as it is currently effective and as it shall become effective, relating to definition of law-enforcement officer; fire marshal with police powers.

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-101, as it is currently effective and as it shall become effective, of the Code of Virginia is 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.

"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,

27 indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall
28 not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title
29 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional
30 status information.

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

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

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

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

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

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

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

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

57 "Law-enforcement officer" means any full-time or part-time employee of a police department or
58 sheriff's office ~~which that~~ is a part of or administered by the Commonwealth or any political subdivision
59 thereof, or any full-time or part-time employee of a private police department, and who is responsible for
60 the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the
61 Commonwealth, ~~and shall include~~ includes any (i) special agent of the Virginia Alcoholic Beverage
62 Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia
63 Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement
64 division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the security
65 division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and
66 Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement
67 division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection
68 police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under
69 Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit designated
70 by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal behavior
71 affecting the operations of a state or nonstate agency; (xi) employee with internal investigations authority
72 designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the Department
73 of Juvenile Justice pursuant to subdivision A 7 of § 66-3; ~~or~~ (xii) private police officer employed by a
74 private police department; or (xiii) fire marshal appointed pursuant to § 27-30 when such fire marshal has
75 police powers as set out in §§ 27-34.2 and 27-34.2:1. Part-time employees are those compensated officers
76 who are not full-time employees as defined by the employing police department, sheriff's office, or private
77 police department.

78 "Private police department" means any police department, other than a department that employs
79 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
80 authorized by statute or an act of assembly to establish a private police department or such entity's

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

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

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

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

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

123 **§ 9.1-101. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542)**

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

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167 means. The term shall not include access to the information by officers or employees of a criminal justice
168 agency maintaining the information who have both a need and right to know the information.

169 "Law-enforcement officer" means any full-time or part-time employee of a police department or
170 sheriff's office ~~which that~~ is a part of or administered by the Commonwealth or any political subdivision
171 thereof, or any full-time or part-time employee of a private police department, and who is responsible for
172 the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the
173 Commonwealth, ~~and shall include~~ includes any (i) special agent of the Virginia Alcoholic Beverage
174 Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia
175 Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement
176 division of the Department of Wildlife Resources; (v) investigator who is a sworn member of the security
177 division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and
178 Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement
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188 who are not full-time employees as defined by the employing police department, sheriff's office, or private
189 police department.

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191 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
192 authorized by statute or an act of assembly to establish a private police department or such entity's
193 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
194 to operate a private police department or represent that it is a private police department unless such entity
195 has been authorized by statute or an act of assembly or such entity is the successor in interest of an entity
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198 controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property;
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200 department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of police or
201 sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding
202 with the private police department that addresses the duties and responsibilities of the private police
203 department and the chief law-enforcement officer in the conduct of criminal investigations. Private police
204 departments and private police officers shall be subject to and comply with the Constitution of the United
205 States; the Constitution of Virginia; the laws governing municipal police departments, including the
206 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-
207 1722; and any regulations adopted by the Board that the Department designates as applicable to private
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212 "qualified retired law enforcement officer" within the meaning of the federal Law Enforcement Officers
213 Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the Commonwealth or any
214 locality. An authorized private police department may use the word "police" to describe its sworn officers

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222 enforcement agency to provide law-enforcement and security services to Virginia public elementary and
223 secondary schools.

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225 private or religious school for the singular purpose of maintaining order and discipline, preventing crime,
226 investigating violations of the policies of the school board or the private or religious school, and detaining
227 students violating the law or the policies of the school board or the private or religious school on school
228 property, school buses, or at school-sponsored events and who is responsible solely for ensuring the safety,
229 security, and welfare of all students, faculty, staff, and visitors in the assigned school.

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

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

241 2. That the provisions of the first enactment of this act shall not become effective unless reenacted
242 by the 2024 Session of the General Assembly.

243 3. That the Department of Criminal Justice Services shall convene a work group composed of
244 representatives from the Department of Fire Programs, Virginia Professional Fire Fighters, the
245 Virginia Fire Prevention Association, the Virginia Fire Chiefs Association, the Virginia Association
246 of Chiefs of Police, the Virginia Law Enforcement Sheriffs, the Virginia Sheriffs' Association, a
247 regional fire marshal's office, and other relevant stakeholders to examine and make
248 recommendations on the inclusion of fire marshals with police powers in the definition of law-
249 enforcement officer in § 9.1-101 of the Code of Virginia. The work group shall complete its work
250 and submit its findings and recommendations to the General Assembly no later than November 1,
251 2023.

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