

VLGMA Conference

Police Reform - 2021 Session

Virginia Association of Chiefs of Police
Herndon Chief Maggie DeBoard
VACP President




The seal of the Virginia Association of Chiefs of Police (VACP) is a circular emblem. It features a central eagle with wings spread, perched on a shield. Above the eagle is a banner with the word 'TRUTH'. The outer ring of the seal contains the text 'VIRGINIA ASSOCIATION OF CHIEFS OF POLICE' and 'FOUNDED 1926'. Below the eagle is a banner with the words 'EQUAL JUSTICE UNDER THE LAW'. The seal is flanked by two flags: the American flag on the left and the Virginia state flag on the right.

1

Qualified Immunity

- ▶ [HB 2045](#) (Bourne) - Failed in House Courts of Justice Committee
- ▶ [SB 1440](#) (Surovell) - Failed in Senate Judiciary Committee
- ▶ Legislation opposed by VML, VACO, VSA and VSPA; Del. Bourne plans to bring the legislation back in a future session



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Search Warrants (SB 1475 - Stuart)

- ▶ Nighttime search restrictions apply to “places of abode” only (daytime service defined as between 8am and 5pm)
- ▶ Uniformed presence and audible notice apply to “places of abode” only
- ▶ Provides process to obtain search warrant from a magistrate after 5 pm (*issue remains regarding access to judges on weekends and holidays - what is reasonable efforts?*)
- ▶ Maintains exclusion of evidence upon any violation of code section, despite minor nature or good faith
- ▶ Maintains ban on no-knock warrants
- ▶ Passed Senate, Referred to House Committee for Courts of Justice (emergency enactment to replace March 1 bill)



3

Assault on a Law Enforcement Officer (SB1306)

- ▶ Requires assault and battery that results in bodily injury to remain a felony
- ▶ Reduces penalty to Class 1 misdemeanor when offender is under diminished mental capacity
- ▶ Eliminates mandatory minimum sentence
- ▶ Requires separate LEO to investigate assaults involving juveniles, and warrant/petition approved by the Commonwealth Attorney
- ▶ Passed Senate, Referred to House Committee for Courts of Justice



4

License Plate Readers (LPRs) - (**SB 1198** Petersen)



- ▶ Absent a criminal or administrative warrant, law-enforcement and regulatory agencies shall not use license plate readers to collect or maintain personal information in a manner where such personal information is of unknown relevance and will not be promptly evaluated and potentially used to investigate suspected criminal activity, civil and regulatory violations, or terrorism by any person
- ▶ License plate data may be collected if intended for prompt evaluation and potential use in investigating suspected criminal activity, civil or regulatory violations.
- ▶ **CONCERN** - we oppose the language in the bill that includes a license plate as personal information. Personal identifying information is **ONLY** available when that tag is run. VCIN policies currently restrict our ability to run tags without a legitimate law enforcement purpose.
- ▶ Data may only be retained for 30 days and shall not be subject to any outside inquiries or internal usage except for the investigation of a report of a missing person, suspected criminal activity, civil or regulatory violations.
- ▶ Amended Version Passed Senate; Referred to House Committee on Public Safety

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Release on a Summons - Signature Not Required



- ▶ **SB 1329** - Eliminates the requirement that a promise to appear be completed after the issuance of a summons for a misdemeanor traffic offense. The bill provides that an accused shall be released from custody after a summons has been issued - **exception "if likely to disregard summons"**.
- ▶ This eliminates requirement that a summons must be signed before release from custody. This does not negate the requirement to appear in court or prepay the fine.
- ▶ Passed Senate, Referred to House Committee for Courts of Justice

6

FOIA of Criminal Investigative Files

- ▶ **HB 2004** – Adds criminal investigative files relating to a criminal investigation or proceeding that is not ongoing, to be released in accordance with Virginia FOIA
 - ▶ *"Ongoing" refers to a case in which the prosecution has not been finally adjudicated, the investigation continues to gather evidence for a possible future criminal case, and such case would be jeopardized by the premature release of evidence.*
- ▶ Under current law, the release of criminal investigative files is discretionary.
- ▶ Criminal investigative files include court orders, memoranda, notes, initial incident reports, filings through any incident-based reporting system, diagrams, maps, photographs, reports, witness statements, or evidence, relating to a criminal investigation or proceeding that is not ongoing
- ▶ Courts can block release under specific exemptions listed in Code
- ▶ **Concerns** - release of information could compromise future prosecution, no protection for witnesses, redaction costs and staff time
- ▶ Passed House, Continued to 2021 Sp. Sess. 1 in General Laws and Technology



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Expungement

- ▶ **HB 2113** - Passed House, Continued to 2021 Sp. Sess. 1 in Senate Judiciary
- ▶ **SB 1339** - Passed Senate, Referred to Committee for Courts of Justice
- ▶ Will establish the process for automatic expungement of felony and misdemeanor convictions, deferred and dismissed offenses retroactively and moving forward, non-convictions moving forward, and certain non-convictions retroactively.
- ▶ A conviction or an offense that was deferred and dismissed will be automatically expunged after 8 years, and criminal cases that do not result in a conviction will be automatically expunged at disposition.
- ▶ Staggered effective dates to allow for system changes
- ▶ Bills raise concern, especially when it comes to access to records for hiring for sensitive positions (LEOs, security clearances, child care/teachers); also issues of expungement vs. sealing?



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COVID Workers Compensation Presumption (SB 1375)



- ▶ Presumption for LEOs, Firefighters and Correctional Officers for workers compensation for COVID exposure
- ▶ Prospective Coverage only after July 1, 2021; requires medical test and determination; employee must have signs and symptoms that require medical treatment
- ▶ Employees hired after July 1, 2021 must undergo pre-employment physical that tests for COVID to be covered under presumption
- ▶ Retroactive coverage would have cost an additional \$15 million
- ▶ Passed Senate, Referred to House Committee on Labor and Commerce

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Marijuana



- ▶ HB 2312 - Passed House, Continued to 2021 Sp. Sess. 1 in Senate Rehabilitation and Social Services
- ▶ SB 1406 - Passed Senate, Referred to House Committee on General Laws
- ▶ Bills are lengthy and complicated; studies from other states show public health and highway safety impact; increase of child overdoses (edibles); also strain on local government social services
- ▶ House bill eliminated the ability of local gov't's to opt out of marijuana sales in their communities

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U-VISA/T-VISA SB 1468

- ▶ Establishes a process for a state or local law-enforcement agency, an attorney for the Commonwealth, the Attorney General, or any other agency or department employing law-enforcement officers to complete a certification form or declaration that is required by federal immigration law certifying that a person is a victim of qualifying criminal activity.
- ▶ Agencies must develop a policy to process certification forms and make policy publicly available
- ▶ Must process the certification forms within 120 days unless there is a qualified exception; must notify party in writing if the certification form is not signed due to applicant not meeting qualifications
- ▶ Passed Senate, Continued to Special Session 1 in Courts of Justice by voice vote



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Bicycles

- ▶ HB 2262 - Permits operators of bicycles to treat a stop sign as a yield sign in certain situations.
- ▶ Requires the driver of a motor vehicle to change lanes when overtaking a bicycle or certain other vehicles when the lane of travel is not wide enough for the overtaking motor vehicle to pass at least three feet to the left of the overtaken vehicle.
- ▶ The bill also removes the limitations on riding bicycles and certain other vehicles two abreast and eliminates requirement to move to single file upon approaching vehicle and not impede traffic.
- ▶ Passed House, Continued to 2021 Sp. Sess. 1 in Transportation
- ▶ SB 1263 – Defeated by Senate; same fate in House?



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Mandatory Minimum Sentences



- ▶ **HB 2331** - Eliminates mandatory minimum sentences of confinement for certain crimes.
- ▶ The bill also provides a petition process for a person who was convicted or adjudicated delinquent of certain felony offenses committed prior to July 1, 2021, sentenced to a mandatory minimum term of confinement for any such felony offense, and remains incarcerated in a state or local correctional facility serving the mandatory minimum term of confinement for any such felony offense to petition the circuit court that entered the original judgment or order to (i) suspend the unserved portion of such mandatory minimum sentence, (ii) place such person on probation for such time as the court shall determine, or (iii) otherwise modify the sentence imposed.
- ▶ The bill provides that such petition shall be filed by July 1, 2024.
- ▶ **SB 1443** - Eliminates all mandatory minimum sentences of confinement from the Code of Virginia.
- ▶ The bill directs the Secretary of Public Safety and Homeland Security to establish a work group to evaluate the feasibility of resentencing persons previously convicted of a felony offense that was punishable by a mandatory minimum term of confinement.
- ▶ The work group would report on its findings by November 1, 2021. This bill was a recommendation of the Virginia State Crime Commission.

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Budget Amendments



- ▶ **599 Funding** - efforts to both decrease and increase 599 funding are under consideration; localities with police departments cannot afford any 599 reductions and carry out police reform measures; outreach needed to protect these funds
- ▶ **SRO Grant Elimination** - budget amendments to eliminate \$4.7 million in state grant funds for school resource officers primarily affect rural areas; urban areas fund SRO positions without state grant funds
- ▶ **Alternative Mental Health Transportation** - provide funding for licensed security staff to assist when a Temporary Detention Order is issued, and no bed is immediately available.

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QUESTIONS?

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