



2020 Legislative Update **Special Session Fall 2020**

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2020 Legislative Update

Special Session Fall 2020

Master List

HB 5029 - Law-enforcement officer; failure to intervene in an excessive use of force; penalties.

Requires that any law-enforcement officer who while in the performance of his official duties witnesses another law-enforcement officer engaging or attempting to engage in the use of excessive force, defined in the bill, against another person shall intervene, when such intervention is objectively reasonable and possible, to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. The bill also requires a law-enforcement officer to render aid, as circumstances objectively permit, to any person injured as the result of such use of excessive force. The bill requires a law-enforcement officer to report intervention or use of excessive force in accordance with his employing agency's policies for reporting misconduct. The bill provides that any law-enforcement officer who violates the provisions of the bill shall be subject to disciplinary action.

Effective March 1, 2021

HB 5045 - Carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, arrestee, juvenile detainee, or pretrial defendant or posttrial offender; local or state law-enforcement officer; penalty.

Adds law-enforcement officers to those persons who are guilty of a Class 6 felony if they are in a position of authority over and carnally know without force, threat, or intimidation a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pretrial defendant or posttrial offender, including those in the custody of a private, local, or state law-enforcement agency. In addition, the bill adds a person in the custody of a law-enforcement officer to the list of



those persons for whom it is unlawful for a person in such authority to commit the offense of carnal knowledge. See also [SB 5030](#), which contains this language.

Effective March 1, 2021

[HB 5047](#) - Virginia Post-Disaster Anti-Price Gouging Act; manufacturers and distributors.

Prohibits any manufacturer or distributor from selling necessary goods or services at an unconscionable price during a declared state of emergency. However, the bill provides such prohibition does not apply to a manufacturer or distributor of agricultural goods or services unless it advertises its goods or services. Under current law, the prohibition from selling necessary goods or services does not apply to any manufacturer or distributor unless it advertises its goods or services to consumers.

Effective March 1, 2021

[HB 5051](#) - Decertification of law-enforcement officer. Directs the Department of Criminal Justice Services to adopt standards of conduct applicable to law-enforcement and jail officers and due process procedures for decertification based on serious misconduct in violation of those standards.

The bill requires any sheriff, chief of police, or agency administrator to notify the Criminal Justice Services Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has been terminated for engaging in misconduct, as set forth in the bill. The bill authorizes the Board to initiate decertification proceedings against any current or former law-enforcement or jail officer who has engaged in such activities. The bill directs the Department to adopt emergency regulations to implement the provisions of the bill. See also [SB 5030](#).

Effective March 1, 2021

[HB 5055](#) / [SB 5035](#) - Law-enforcement civilian oversight bodies.

Authorizes a locality to establish a law-enforcement civilian oversight body that may (i) receive, investigate, and issue findings on complaints from civilians regarding conduct of law-enforcement officers and civilian employees; (ii) 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; (iii) make binding disciplinary determinations in cases that involve serious breaches of departmental and professional standards; (iv) investigate policies, practices, and procedures of law-enforcement agencies and make recommendations regarding changes to such policies, practices, and procedures; (v) review all investigations conducted internally by law-enforcement agencies and issue findings regarding the accuracy, completeness, and impartiality of such investigations and the sufficiency of any discipline resulting from such investigations; (vi) request reports of the annual expenditures of law-enforcement agencies and make budgetary recommendations; (vii) make public reports on the activities of the law-enforcement civilian oversight body; and (viii) undertake any other duties as reasonably necessary for the law-enforcement civilian oversight body to effectuate its lawful purpose to effectively oversee the law-enforcement agencies as authorized by the locality. Such oversight bodies are not authorized to oversee sheriff's departments. The bill provides that a law-enforcement officer who is subject to a binding disciplinary determination may file a grievance requesting a final hearing pursuant to the locality's local grievance procedures. The bill also provides that a retired law-enforcement officer may serve on such law-enforcement civilian oversight body as an advisory, nonvoting ex officio member. HB 5055 and SB 5035 are identical.

The bill has a delayed effective date of July 1, 2021.

HB 5058 / SB 5029 - Marijuana and certain traffic offenses; issuing citations, etc, Issuing citations; possession of marijuana and certain traffic offenses. Provides that no law-enforcement officer may lawfully stop a motor vehicle for operating (i) without a light illuminating a license plate, (ii) with defective and unsafe equipment, (iii) without brake lights or a high mount stop light, (iv) without an exhaust system that prevents excessive or unusual levels of noise, (v) with certain sun-shading materials and tinting films, and (vi) with certain objects suspended in the vehicle. No evidence discovered or obtained as a result of such unlawful stop shall be admissible in any trial, hearing, or other proceeding. The bill also provides that no law-enforcement officer may lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana, and no evidence discovered or obtained as a result of such unlawful search or seizure shall be admissible in any trial, hearing, or other proceeding. The bill prohibits the enactment of a local ordinance establishing a primary offense when the corresponding provision in the Code of Virginia is a secondary offense. The bill prohibits any local ordinance relating to the ownership or maintenance of a motor vehicle from being cause to stop or arrest a driver of a motor vehicle unless such violation is a jailable offense. The bill prohibits a law-enforcement officer from stopping a pedestrian for jaywalking or entering a highway where the pedestrian cannot be seen. The bill provides that law-enforcement officers are not permitted to stop a motor vehicle for an expired safety inspection or registration sticker until the first day of the fourth month after the original



expiration date. The bill also provides that no evidence discovered or obtained due to an impermissible stop, including evidence obtained with the person's consent, is admissible in any trial, hearing, or other proceeding. HB 5058 and SB 5029 are identical.

Effective March 1, 2021

[HB 5062](#) / [SB 5033](#) - Court authority in criminal cases; prosecutorial discretion to dispose of a criminal case.

Requires a court to grant a motion to dismiss made by the Commonwealth, whether with or without prejudice, and with the consent of the defendant unless the court finds by clear and convincing evidence that the motion was made as the result of (i) bribery or (ii) bias or prejudice toward a victim because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the victim.

The bill provides that, upon the agreement of the Commonwealth and the defendant, a trial court may defer proceedings; defer entry of a conviction order, if none, or defer entry of a final order; and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties.

HB 5062 contains the identical language from SB 5033, but also contains a few additional provisions.

Effective March 1, 2021

[HB 5069](#) - Law-enforcement officers; prohibition on the use of neck restraints.

Prohibits a law-enforcement officer from using a neck restraint in the performance of his official duties and provides for disciplinary sanctions on an officer who uses a neck restraint. The bill provides an exception from the prohibition if a neck restraint is immediately necessary to protect the officer or another person. The bill defines "neck restraint" as the use of any body part or object to attempt to control or disable a person by applying pressure against the neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person's movement or restricting the person's blood flow or breathing, including chokeholds, carotid restraints, and lateral vascular neck restraints. [SB 5030](#) (listed below) expands these restrictions and adds additional restrictions.

Effective March 1, 2021



HB 5072 / SB 5024 Law-enforcement misconduct.

Authorizes the Attorney General to file a civil suit or inquire into or seek to conciliate, through the Division of Human Rights, any unlawful pattern and practice against the Commonwealth or a locality whenever the Attorney General has reasonable cause to believe that law-enforcement officers of any agency of the Commonwealth or any locality are engaging in a pattern or practice that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth. The bill also empowers the Attorney General to issue a civil investigative demand if the Attorney General has reasonable cause to believe that an unlawful pattern and practice violation has occurred. The bill authorizes the Attorney General to enter into a conciliation agreement with a locality to resolve an unlawful pattern and practice, and provides that such agreement may include a court-enforceable deprivation of certain local funds if the locality fails to abide by the agreement. HB 5072 and SB 5024 are identical.

Effective March 1, 2021

HB 5093 / SB 5117 Emergency Services and Disaster Law; powers and duties of the Governor; executive orders; penalty.

Provides that a violation of an executive order declared by the Governor as the Director of Emergency Management shall be punishable either as a civil penalty of not more than \$500 or as a Class 1 misdemeanor. Under current law, the only penalty for such a violation is a Class 1 misdemeanor. The bill also mandates that a violation of an executive order that is punishable as a civil penalty shall be charged by summons and may be executed by a law-enforcement officer when such violation is observed by the officer. The proceeds of any such civil penalty that is imposed shall be paid and collected only in lawful money of the United States and paid into the state treasury to the credit of the Literary Fund. This bill has an expiration date of June 30, 2023. HB 5093 and SB 5117 are identical.

Effective March 1, 2021. This bill expires on June 30, 2023.

HB 5098 - Hate crime; falsely summoning or giving false reports to law-enforcement officials; penalty.

Increases the penalty for falsely summoning or giving false reports to law-enforcement officials from a Class 1 misdemeanor to a Class 6 felony when a person intentionally gives a false report as to the commission of any crime to any law-enforcement official, causes another to give a false report to any law-enforcement official, or calls or summons any law-enforcement official against another person because of his race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin.



Effective March 1, 2021

HB 5099 - Search warrants; provide notice of authority.

Prohibits any law-enforcement officer from seeking, executing, or participating in the execution of a no-knock search warrant. The bill provides that, for all authorized search warrants, the law-enforcement officer be recognizable and identifiable as a uniformed law-enforcement officer and that he provide audible notice of his authority and purpose reasonably expected to be heard by occupants of such place to be searched prior to the execution of such search warrant. It also requires that after entering and securing the place to be searched and prior to undertaking any search or seizure pursuant to the search warrant, the executing officer shall read and give a copy of the search warrant to the person to be searched or the owner of the place to be searched or, if the owner is not present, to any occupant of the place to be searched. If the place to be searched is unoccupied, the executing law-enforcement officer shall leave a copy of the search warrant suitably affixed to the place to be searched. The bill requires search warrants to be executed only in the daytime unless (i) a judge or magistrate, if a judge is not available, authorizes the execution of such search warrant at another time for good cause shown or (ii) the search warrant is for the withdrawal of blood. Language is also found in [SB 5030](#).

Effective March 1, 2021.

HB 5104 - Minimum qualifications for law-enforcement officer, etc.; disclosure of information.

Provides that any sheriff or chief of police, the director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers, and the Director of the Department of Criminal Justice Services shall disclose to a prospective law-enforcement or jail employer any information (i) related to an arrest or prosecution of a former police officer, deputy sheriff, or jail officer, including expunged information; (ii) related to a civil suit regarding a former police officer's, deputy sheriff's, or jail officer's employment or performance of his duties; (iii) obtained during the course of any internal investigation related to a former police officer's, deputy sheriff's, or jail officer's alleged criminal conduct, use of excessive force, or other official misconduct in violation of the state professional standards of conduct; and (iv) related to a former police officer, deputy sheriff, or jail officer's job performance that led to dismissal, demotion, suspension, or transfer. The bill further provides that no police officer, deputy sheriff, or jail officer may be employed by another law-enforcement agency or jail until the requested information is received from all prior employing agencies in the Commonwealth. The bill authorizes a hiring law-enforcement agency or jail to require a candidate for employment to undergo a psychological examination, subsequent to a



conditional offer of employment, conducted under the supervision of a licensed psychiatrist or a licensed clinical psychologist. The bill requires the Department of Criminal Justice Services to establish guidelines for such examinations. [SB 5030](#) also incorporates this language.

Effective March 1, 2021

[SB 5007](#) - Criminal cases; sentencing reform, procedure for trial by jury, etc.

Criminal cases; sentencing reform. Provides that in a criminal case the court shall ascertain the extent of the punishment unless the accused has requested that the jury ascertain punishment or was found guilty of capital murder. The bill also provides that if a jury cannot agree on a punishment, the court shall fix punishment.

The bill has a delayed effective date of July 1, 2021.

[SB 5034](#) - Terminally ill prisoners; conditional release, sentence credits.

[HB 5148](#) - Earned sentence credits; 4.5 credits may be earned for each 30 days served on certain sentences.

Department of Corrections; earned sentence credits. Establishes a four-level classification system for the awarding and calculation of earned sentence credits. The bill also specifies certain crimes that are subject to the maximum 4.5 earned sentence credits for each 30 days served that is permitted under current law. As introduced, this bill was a recommendation of the Virginia State Crime Commission.

SB 5034 includes the above language, and adds that any person serving a sentence imposed upon a conviction for a felony offense other than those enumerated in the bill as exceptions to eligibility and who is terminally ill as defined in the bill is eligible for consideration by the Parole Board for conditional release.

The bill provides that the Department of Corrections shall convene in due course a work group to study the impact of the sentence credit amendments set forth in the act. The bill directs the work group to report to the Governor and the General Assembly by July 1, 2021, the membership of the work group and the work group's plan for conducting such study, including any data and information upon which the work group will rely in conducting such study, and to report its finding and conclusions to the Governor and the General Assembly by December 1, 2022. The remainder of the bill has a delayed effective date of January 1, 2022, and requires the calculation of earned sentence credits to apply retroactively to the entire sentence of any inmate who is confined in a state correctional facility and participating in the earned sentence credit system on January 1, 2022.



SB 5013 - Possession of marijuana; prepay penalty.

Provides that a violation of possession of marijuana by an adult shall be a prepayable offense.

Effective March 1, 2021

SB 5014 - Minimum training standards for law-enforcement officers; crisis intervention team training.

Requires all law-enforcement officers involved in a crisis intervention team program to complete a comprehensive advanced training course developed by the Department of Criminal Justice Services. The bill also directs the Department to develop modules of principles-based training to be included as part of compulsory minimum training standards subsequent to employment as a law-enforcement officer and as part of basic training and the recertification of law-enforcement officers. The bill also requires the Department to establish training standards for law-enforcement personnel concerning sensitivity and awareness of systemic and individual racism and the potential for bias-based profiling. This bill incorporates [SB 5113](#), listed below. See also [SB 5030](#).

Effective March 1, 2021

SB 5017 - Local correctional facility; definition.

Provides that, for purposes of minimum standards for correctional facilities and enforcement of those standards, the term "local correctional facility" shall also include any facility owned, maintained, or operated by any political subdivision or combination of political subdivisions of the Commonwealth that is used for the detention or incarceration of people pursuant to a contract or third-party contract with the federal government or any agency or contractor thereof.

Effective March 1, 2021

SB 5018 - Conditional release of terminally ill prisoners.

Provides that any person serving a sentence imposed upon a conviction for a felony offense other than those enumerated in the bill as exceptions to eligibility and who is terminally ill as defined in the bill is eligible for consideration by the Parole Board for conditional release.

Effective March 1, 2021



SB 5030 - Policing reform [Senate Omnibus].

This bill incorporates SB 5002, SB 5005, SB 5037, and SB 5049.

Adds law-enforcement officers to those persons who are guilty of a Class 6 felony if they are in a position of authority over and carnally know without force, threat, or intimidation a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pretrial defendant or posttrial offender, including those in the custody of a private, local, or state law-enforcement agency. In addition, the bill adds a person in the custody of a law-enforcement officer to the list of those persons for whom it is unlawful for a person in such authority to commit the offense of carnal knowledge. Language is also found in [HB 5045](#).

Effective March 1, 2021

The bill also requires that a law-enforcement officer provide audible notice of his authority and purpose prior to the execution of a search warrant and that such warrants shall only be executed during the daytime unless a judge, or a magistrate if a judge is not available, authorizes the execution of such search warrant at another time for good cause shown. The bill creates an exception to this requirement for a search warrant for the withdrawal of blood. Language is also found in [HB 5099](#).

Effective March 1, 2021

The bill also requires the Criminal Justice Services Board (the Board) to adopt statewide professional standards of conduct applicable to all certified law-enforcement officers and certified jail officers. The bill requires any sheriff, chief of police, or agency administrator to notify the Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has been found to have engaged in serious misconduct. The bill authorizes the Board to initiate decertification proceedings against any current or former law-enforcement or jail officer who has engaged in serious misconduct as defined in such statewide professional standards of conduct. See also [HB 5051](#).

Effective March 1, 2021

The bill also provides that any sheriff or chief of police, any director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers, and the Director of the Department of Criminal Justice Services shall disclose to a prospective law-enforcement or jail employer (i) any information related to an arrest or prosecution of a former appointee or employee, including expunged information, known



or disclosed to the agency; (ii) any information related to a civil suit regarding a former appointee's or employee's employment or performance of his duties; (iii) any information obtained during the course of any internal investigation related to a former appointee's or employee's alleged criminal conduct, use of excessive force, or other official misconduct; and (iv) any information related to a former police officer, deputy sheriff, or jail officer's job performance that led to such officer's or deputy sheriff's resignation, dismissal, demotion, suspension, or transfer. The bill requires candidates for employment to undergo a psychological examination. See also [HB 5104](#)

Effective March 1, 2021

The bill adds requirements for training in de-escalation techniques and the lawful use of force to the compulsory training standards developed by the Department of Criminal Justice Services for basic training and recertification of law-enforcement officers. The bill provides that a law-enforcement officer shall not use deadly force against a person unless (a) the law-enforcement officer reasonably believes that deadly force is immediately necessary to protect the law-enforcement officer or another person, other than the subject of the use of deadly force, from the threat of serious bodily injury or death; (b) the law-enforcement officer has provided a warning before using such deadly force; (c) the law-enforcement officer's actions are reasonable, given the totality of the circumstances; and (d) all other options have been exhausted or do not reasonably lend themselves to the circumstances. The bill also prohibits the use of neck restraints by law-enforcement officers unless the use of a neck restraint is immediately necessary to protect the law-enforcement officer or another person. The bill bans law-enforcement officers from willfully discharging a firearm into or at a moving vehicle. The bill also requires that law-enforcement officers intervene and render aid if they observe another law-enforcement officer using an unlawful use of force. [HB 5069](#) contains some of, but not all, this language.

Effective March 1, 2021

The bill also revises the basic training and recertification requirement for training in sensitivity to and awareness of cultural diversity and the potential for biased policing to include (1) awareness of racism and the potential for racially biased policing and (2) recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder, or developmental or cognitive disability. See also [HB 5014](#).

Effective March 1, 2021



The bill also expands the required law-enforcement data collection for motor vehicle stops to include all investigatory motor vehicle stops, all stop-and-frisks based on reasonable suspicion, and all investigatory detentions that do not result in an arrest or summons.

The provisions requiring data collection become effective on July 1, 2021.

The bill also prohibits the Department of State Police and other law-enforcement agencies from acquiring from the Department of Defense (A) weaponized unmanned aerial vehicles; (B) aircraft that are configured for combat or are combat-coded and have no established commercial flight application; (C) grenades or similar explosives or grenade launchers from a surplus program operated by the federal government; (D) armored multi-wheeled vehicles that are mine-resistant, ambush-protected, and configured for combat from a surplus program operated by the federal government; (E) bayonets; (F) firearms of .50 caliber or higher; (G) ammunition of .50 caliber or higher; or (H) weaponized tracked armored vehicles.

Effective March 1, 2021

The bill also requires every chief law-enforcement officer, defined in the bill, to provide the attorney for the Commonwealth access to all records relating to wrongful arrest or use of force complaints, or other complaints that a person has been deprived of the rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth made against a law-enforcement officer that is employed by the chief law-enforcement officer's agency when such law-enforcement officer has a matter before the court.

Effective March 1, 2021

The bill also changes the membership of the Criminal Justice Services Board and its Committee on Training by adding four members and requiring that one member shall be an attorney representing the Virginia Indigent Defense Commission, one shall be a mental health service provider, one shall represent a social justice organization, and two shall represent community interests, at least one of whom shall represent the community interests of minority individuals. The bill further permits the Committee on Training to appoint curriculum review committees and requires the Committee on Training to provide an opportunity for public comment on any proposed change to any training standards promulgated for law-enforcement officers.

Effective March 1, 2021



The bill requires the Department of Criminal Justice Services to develop uniform 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 of Criminal Justice Services when conducting training. The bill requires any criminal justice training academy approved by the Department of Criminal Justice Services to employ such uniform curriculum and lesson plans and requires the Department of Criminal Justice Services to conduct annual evaluations of each criminal justice training academy's compliance with uniform curriculum and lesson plans.

Effective March 1, 2021

SB 5113 - Crisis intervention team training; appropriation.

Appropriates a sum sufficient to provide basic and advanced crisis intervention team training to all state and local law-enforcement officers in the Commonwealth.