

# 2020 Special Session Legislative Summary

## Public safety bills approved in the Special Session



### Civilian police oversight boards - [HB 5055](#) (Herring) and [SB 5035](#) (Hashmi)

- Civilian police oversight bodies are optional, not required, under the compromise reached by the House and Senate on these bills.
- The civilian oversight bodies may be established by any city, town, or county with a police department with three or more law enforcement officers. The legislation does not apply to sheriff's departments.
- The bodies would be established by the local governing body, and any such boards must reflect the demographic diversity of the locality. The locality would establish the policies of the oversight body; the legislation outlines the allowed duties and responsibilities of the bodies.
- These boards are allowed to retain legal counsel to represent them; such counsel would be paid from funds appropriated by the locality.
- A retired law enforcement officer may serve on an oversight body as an ex officio, nonvoting member; such person may not come from the locality's department but from a "similar" locality.
- The provisions of this legislation become effective on July 1, 2021.

### Marcus alert and community teams – [HB 5043](#) (Bourne) and [SB 5038](#) (McPike).

- This legislation requires the development and implementation of a statewide comprehensive mental health crisis response and alert. The alert system is to be called the Marcus alert system, named for Marcus-David Peters who died during a mental health crisis. The crisis alert and response system will cover every city and county in Virginia and include required local/regional community teams, mobile crisis response, and crisis stabilization centers.
- Background work/development of written plans to implement components of the bill begin immediately with a due date of July 1, 2021. The roll out of components of the bill starts at that time and will continue through July 1, 2026.

### Deadlines and areas of program development and implementation include the following:

- Require the Department of Criminal Justice Services (DCJS) and the Department of Behavioral Health and Developmental Services (DBHDS) to work cooperatively with a variety of stakeholders to study the current system of crisis intervention and develop a written plan outlining law enforcement agencies' roles and engagement with the development of a Marcus alert system, best practices and protocols and plans for measurement of progress towards the goals of law enforcement participation in the Marcus alert system. That analysis and written plan is due by July 1, 2021.
- Over the next five years, communities are required to both implement a Marcus alert system and a community team program alone or in cooperation with communities in their region. Using DBHDS regions as a basis for phase in, one program in each of the five DBHDS regions will begin implementation beginning no later than Dec. 1, 2021, with five more added by July 1, 2023, then five more by July 1, 2024 and July 1, 2025; by July 1, 2026 all communities will have to be on line with a Marcus alert system and community team program.
- By July 1, 2021, every locality will have to establish a voluntary database available to 9-1-1 dispatch and the Marcus alert system to provide relevant mental health information and emergency contact information for appropriate response to an emergency or crisis. This information would be voluntarily

provided by an individual, parent or guardian (if the individual is under 18 years of age), or a person appointed as guardian. Upon turning 18 years of age, an individual would choose whether they want the information provided to 9-1-1.

- By July 1, 2022, every locality will have to establish local protocols that meet requirements set forth by DBHDS regarding 1) diverting calls from their 9-1-1 dispatch system to a crisis call center for risk assessment and engagement, including assessment for mobile crisis or community care team dispatch; 2) setting protocols for local law-enforcement agencies to enter into memorandums of agreement with mobile crisis response providers regarding requests for law-enforcement backup during a mobile crisis or community care team response; and 3) creating minimum standards, best practices, and a system for the review and approval of protocols for law-enforcement participation in the Marcus alert system. Localities will also be required to either establish or be part of an area that has established protocols for law enforcement participation in a Marcus alert system by that date.

## Bills addressing policing standards, requirements, procedures, prohibited behaviors and training requirements

**The comprehensive Senate measure, [SB 5030](#)** (Locke), covers a number of issues including minimum requirements and decertification, training, use of military equipment, use of excessive force, neck restraints, use of search warrants, prohibited behavior during arrest and detention, and employment checks and requirements.

This bill incorporates items included the individual House bills outlined below:

**Law enforcement conduct during arrest/detention -requirements - [HB 5029](#)** (McQuinn) This bill addresses law enforcement conduct during arrest or detention and requirements for officer intervention if they witness the excessive use of force by another officer.

**Military property acquisition - [HB 5049](#)** (Helmer) This bill limits acquisition of certain types of military property by law enforcement agencies. During the reconvened session on Nov. 9 the House rejected the Governor's proposed amendment to add search and rescue operations to those units could seek waivers for certain equipment acquisitions.

**Standards of conduct and decertification - [HB 5051](#)** (Simon) This bill requires 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. It also requires police chiefs, sheriffs, or agency administrators to notify the Criminal Justice Services Board in cases where officers were terminated because of misconduct as set forth in the legislation and authorizes the Board to initiate decertification against current or former officers who engaged in such activities. The Board is authorized to adopt emergency regulations to implement the provisions of the bill.

**Neck restraints - [HB 5069](#)** (Carroll-Foy) This bill defines "neck restraint" and prohibits law enforcement officers from using a neck restraint in performance of official duties and provides for disciplinary sanctions for such use. It provides an exception if such restraint is immediately necessary to protect the officer or another person.

**Search warrants - [HB 5099](#)** (Aird) This bill prohibits no-knock search warrants. It outlines requirements for proper identification and notification to occupants of a place to be searched prior to execution of the warrant

and after entering the place to be searched, including providing a copy of the search warrant or if the place is unoccupied, leaving a copy of the warrant. Warrants are required to be executed during daytime hours unless a judge/magistrate otherwise authorizes it for good cause or if it is for withdrawal of blood. The bill goes into effect March 1.

**Minimum qualifications for employment** - [HB 5104](#) (Price) This bill requires public safety agencies (namely police chiefs, sheriffs, directors of public safety agencies) in Virginia to disclose as part of an employment background check by another public safety agency any information regarding 1) any arrest or prosecution of a former officer including expunged information; 2) any civil suit regarding that person's performance/employment; 3) internal investigation information related to alleged criminal conduct, use of excessive force or other official misconduct in violation of state standards of conduct; or 4) job performance that led to dismissal, demotion, suspension or transfer. No officer can be employed by another law-enforcement agency/jail until the requested information is received from all prior employing agencies in the Commonwealth. The bill also authorizes hiring law enforcement agencies/jails to require a candidate for employment to undergo a psychological examination as a part of the hiring process.

**Membership of Criminal Justice Services Board** - [HB 5108](#) (Guzman) – This bill increases the membership of the Criminal Justice Services Board from 17 to 20 and requires that some members represent social justice organizations, representatives of community interests of minorities, and mental health service providers. It also increases the membership of the Board's Committee on Training from 15 to 19 to include a representative of the Virginia Indigent Defense Commission, a mental health service provider, and a representative of the community interests of minorities. It also permits the Committee on Training to use a curriculum review committee.

## Other policing/criminal justice bills approved

**Primary to secondary offenses/restrictions on reasons to stop a motor vehicle/pedestrian** - [HB 5058](#) (Hope) and [SB 5029](#) (Lucas). These identical bills downgraded certain offenses from primary to secondary status regarding operation of a motor vehicles and pedestrian behavior. Included on this list of downgraded offenses are motor vehicles operating without a working license plate light; with more than one non-working brake light, head light or tail light; with certain sun-shading materials or tinting; or with certain objects suspended from a rear-view mirror. For pedestrians this includes jaywalking and entering a highway where they cannot be seen. It also forbids law enforcement from lawfully stopping, searching, or seizing any person, place, or thing solely on the basis of the odor of marijuana. No evidence discovered or obtained as the result of an unlawful search/seizure will be admissible in any trial, hearing, or other procedure. It also prohibits any local ordinance related to ownership or maintenance of a motor vehicle from being a cause to stop that vehicle unless it is a jailable offense. It also restricts law enforcement officers from stopping motor vehicles for expired safety inspection or registration stickers until the first day of the fourth month after expiration. Finally, it provides that no evidence discovered or obtained due to an impermissible stop, including evidence obtained with a person's consent, is admissible in any trial, hearing, or other proceeding. The bills go into effect on March 1.

**Law-enforcement misconduct – authority of Attorney General to file suit** - [SB5024](#) (Lucas) and [HB 5072](#) (Lopez) These identical bills authorize 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 bills also empower 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.

## Sentencing reform

**Criminal cases; sentencing reform** - [SB5007](#) (Morrissey) This bill 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.*

## Operating in a COVID-19 world – approved bills addressing civil liability, land use, and ABC laws

**Certain hospices, home care organizations, private providers, assisted living facilities, and adult day care centers; immunity from civil liability; COVID-19; emergency** - [SB5082](#) (Marsden) and [HB 5059](#) (Willett) These identical bills provide that a licensed hospice, home care organization, private provider, assisted living facility, or adult day care center that delivers care to or withholds care from a patient, resident, or person receiving services who is diagnosed as being or is believed to be infected with the COVID-19 virus shall not be liable for any injury or wrongful death of such patient, resident, or person receiving services arising from the delivery or withholding of care when the emergency and subsequent conditions caused by the emergency result in a lack of resources, attributable to the disaster, that render such hospice, home care organization, private provider, assisted living facility, or adult day care center unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and that resulted in the injury or wrongful death at issue. The bill contains an emergency clause.

**Alcoholic beverage control; local special events license; limitations on events during public health emergency** - [SB5036](#) (McPike) This bill provides that no limitation on the number of special events that may be held by a local special events licensee shall be imposed during the effective dates of any rule, regulation, or order that is issued by the Governor or State Health Commissioner to meet a public health emergency and that effectively reduces allowable restaurant seating capacity. Under current law, local special events licensees are limited to holding 16 special events per year. The bill contains an emergency clause.

**Local land use approvals; extension of approvals to address the COVID-19 pandemic** - [SB5106](#) (Lewis) This bill extends until at least July 1, 2022, the sunset date for various local land use approvals that were valid and outstanding as of July 1, 2020.

## Notable bills not approved in the Special Session

### I. Bills of interest not approved but being studied/likely to return in 2021 Session

**1. Virginia Freedom of Information Act; law-enforcement criminal incident information; criminal investigative files** - [HB5090](#) (Hurst). Adds criminal investigative files, defined in the bill, to the types of law-enforcement and criminal records required to be released in accordance with the provisions of the Virginia Freedom of Information Act. Under current law, the release of criminal investigative files is discretionary. The bill also allows a law-enforcement agency or attorney for the Commonwealth to petition a court of record

for permission not to release criminal incident information that would otherwise be subject to release, if the release of such information is likely to jeopardize an ongoing investigation or cause certain other harms.

**Explanation:** This bill was passed by indefinitely in committee but is being studied by the Freedom of Information Advisory Council; a draft will be considered at their December meeting. Once posted the date and time can be found [here](#).

**2. Civil action for deprivation of rights; duties and liabilities of certain employers in employing or contracting for the services of law-enforcement officers - [HB5013](#)** (Bourne) Would create a civil action for the deprivation of a person's rights by a law-enforcement officer and provide that a plaintiff may be awarded compensatory damages, punitive damages, and equitable relief, as well as reasonable attorney fees and costs. The bill would provide that sovereign immunity or any other immunities or limitations on liability or damages shall not apply to such actions and that qualified immunity is not a defense to liability for such deprivation of rights. Finally, the bill would provide that any public or private entity that employs or contracts for the services of a law-enforcement officer owes a duty of reasonable care to third parties in its hiring, supervision, training, retention, and use of such officers under its employment or contract.

**Explanation:** While this bill was passed by indefinitely in committee, the issue will likely return in the 2021 Session. Please review the VML legislative [program](#) for the VML position on this issue.

## II. Other bills of interest that were unsuccessful in the Special Session

**Utility disconnection moratorium and repayment plan for customer arrearages - [SB5118](#)** (McClellan). Would provide terms and conditions under which utilities would be allowed to disconnect customers from service during a public health emergency. Would provide specific conditions for repayment plans for use during a public health emergency. Largely exempted municipally owned utilities with the exception of reporting requirements. Left in committee.

**Paid quarantine leave - [HB5116](#)** (Guzman) Would require public and private employers to provide eligible employees paid quarantine leave. Such paid quarantine leave would be available for immediate use by the employee, regardless of length of service with the employer. Such paid quarantine leave could be used for an eligible employee or for care of a family member due to 1) illness or health condition related to COVID-19; 2) need for medical diagnosis, care, or treatment of an illness or health condition related to COVID-19; and 3) need for preventive medical care related to COVID-19. Also could be used by employee for 1) care of a family member with illness or health condition related to COVID-19; or 2) to care for oneself or a family member when health authorities with jurisdiction or health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of COVID-19 exposure to COVID-19. It would prohibit employers from taking certain retaliatory actions against an employee related to paid quarantine leave or absence from work without pay after exhausting paid quarantine for the same purposes an employee may use paid quarantine leave. The bill would allow an employee to bring a civil action against an employer for violations of the bill's provisions unless such violations are resolved through the employer's human resources department. The bill would not apply to employees of the Commonwealth unless federal COVID-19 pandemic relief funds are available to fund the costs. Except for employers of employees in domestic service, the bill would not apply to employers with 25 employees or fewer, unless a federally funded grant program is available to such employers. The bill would sunset July 1, 2021, or upon expiration of the state of emergency declared by the Governor, whichever is earlier. Passed by Indefinitely in committee.

**Employers; reporting outbreaks of COVID-19** - [SB5064](#) (Lewis) Would require employers to report for each worksite with 30 or more employees, or for any multi-employer worksite with 30 or more combined employees, to the local health department when the worksite has had five or more confirmed cases of the COVID-19 virus. The employer is required to make such report within 24 hours of becoming aware of such cases. The bill requires the State Department of Health to compile such reports and to make a weekly report available to the public with the compiled information. Left in committee.

**Immunity from civil claims related to the transmission of or exposure to the COVID-19 virus; emergency** - [HB5074](#) (Sullivan) Would provide immunity to a person, as defined in the bill, from civil causes of action arising from any act or omission alleged to have resulted in the contraction of or exposure to the COVID-19 virus, provided such person has complied with applicable and the most recent federal, state, and local laws, policies, procedures, and guidance regarding COVID-19. Would require every person to provide, with respect to any premises owned by the person or under the person's possession, custody, or control, reasonable notice of actions taken by the person for the purpose of reducing the risk of transmission of COVID-19 to individuals present on the premises. The bill contains an emergency clause and specifies that the provisions apply to claims arising no later than 180 days after the expiration or revocation of all states of emergency declared by the Governor related to the COVID-19 pandemic. Left in committee.

**Immunity from civil claims related to the transmission of or exposure to the COVID-19 virus and uses of personal protective equipment; emergency** - [SB5098](#) (Vogel) and [SB5099](#) (Vogel) Similar measures that would provide immunity to persons, as defined in the bill, from civil causes of action arising from any act or omission alleged to have resulted in the contraction of or exposure to the COVID-19 virus. Would provide immunity to persons who design, manufacture, label, or distribute any personal protective equipment in response to the COVID-19 virus from any civil cause of action arising out of the use of such equipment. The immunities provided by such bill would expire two years after the expiration or revocation of all states of emergency declared by the Governor related to the COVID-19 pandemic. SB 5098 passed by indefinitely in committee; SB 5099 stricken at request of patron.

**Private school employees and volunteers; essential workers; personal protective equipment during certain declared states of emergency; emergency** - [SB5101](#) (Dunnavant) Would provide that during any case in which the Governor has declared a state of emergency related to a communicable disease of public health threat, individuals working or volunteering in a private elementary or secondary school in the Commonwealth shall be considered essential workers and shall be included in any group afforded priority with regard to access to personal protective equipment during such state of emergency. Left in committee.

**Workers' compensation; presumption of compensability for COVID-19** - [HB5028](#) (Davis) Would establish a presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, first responders, health care providers, and school board employees is an occupational disease compensable under the Workers' Compensation Act. The provisions of the bill will be effective retroactive to January 1, 2020. Passed by indefinitely in committee.

**Workers' compensation; presumption of compensability for COVID-19** - [SB5066](#) (Saslaw) Would establish a presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, first responders, and health care providers is an occupational disease compensable under the Workers' Compensation Act. The provisions of the bill would be effective retroactive to January 1, 2020. Left in committee.

**Collective bargaining; law enforcement** - [SB5027](#) (Newman) Would provide that no county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any law-enforcement agency or its employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service. Under current law, beginning May 1, 2021, localities will have the authority to recognize a labor union or other employee association of a law-enforcement agency or its employees and to collectively bargain with such unions or associations if such authority is provided for by local ordinance. Passed by indefinitely in committee.

**Collective bargaining; prohibited considerations during negotiations** - [HB5021](#) (Davis) Would prohibit any local ordinance or resolution granting or permitting collective bargaining from permitting consideration during collective bargaining negotiations of any action or discussion regarding the hiring, firing, or discipline of a local employee. All such actions and discussions would be exempt from all collective bargaining negotiations. Left in committee.

**Collective bargaining; law enforcement; transparency and accountability** - [HB5071](#) (LaRock) Would prohibit a county, city, or town from entering into a collective bargaining contract with a labor union or other employee association representing law-enforcement officers or employees of a law-enforcement agency that (i) prevents the Attorney General from seeking equitable relief against a law-enforcement agency engaging in a pattern or practice of unconstitutional misconduct; (ii) includes any stipulation that delays officer interviews or interrogations after alleged wrongdoing for a set length of time; (iii) provides officers with access to evidence before interviews or interrogations about alleged wrongdoing; (iv) mandates the destruction or purging of disciplinary records from personnel files after a set length of time, or limits the consideration of disciplinary records in future employment actions; (v) prohibits the interrogation, investigation, or punishment of officers on the basis of alleged wrongdoing if a set length of time has elapsed since its alleged occurrence, or since the initiation of the investigation; (vi) prohibits supervisors from interrogating, investigating, or disciplining officers on the basis of anonymous civilian complaints; or (vii) requires arbitration of disputes related to disciplinary penalties or termination. Left in committee

**Broadband funding** - [SB5115](#) (McDougle) Would appropriate to the Department of Housing and Community Development a sum sufficient to expand access to broadband services in underserved and unserved areas of the Commonwealth. Passed by indefinitely in committee.

**Guests of transient lodging facilities impacted by the COVID-19 pandemic; application of the Virginia Residential Landlord and Tenant Act; emergency** - [SB5089](#) (Locke) Would suspend provisions of the Code of Virginia that allow an innkeeper or property owner of a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging to evict a guest using self-help methods during the declared public health emergency related to the COVID-19 pandemic and would apply the provisions of the Virginia Residential Landlord and Tenant Act to (i) a guest who uses such lodging as his primary residence for any length of time as tenant and (ii) the innkeeper or property owner of such lodging, or his agent, as landlord. Passed by indefinitely.

**Guests of transient lodging facilities impacted by the COVID-19 pandemic; suspending self-help evictions; emergency** - [HB5120](#) (Jenkins) Would suspend provisions of the Code of Virginia that allow an innkeeper or property owner of a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging to evict a guest using self-help methods during the declared public health emergency

related to the COVID-19 pandemic and replaces those provisions with a requirement that guests who demonstrate that their stay is a direct or indirect result of the COVID-19 pandemic only be evicted according to the provisions of the Virginia Residential Landlord and Tenant Act, including the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of eviction issued pursuant to such action. Left in committee

**Monuments and memorials for war veterans; authority of localities** - [HB5030](#) (McQuinn) Would change the authority of a locality from the authority to “contextualize or cover” to the authority to “alter” a monument or memorial for war veterans located within the geographical limits of the locality, with the result that the locality has the authority to remove, relocate, or alter such monument or memorial. The bill removes the current requirement that the locality publish notice of its intent to remove, relocate, contextualize, or cover such monument or memorial in a newspaper having general circulation in the locality, allow a public hearing on the matter, and, if the governing body votes to remove the monument or memorial, offer, for a period of at least 30 days, the monument or memorial for relocation and placement to any museum, historical society, government, or military battlefield. In addition, an existing enactment clause that excludes “a monument or memorial located on the property of a public institution of higher education within the City of Lexington” from the application of this law is repealed. Passed by indefinitely in committee.

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