

## Update on Other Legislation of Interest in 2020 General Assembly Special Session September 22, 2020

### Public Safety

**HB 5029** (McQuinn) requires that any law-enforcement officer who witnesses another law-enforcement officer engaging or attempting to engage in the unlawful use of force against another person shall intervene, when such intervention is objectively reasonable and possible, to end the unlawful use or attempted unlawful use of force, or to prevent the further unlawful use of 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 unlawful use of force. The bill states that the knowing failure to intervene in the unlawful use of non-deadly force is punishable as a Class 1 misdemeanor and the knowing failure to intervene in the unlawful use of deadly force is punishable as a Class 6 felony. The bill punishes the knowing failure to intervene in the unlawful use of force that leads to death or if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment as a Class 4 felony. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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**HB 5045** (Delaney) 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 any inmate, parolee, probationer, arrestee, 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 arrestees to the list of those persons for whom it is unlawful for a person in such authority to commit the offense of carnal knowledge. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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**HB 5049** (Helmer) provides that no state or local law-enforcement agency shall acquire, purchase, or otherwise accept on any terms (i) weaponized unmanned aerial vehicles; (ii) aircraft that are configured for combat or are combat-coded and have no established commercial flight application; (iii) grenades or similar explosives or grenade launchers; (iv) standard issue military rifles; or (v) armored multi-wheeled vehicles that are mine-resistant, ambush-protected, and configured for combat from a surplus program operated by the federal government. These provisions do not apply to the Virginia National Guard or Virginia Defense Force. The bill prohibits the use of such military property by a law-enforcement officer unless a waiver has been granted by the Department of Criminal Justice Services (DCJS). The bill prohibits the use of "kinetic energy munitions," which includes impact rounds and baton rounds, such as rubber batons, bean bag rounds, foam baton rounds, and plastic, wax, wood, or rubber-coated projectiles. The bill directs DCJS to adopt emergency regulations to implement the provisions of the bill. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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**HB 5062** (Mullin) 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) animus toward a victim because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the victim. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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**HB 5072** (Lopez) 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 passed the House and was reported from Senate Judiciary with an amendment, and it was then sent to Senate Finance and Appropriations.

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**SB 5024** (Lucas) 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 passed the Senate and was sent to the House Courts of Justice Committee.

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**HB 5099** (Aird) prohibits any law-enforcement officer from seeking, executing, or participating in the execution of a no-knock search warrant, defined in the bill as any search warrant executed without law-enforcement officers giving notice of their identity, authority, and purpose prior to entering the place to be searched. The bill requires a law-enforcement officer to provide notice of his identity, authority, and purpose prior to entering the place to be searched and states that, 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 does not contain an exception for having a no-knock search warrant authorized by a magistrate or judge. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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**HB 5142** (Jenkins)/**SB 5033** (Surovell) 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. The bill provides that such dispositions may be eligible for expungement upon the agreement of all parties. The bill also provides that "good cause" for purposes of a nolle prosequi includes that (i) the particular circumstances relating to the facts of the case, (ii) the general deterrence value of prosecuting a case, or (iii) the limits on agency resources or competing prosecutorial priorities make such case unprosecutable or not in the interests of the Commonwealth to prosecute such case at such time. **HB 5142** was referred to the House Committee for Courts of Justice. **SB 5033** passed the Senate and was sent to House Courts of Justice, though House Courts of Justice elected not to hear **HB 5142**.

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**HB 5146** (Herring) establishes a process for the automatic expungement of criminal records for certain convictions, deferred dispositions, acquittals, and for offenses that have been nolle prossed or otherwise

dismissed. The bill also provides a process for the automatic expungement of criminal records for charges arising from mistaken identity or the unauthorized use of identifying information. The bill has staggered delayed effective dates in order to develop systems for implementing the provisions of the bill. As introduced, this bill was a recommendation of the Virginia State Crime Commission, though there was more discussion than is sometimes the case at the Crime Commission. The bill passed the House and was reported from Senate Judiciary with a substitute and was then sent to Senate Finance and Appropriations.  
<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5146S1+pdf>

**SB 5043** (Deeds) provides that final disposition may include (i) conviction of the original charge, (ii) conviction of an alternative charge, or (iii) dismissal of the proceedings. The bill also allows a person to petition for the expungement of the police and court records relating to such person's conviction for misdemeanors and certain felonies if he has been granted a simple pardon for the crime. The bill also allows a person to petition for an expungement of the police and court records relating to convictions of marijuana possession, underage alcohol or tobacco possession, and using a false ID to obtain alcohol, and for deferred disposition dismissals for possession of controlled substances or marijuana, underage alcohol or tobacco possession, and using a false ID to obtain alcohol. The bill requires the person to have paid all court costs, fines, and restitution, and for five years to have elapsed since the date of conviction, depending on the nature of the offense. Under current law, police and court records relating to convictions are only expunged if a person received an absolute pardon for a crime he did not commit.

The bill creates an Expungement Fee Fund, which would be funded by all collected expungement fees. The bill provides that expungement fees shall not be refundable, but persons who are indigent or represented by court-appointed counsel shall not be required to pay such fees. The Fund would be administered by the Executive Secretary of the Supreme Court and used to fund the costs of court-appointed counsel. The bill has a delayed effective date of January 1, 2022, and incorporates SB 5006, SB 5009, and SB 5110.  
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**SB 5013** (Stuart) provides that a summons for a violation of possession of marijuana shall contain the option for the person charged to prepay the civil penalty. This bill passed the Senate and was sent to House Courts of Justice.  
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**SB 5032** (Surovell) eliminates the mandatory minimum term of confinement for an assault and battery committed against a judge; magistrate; law-enforcement officer; correctional officer; person directly involved in the care, treatment, or supervision of inmates; firefighter; or volunteer firefighter or any emergency medical services personnel and provides that such crime can no longer be committed as a simple assault and must result in a bodily injury. This bill reduces the penalty for assaulting a law-enforcement officer in cases where the degree of culpability is slight due to diminished physical or mental capacity, or in cases where there is no physical injury to a Class 1 misdemeanor. The bill also eliminates the mandatory minimum term of confinement for assaulting a law-enforcement officer. The bill passed the Senate and was sent to House Courts of Justice.  
<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5032S1+pdf>

**SB 5043** (Deeds) provides that final disposition may include (i) conviction of the original charge, (ii) conviction of an alternative charge, or (iii) dismissal of the proceedings. The bill also allows a person to petition for the expungement of the police and court records relating to such person's conviction for misdemeanors and certain felonies if he has been granted a simple pardon for the crime. The bill also allows a person to petition for an expungement of the police and court records relating to convictions of marijuana possession, underage alcohol

or tobacco possession, and using a false ID to obtain alcohol, and for deferred disposition dismissals for possession of controlled substances or marijuana, underage alcohol or tobacco possession, and using a false ID to obtain alcohol, when all court costs, fines, and restitution have been paid and five years have elapsed since the date of completion of all terms of sentencing and probation. Under current law, police and court records relating to convictions are only expunged if a person received an absolute pardon for a crime he did not commit. This bill passed the Senate and was sent to House Courts of Justice.

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### ***Law Enforcement Training***

**HB 5108** (Guzman) changes the membership of the Criminal Justice Services Board and its Committee on Training by requiring that some members be representatives of a civil rights organization, representatives of community interests of minorities, and representatives of a mental health service provider. The bill requires that the Committee on Training include a representative from the Virginia Indigent Defense Commission and reduces the representatives from the Virginia Sheriffs' Association and Virginia Association of Chiefs of Police from two representatives to one representative each. In addition, the bill permits the Committee on Training to appoint curriculum review committees. The bill also provides that the Committee on Training shall serve as an advisory board to DCJS for effecting the compulsory minimum training standards for law-enforcement officers, deputy sheriffs, jail and correctional officers, and dispatchers and makes DCJS the policy maker responsible to the Criminal Justice Services Board for effecting such standards. This bill would reduce the number of law-enforcement officers on the Committee of Training and increase the number of members that do not have law enforcement training. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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**HB 5109** (Hope) requires DCJS to develop a 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 when conducting training. The bill also requires DCJS to include the recognition of implicit biases in interacting with persons who have a mental illness, substance use disorder, or developmental or cognitive disability in its (i) training standards and model policies; (ii) compulsory training standards for basic training and recertification of law-enforcement officers; and (iii) operating procedures, guidelines, and standards for community policing in order to ensure sensitivity to and awareness of systemic and individual racism, cultural diversity, and the potential for bias-based profiling. The bill also requires the Department to include training in de-escalation techniques and training in the lawful use of force, including the use of force only when necessary to protect the law-enforcement officer or another person, in the compulsory training standards for basic training and recertification. The bill requires DCJS to establish compulsory in-service training standards for law-enforcement officers that shall include (a) relevant state and federal laws; (b) awareness of cultural diversity and the potential for bias-based profiling; (c) de-escalation techniques; (d) working with individuals with disabilities, mental health needs, or substance use disorders; and, (e) the lawful use of force, including the use of deadly force only when necessary to protect the law-enforcement officer or another person.

In addition, the bill adds to the minimum qualifications to become a law-enforcement officer or a jail officer the requirement that such person undergo a psychological examination, subsequent to a conditional offer of employment, conducted under the supervision of a licensed psychologist or other licensed mental health professional. The bill requires the Department to establish requirements for compulsory mental health examinations for law-enforcement officers, jail officers, and correctional officers that include guidelines on the implementation of such mental health examinations. Finally, the bill requires any criminal justice training academy approved by the Department to employ such uniform curriculum and lesson plans and requires the Department to conduct annual evaluations of each criminal justice training academy's compliance with uniform

curriculum and lesson plans. The bill allows approved criminal justice training academies to petition the Department to approve the use of an alternative curriculum and lesson plans developed by such academy. Currently, the Fairfax County Criminal Justice Academy operates at a higher standard than the minimum requirements. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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### ***Possession of Marijuana and Traffic Infractions***

**HB 5058** (Hope) changes from a primary offense to a secondary offense the traffic infractions of operating a motor vehicle (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. A secondary offense is one for which a summons can only be issued if the offender is stopped for another, separate offense. The bill also provides that no law-enforcement officer may lawfully 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 issuing a citation for jaywalking or entering a highway where the pedestrian cannot be seen unless the pedestrian is also stopped for another, separate offense. 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 is admissible in any trial, hearing, or other proceeding. The bill passed the House and was reported from Senate Judiciary with a substitute. The bill was then sent to Senate Finance and Appropriations.

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**SB 5029** (Lucas) changes from primary offenses to secondary offenses the possession of marijuana and the traffic infractions of operating a motor vehicle (i) without a light illuminating a license plate, (ii) without an exhaust system that prevents excessive or unusual levels of noise, (iii) with certain sun-shading materials and tinting films, and (iv) with certain objects suspended in the vehicle. A secondary offense is one for which a summons can only be issued if the offender is stopped for another, separate offense. The bill also provides that no law-enforcement officer may lawfully 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 passed the Senate and was sent to House Courts of Justice.

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### ***Use of Neck Restraints***

**HB 5069** (Carroll Foy) makes it a Class 6 felony for a law-enforcement officer to use a neck restraint in the performance of his official duties. 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. The bill passed the House and was reported from Senate Judiciary with a substitute. The bill was then sent to Senate Finance and Appropriations.

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### ***Crisis Intervention Teams***

**HB 5043** (Bourne) provides that DCJS and the Department of Behavioral Health and Developmental Services (DBHDS) shall support the development and establishment of a mental health awareness response and community understanding services (Marcus) alert system in localities and areas throughout the Commonwealth. The bill provides that, by July 1, 2021, every locality shall have established, or be part of an area that has established, a Marcus alert system that uses community care teams. An area can be a combination of one or more localities or institutions of higher education located therein that may have law-enforcement officers. A "community care team" is defined in the bill as a group of mental health service providers working with registered peer recovery specialists and law-enforcement officers as a team, with the mental health service providers leading such team, to help stabilize individuals in crisis situations. A "mental health awareness response and community understanding services (Marcus) alert system" is defined in the bill as a process in which a call for service or other communication to an emergency 911 system or that is communicated with any other equivalent reporting system gets routed for the appropriate services, including calls for service being directed to a community care team. The bill was reported from the House Committee on Public Safety and was referred to the Committee on Appropriations. Although crisis intervention teams could help stabilize individuals during law enforcement encounters and crisis intervention, giving localities the ability to create teams that would best serve their locality would be preferable. The bill passed the House and was reported from Senate Judiciary with a substitute, and it was then sent to Senate Finance and Appropriations.

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**SB 5014** (Edwards) requires all law-enforcement officers to complete crisis intervention team training as part of the 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 was reported from Senate Judiciary and sent to the Senate Committee on Finance and Appropriations. The bill passed the Senate and was sent to the House Committee on Public Safety, where it reported with a substitute.

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**SB 5038** (McPike) directs DBHDS to develop a comprehensive crisis service continuum comprised of a crisis call center, mobile crisis teams, crisis stabilization centers, and a Marcus alert system. The Department, in collaboration with stakeholders, shall develop a plan for the implementation of a Marcus alert system by July 1, 2021, and requires that every locality be served by a Marcus alert system by July 1, 2022. The bill also directs the Department of Criminal Justice Services to develop a plan for law-enforcement's role in the Marcus alert system and protocols for law-enforcement participations. The bill incorporates **SB 5084** (McClellan). Governor Northam's proposed amendments to the biennium budget included \$3.6 million for a number of public-safety-related items, including training requirements for law enforcement training academies, which could address some of the CIT training but not the operation/staffing of these programs. Although crisis intervention teams could help stabilize individuals during law enforcement encounters and crisis intervention, giving localities the ability to create teams that would best serve their locality would be preferable. The bill passed the Senate and was sent to the House Committee on Public Safety, where it was reported with a substitute and referred to the House Committee on Appropriations.

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### **Land Use Approvals**

**SB 5106** (Lewis) 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. The Board already authorized the extension of such approvals

for Fairfax County. This bill passed the Senate and was sent to House General Laws, where an amendment to limit the scope of the bill was added at the request of local governments.

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## **Health and Human Services**

### ***Outbreak Reporting***

**HB 5048** (Sickles) and **SB 5081** (Barker) require the Department of Health to make information about outbreaks of communicable diseases of public health threat at any medical care facility, residential or day program, service or facility licensed or operated by any agency of the Commonwealth, school, or summer camp currently required to report an outbreak of a communicable disease to the Department available to the public on a website maintained by the Department. Such information shall include the name of the place at which the outbreak has occurred and the number of confirmed cases of and deaths resulting from such communicable disease reported by each such place. These bills contain an emergency clause. **HB 5048** passed the House (96-0), and **SB 5081** passed the Senate (34-0).

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<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5081ES1+pdf>

**SB 5090** (Dunnavant) requires that for the duration of the emergency declared by the Governor pursuant to §44-146.17 of the Code of Virginia in response to COVID-19, the Commissioner of Health shall make available to the public on a website maintained by the Department of Health information about the number of confirmed cases of COVID-19 by week at the health district level, the number of confirmed cases by week and by age group at the health district level, and the percentage of cases by week that are known to be associated with a nursing home, assisted living facility, or correctional facility at the health district level. For the duration of the emergency declared by the Governor pursuant to §44-146.17 of the Code of Virginia in response to COVID-19, the Commissioner of Health shall develop and make available to the public on a website maintained by the Department of Health COVID-19 indicators with thresholds to include case incidence rate, percentage of polymerase chain reaction (PCR) tests that are positive, rate of COVID-like illness visits to emergency departments, rate of current confirmed COVID-19 intensive care unit hospitalizations, and percentage of hospital beds that are currently occupied. The bill passed the Senate and was reported from House Health, Welfare and Institutions with a substitute (the substitute has not been posted yet).

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+SB5090S1+pdf>

### ***PPE for Child Care Providers***

**SB 5096** (Dunnavant) provides that during any case in which the Governor has declared a state of emergency related to a communicable disease of public health threat, persons operating or working or volunteering at a child day center or family day home shall be considered essential workers and shall be included in any group afforded priority with regard to access to personal protective equipment during such emergency. The bill contains an emergency clause. This bill passed the Senate on a 35-0 vote.

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### ***In-Home Consumer Directed Services***

**SB 5116** (McDougle) requires DMAS to implement an electronic visit verification system to confirm delivery of in-home services by providers of consumer-directed personal care, respite care, or companion services through the Commonwealth Coordinated Care Plus waiver program, Developmental Disability waiver program, or the Early and Periodic Screening Diagnosis and Treatment program and creates an exception to the requirement that providers of such services use the electronic visit verification system for providers who reside in the home of the person receiving services. The bill passed the Senate and was reported from House Health, Welfare and Institutions with a substitute and was then sent to House Appropriations.

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<http://leg1.state.va.us/cgi-bin/legp504.exe?202+amd+SB5116AH>

### **Utility Repayments**

**SB 5118** (McClellan) requires every utility providing electric, gas, or water service that is subject to regulation by the State Corporation Commission (the Commission) to develop an Emergency Debt Repayment Plan (EDRP) for residential customers. The bill requires that an EDRP is designed to ensure that debt repayments accrued during a certain state of emergency or a certain service disconnection moratorium, in addition to the customer's regular utility bill are sustainable and affordable for the customer. The bill provides that EDRP will allow for an up to 12-month repayment period and for a customer to roll over remaining debt with any debt accrued under a subsequent state of emergency. The bill prohibits a utility from requiring any new deposit, application fee, or other new type of advance payment before enrolling a customer in an EDRP and from charging any interest, finance charges, or prepayment penalties on the unpaid debt while the customer is enrolled in an EDRP. The bill prohibits a utility from discontinuing service for any customer enrolled in the program provided the customer remains in compliance with the terms of the EDRP and remains current on the customer's current utility bill. The bill requires the Commission to allow for the timely recovery of certain costs resulting from an EDRP for jurisdictional utilities, including through a rate adjustment clause or through base rates and provides that the Commission may apply any applicable earnings test in the Commission rules governing utility rate applications and annual informational filings when assessing the recovery of such costs. The bill provides that it does not confer any additional jurisdiction or authority to the Commission.

The bill requires each jurisdictional utility to report certain information to the Commission and for the Commission to report such information to the chairs of the House Committees on Labor and Commerce and Appropriations and the Senate Committees on Commerce and Labor and Finance and Appropriations. The bill requires municipal utilities, upon the request of the chairs of such committees to submit a report to such committees. The bill also requires the Commission to submit an additional report to the chairs of the House Committees on Labor and Commerce and Appropriations and the Senate Committees on Commerce and Labor and Finance and Appropriations. **SB 5118** passed the Senate and was sent to House Appropriations (a House version of legislation related to utility disconnection, **HB 5117** (Aird) was not heard in House committee, so it is likely that **SB 5118** will be the bill that is considered by the House. There is also language regarding utility disconnections and the creation of a repayment plan for customers included in the Governor's proposed budget amendments).

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### **Confederate Monuments**

**HB 5030** (McQuinn) changes 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. The bill passed the House and was sent to Senate Local Government.

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## Elections

**SB 5120** (Howell) appropriates \$2 million to the Department of Elections to be used to provide prepaid postage for the return of absentee ballots for the November 3, 2020, election. The bill requires that such prepaid postage be provided by localities, which will be reimbursed by the Department out of the appropriation. The bill also makes other procedural changes for absentee voting for the November 3, 2020, election, including directing the State Board of Elections to promulgate emergency regulations for the establishment and operation of drop-off locations for completed ballots and removing the requirement for a witness to certify an absentee ballot signature. The bill was treated as a mini budget bill (there was an identical House bill, **HB 5103** (Sickles), which ultimately did not move forward), which allows it to become effective much sooner than other bills enacted during the special session. After passing both houses, **SB 5120** was signed by the Governor, becoming law immediately (non-budget bills will not become effective for four months after the special session adjourns unless they pass by a four-fifths majority).

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## Housing

**HB 5064** (Price) requires a landlord who owns more than four rental dwelling units, or more than a 10 percent interest in more than four rental dwelling units, before terminating a rental agreement due to nonpayment of rent, to serve upon such tenant a written notice informing the tenant of the total amount due and owed and offer the tenant a payment plan under which the tenant must pay the total amount due and owed in equal monthly installments over a period of the lesser of six months or the time remaining under the rental agreement. The bill also outlines the remedies a landlord has if a tenant fails to pay the total amount due and owed or enter into a payment arrangement within five days of receiving notice or if the tenant enters into a payment arrangement but fails to pay within five days of the due date any rent that becomes due under the payment plan or arrangement after such plan or arrangement becomes effective. The bill clarifies that a tenant is not precluded from participating in any other rent relief programs available to the tenant through a nonprofit organization or under the provisions of a federal, state, or local law, regulation, or action. The bill sunsets on July 1, 2021.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5064S1+pdf>

**SB 5088** (Ebbin) requires a landlord who owns more than four rental dwelling units, or more than a 10 percent interest in more than four rental dwelling units, before terminating a rental agreement due to nonpayment of rent, to serve upon such tenant a written notice informing the tenant of the total amount due and owed and offer the tenant a payment plan under which the tenant must pay the total amount due and owed in equal monthly installments over a period of the lesser of six months or the time remaining under the rental agreement. The bill also outlines the remedies a landlord has if a tenant fails to pay the total amount due and owed or enter into a payment arrangement within five days of receiving notice or if the tenant enters into a payment arrangement but fails to pay within five days of the due date any rent that becomes due under the payment plan or arrangement after such plan or arrangement becomes effective. The bill clarifies that a tenant is not precluded from participating in any other rent relief programs available to the tenant through a nonprofit organization or under the provisions of a federal, state, or local law, regulation, or action. This bill passed the Senate and was sent to House General Laws.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+SB5088S1+pdf>

**HB 5106** (J. Cole) provides that a landlord shall not take any adverse action against a tenant or applicant for tenancy based on any adverse item related to payment history or an eviction for nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic. The bill also requires landlords who use consumer or tenant screening reports and who receive notification that a tenant or applicant

for tenancy is determined to be anything other than "qualified" to contact the generator of the report in instances in which the report does not specify the reason for such determination to ascertain whether such determination was due solely to the tenant the tenant or applicant for tenancy's payment history or an eviction for nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic. The bill permits a tenant or applicant for tenancy to recover damages of up to \$1,000, along with attorney fees, from landlords who do not comply with these requirements. The bill passed the House and was reported from Senate General Laws with amendments.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5106EH1+pdf>

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+amd+HB5106AS>

### **State Holiday – Juneteenth**

**HB 5052** (Bagby) and **SB 5031** (Locke) would recognize the nineteenth day of June of each year, also known as Juneteenth, as a legal holiday in the Commonwealth to commemorate the announcement of the abolition of slavery in Texas, the last of the former Confederate States of America to abolish slavery, and to recognize the significant roles and many contributions of African Americans to the Commonwealth and the nation. **HB 5052** passed the House and was sent to Senate General Laws, while **SB 5031** passed the Senate and was sent to House General Laws.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5052+pdf>

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+SB5031+pdf>

### **No Longer Under Consideration**

#### ***Paid Leave***

**SB 5076** (Favola) would more generally require public and private employers to provide eligible employees paid sick time that can be used during a pandemic. The bill would have a delayed effective date of January 1, 2021. The legislation was passed by indefinitely in the Senate Commerce and Labor Committee (12-3).

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+SB5076+pdf>

<https://committees.lis.virginia.gov/forconsideration.aspx?ses=202&bil=SB5076&hou=S>

#### ***Public Safety***

**SB 5065** (Morrissey) creates a civil action for the deprivation of a person's rights by a law-enforcement officer. The bill provides that a plaintiff may be awarded compensatory damages, punitive damages, and equitable relief, as well as reasonable attorney fees and costs. Finally, the bill provides 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. The bill was passed by indefinitely in Senate Judiciary and was sent to the Boyd-Graves Conference (a group within the Virginia Bar Association) for study.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+SB5065S1+pdf>

**HB 5013** (Bourne) creates a civil action for the deprivation of a person's rights by a law-enforcement officer and provides that a plaintiff may be awarded compensatory damages, punitive damages, and equitable relief, as well as reasonable attorney fees and costs. The bill provides 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 provides 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. The bill passed the House but was passed by indefinitely in Senate Judiciary (12-3). Though Senate Judiciary

sent the Senate version of this bill, **SB 5065**, to the Boyd-Graves Conference for study, when **HB 5013** was considered, the committee decided to create a separate subcommittee (or perhaps a joint Senate-House subcommittee if the House agrees) to examine this issue, as the Boyd-Graves Conference is not likely to meet in the coming months. It is likely that this issue will be discussed again during the 2021 GA session.

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+HB5013+pdf>

**HB 5090** (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. This bill would add a requirement that the police department obtain a court order to withhold investigative files when it would jeopardize a pending criminal investigation. In addition, the bill would require the police department to release the entire investigative file after adjudication (or after three years) without regard for privacy concerns. Current law gives the department some discretion over sensitive information. This bill passed the House but the Senate General Laws Committee sent it to the FOIA Council for study in the off-session.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5090H3+pdf>

**HB 5112** (Levine) requires any law-enforcement officer who witnesses another person suffering from a serious bodily injury or a life-threatening condition to render aid and makes it a duty to report acts of wrongdoing committed by another law-enforcement officer. Any law-enforcement officer who fails to render such aid or report such acts of abuse, fraud, misconduct, or wrongdoing committed by another law-enforcement officer shall be subject to disciplinary action, including dismissal, demotion, suspension, or transfer of the law-enforcement officer. The bill also penalizes as a Class 1 misdemeanor the failure of any law-enforcement officer, who has actual knowledge of the commission on duty of a criminal offense by another law-enforcement officer, to report such wrongdoing, defined in the bill. The bill also amends the definition of "bias-based profiling" to include sexual orientation and gender identity. This bill passed the House but was passed by indefinitely in Senate Judiciary.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5112E+pdf>

### ***Collective Bargaining***

**HB 5021** (Davis) prohibits 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 shall be exempt from all collective bargaining negotiations. The bill has been referred to the House Committee on Labor and Commerce – the House has completed consideration of House bills, so it is unlikely that this bill will be considered during the special session.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5021+pdf>

**HB 5071** (LaRock) prohibits 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. The bill has been referred to the House Committee on Labor and Commerce – the House has completed consideration of House bills, so it is unlikely that this bill will be considered during the special session.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5071+pdf>

### ***School Nurses***

**SB 5004** (Kiggans) excludes school nurse positions from requirements for student support positions and instead requires each local school board to employ at least one full-time equivalent school nurse position in each elementary school, middle school, and high school in the local school division. This bill is estimated to cost Fairfax County approximately \$11.1 million. The legislation passed the Senate Education and Health Committee and was re-referred the Senate Finance and Appropriations Committee, where it was passed by indefinitely.

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5004S1+pdf>

### ***Housing***

**SB 5051** (Hashmi) prohibits the termination of rental agreements and the issuance of orders of possession and writs of eviction for any reason, except in response to a criminal or willful act that is not remediable and that poses a threat to health or safety, until after April 30, 2021. This bill was reported from Senate General Laws and Technology with a substitute (9-5) and re-referred to Senate Finance and Appropriations, but it does not appear that this bill is moving forward at this time.

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5051S1+pdf>

**SB 5089** (Locke) suspends 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 applies 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. The bill contains an emergency clause. There were concerns this may have impacted the collection of transient occupancy taxes. This bill was referred to the Committee on General Laws and Technology, where it was passed by indefinitely at the patron's request.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+SB5089+pdf>

**HB 5120** (Jenkins) suspends 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. The bill contains an emergency clause. The bill was sent to House General Laws, but it is not likely to be considered at this time due to a number of concerns that were raised, including the potential impact on transient occupancy taxes.

<http://leg1.state.va.us/cgi-bin/legp504.exe?202+ful+HB5120+pdf>