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HOUSE BILL NO. 1340

Offered January 21, 2022

A BILL to amend and reenact §§ 2.2-2618, 9.1-102, and 19.2-163.03 of the Code of Virginia, relating to Department of Criminal Justice Services; Commonwealth's Attorneys' Services Council; court-appointed counsel; training standards for interacting with victims of criminal sexual offenses.

Patrons—Delaney and Bennett-Parker

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2618, 9.1-102, and 19.2-163.03 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2618. Powers and duties of Council.

The Council, in order to (i) strengthen the criminal justice system in the Commonwealth; (ii) provide a professional organization for the education, training, service and coordination of technical efforts of state prosecutors; and (iii) maintain and improve prosecutor efficiency and effectiveness in enforcing the law of the Commonwealth, shall have, but ~~are~~ *is* not limited to, the following powers and duties:

1. Organize, supervise, and perform functions consistent with this article;
2. Coordinate training and continuing legal education activities for attorneys for the Commonwealth;
3. Contract or enter into agreements with state or federal agencies or education institutions;
4. Gather and disseminate information to attorneys for the Commonwealth relative to their official duties, including changes in the law affecting their office and information on individuals identified as criminal gang members, as transmitted by the Department of Corrections and the Department of Juvenile Justice;
5. Coordinate with the Department of Criminal Justice Services and the Judicial Conference in reference to training and interdisciplinary criminal justice matters;
6. Obtain statistical reports from attorneys for the Commonwealth relating to their performance, function, and ~~work-load~~ *workload*;
7. Receive and establish an equitable distribution plan for the allocation of any funds from public or private sources;
8. Maintain close contact with the office of the Attorney General and with all attorneys for the Commonwealth and assistant attorneys for the Commonwealth in the discussion of problems or recommendations concerning necessary research, minimum standards, educational needs, and other matters relative to upgrading the professional status of attorneys for the Commonwealth;
9. Gather information on changes in the law that affect the duties and responsibilities of law-enforcement officers; and make such information available to law-enforcement agencies, law-enforcement training academies, and the Department of Criminal Justice Services; ~~and~~
10. *In conjunction with the Department of Criminal Justice Services, establish compulsory training standards for proceedings related to criminal sexual offenses. Such standards shall include sensitivity to and awareness of cultural diversity when interviewing or examining in any court proceeding victims of sexual offenses and techniques for conducting such interview or examination in such a manner that does not place undue blame on the victim; and*

11. Perform such other acts as may be necessary for the effective performance of its duties.

§ 9.1-102. Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;
2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions and (ii) temporary or probationary status and establish the time required for completion of such training. Such compulsory minimum training standards shall include crisis intervention training in accordance with clause (i) of § 9.1-188;
3. Establish minimum training standards and qualifications for certification and recertification for

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59 law-enforcement officers serving as field training officers;

60 4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and
61 programs for schools, whether located in or outside the Commonwealth, which are operated for the
62 specific purpose of training law-enforcement officers;

63 5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize
64 radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in
65 § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum
66 qualifications for certification and recertification of instructors who provide such training;

67 6. [Repealed];

68 7. Establish compulsory minimum entry-level, in-service and advanced training standards for those
69 persons designated to provide courthouse and courtroom security pursuant to the provisions of
70 § 53.1-120, and to establish the time required for completion of such training;

71 8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy
72 sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time
73 required for the completion of such training;

74 9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as
75 the time required for completion of such training, for persons employed as deputy sheriffs and jail
76 officers by local criminal justice agencies and correctional officers employed by the Department of
77 Corrections under the provisions of Title 53.1. For correctional officers employed by the Department of
78 Corrections, such standards shall include training on the general care of pregnant women, the impact of
79 restraints on pregnant inmates and fetuses, the impact of being placed in restrictive housing or solitary
80 confinement on pregnant inmates, and the impact of body cavity searches on pregnant inmates;

81 10. Establish compulsory minimum training standards for all dispatchers employed by or in any local
82 or state government agency, whose duties include the dispatching of law-enforcement personnel. Such
83 training standards shall apply only to dispatchers hired on or after July 1, 1988;

84 11. Establish compulsory minimum training standards for all auxiliary police officers employed by or
85 in any local or state government agency. Such training shall be graduated and based on the type of
86 duties to be performed by the auxiliary police officers. Such training standards shall not apply to
87 auxiliary police officers exempt pursuant to § 15.2-1731;

88 12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state
89 and federal governmental agencies, and institutions of higher education within or outside the
90 Commonwealth, concerning the development of police training schools and programs or courses of
91 instruction;

92 13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth,
93 for school operation for the specific purpose of training law-enforcement officers; but this shall not
94 prevent the holding of any such school whether approved or not;

95 14. Establish and maintain police training programs through such agencies and institutions as the
96 Board deems appropriate;

97 15. Establish compulsory minimum qualifications of certification and recertification for instructors in
98 criminal justice training academies approved by the Department;

99 16. Conduct and stimulate research by public and private agencies which shall be designed to
100 improve police administration and law enforcement;

101 17. Make recommendations concerning any matter within its purview pursuant to this chapter;

102 18. Coordinate its activities with those of any interstate system for the exchange of criminal history
103 record information, nominate one or more of its members to serve upon the council or committee of any
104 such system, and participate when and as deemed appropriate in any such system's activities and
105 programs;

106 19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this
107 chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to
108 submit information, reports, and statistical data with respect to its policy and operation of information
109 systems or with respect to its collection, storage, dissemination, and usage of criminal history record
110 information and correctional status information, and such criminal justice agencies shall submit such
111 information, reports, and data as are reasonably required;

112 20. Conduct audits as required by § 9.1-131;

113 21. Conduct a continuing study and review of questions of individual privacy and confidentiality of
114 criminal history record information and correctional status information;

115 22. Advise criminal justice agencies and initiate educational programs for such agencies with respect
116 to matters of privacy, confidentiality, and security as they pertain to criminal history record information
117 and correctional status information;

118 23. Maintain a liaison with any board, commission, committee, or other body which may be
119 established by law, executive order, or resolution to regulate the privacy and security of information
120 collected by the Commonwealth or any political subdivision thereof;

24. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

29. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

30. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

31. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

32. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

33. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

34. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

35. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

36. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

37. Establish training standards and publish and periodically update model policies for law-enforcement personnel in the following subjects:

a. The handling of family abuse, domestic violence, sexual assault, and stalking cases, including standards for determining the predominant physical aggressor in accordance with § 19.2-81.3. The Department shall provide technical support and assistance to law-enforcement agencies in carrying out the requirements set forth in subsection A of § 9.1-1301;

b. Communication with and facilitation of the safe return of individuals diagnosed with Alzheimer's disease;

182 c. Sensitivity to and awareness of systemic and individual racism, cultural diversity, and the potential
183 for racially biased policing and bias-based profiling as defined in § 52-30.1, which shall include
184 recognizing implicit biases in interacting with persons who have a mental illness, substance use disorder,
185 or developmental or cognitive disability;

186 d. Protocols for local and regional sexual assault response teams;

187 e. Communication of death notifications;

188 f. The questioning of individuals suspected of driving while intoxicated concerning the physical
189 location of such individual's last consumption of an alcoholic beverage and the communication of such
190 information to the Virginia Alcoholic Beverage Control Authority;

191 g. Vehicle patrol duties that embody current best practices for pursuits and for responding to
192 emergency calls;

193 h. Criminal investigations that embody current best practices for conducting photographic and live
194 lineups;

195 i. Sensitivity to and awareness of human trafficking offenses and the identification of victims of
196 human trafficking offenses for personnel involved in criminal investigations or assigned to vehicle or
197 street patrol duties;

198 j. Missing children, missing adults, and search and rescue protocol; and

199 k. The handling and use of tear gas or other gases and kinetic impact munitions, as defined in
200 § 19.2-83.3, that embody current best practices for using such items as a crowd control measure or
201 during an arrest or detention of another person;

202 38. Establish compulsory training standards for basic training and the recertification of
203 law-enforcement officers to ensure (i) sensitivity to and awareness of systemic and individual racism,
204 cultural diversity, and the potential for racially biased policing and bias-based profiling as defined in §
205 52-30.1, which shall include recognizing implicit biases in interacting with persons who have a mental
206 illness, substance use disorder, or developmental or cognitive disability; (ii) training in de-escalation
207 techniques; and (iii) training in the lawful use of force, including the use of deadly force, as defined in
208 § 19.2-83.3, only when necessary to protect the law-enforcement officer or another person;

209 39. Review and evaluate community-policing programs in the Commonwealth, and recommend where
210 necessary statewide operating procedures, guidelines, and standards that strengthen and improve such
211 programs, including sensitivity to and awareness of systemic and individual racism, cultural diversity,
212 and the potential for racially biased policing and bias-based profiling as defined in § 52-30.1, which
213 shall include recognizing implicit biases in interacting with persons who have a mental illness, substance
214 use disorder, or developmental or cognitive disability;

215 40. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with
216 Virginia law-enforcement agencies, provide technical assistance and administrative support, including
217 staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center
218 may provide accreditation assistance and training, resource material, and research into methods and
219 procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia
220 accreditation status;

221 41. Promote community policing philosophy and practice throughout the Commonwealth by
222 providing community policing training and technical assistance statewide to all law-enforcement
223 agencies, community groups, public and private organizations and citizens; developing and distributing
224 innovative policing curricula and training tools on general community policing philosophy and practice
225 and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia
226 organizations with specific community policing needs; facilitating continued development and
227 implementation of community policing programs statewide through discussion forums for community
228 policing leaders, development of law-enforcement instructors; promoting a statewide community policing
229 initiative; and serving as a statewide information source on the subject of community policing including,
230 but not limited to periodic newsletters, a website and an accessible lending library;

231 42. Establish, in consultation with the Department of Education and the Virginia State Crime
232 Commission, compulsory minimum standards for employment and job-entry and in-service training
233 curricula and certification requirements for school security officers, including school security officers
234 described in clause (b) of § 22.1-280.2:1, which training and certification shall be administered by the
235 Virginia Center for School and Campus Safety (VCSCS) pursuant to § 9.1-184. Such training standards
236 shall be specific to the role and responsibility of school security officers and shall include (i) relevant
237 state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school
238 environment; (iv) mediation and conflict resolution, including de-escalation techniques such as a physical
239 alternative to restraint; (v) disaster and emergency response; (vi) awareness of systemic and individual
240 racism, cultural diversity, and implicit bias; (vii) working with students with disabilities, mental health
241 needs, substance use disorders, and past traumatic experiences; and (viii) student behavioral dynamics,
242 including child and adolescent development and brain research. The Department shall establish an
243 advisory committee consisting of local school board representatives, principals, superintendents, and

school security personnel to assist in the development of the standards and certification requirements in this subdivision. The Department shall require any school security officer who carries a firearm in the performance of his duties to provide proof that he has completed a training course provided by a federal, state, or local law-enforcement agency that includes training in active shooter emergency response, emergency evacuation procedure, and threat assessment;

43. License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ 9.1-185 et seq.);

44. License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.);

45. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal justice agencies regarding the investigation, registration, and dissemination of information requirements as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ 9.1-900 et seq.);

46. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers. Such training standards shall include, but not be limited to, the role and responsibility of campus security officers, relevant state and federal laws, school and personal liability issues, security awareness in the campus environment, and disaster and emergency response. The Department shall provide technical support and assistance to campus police departments and campus security departments on the establishment and implementation of policies and procedures, including but not limited to: the management of such departments, investigatory procedures, judicial referrals, the establishment and management of databases for campus safety and security information sharing, and development of uniform record keeping for disciplinary records and statistics, such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an advisory committee consisting of college administrators, college police chiefs, college security department chiefs, and local law-enforcement officials to assist in the development of the standards and certification requirements and training pursuant to this subdivision;

47. Assess and report, in accordance with § 9.1-190, the crisis intervention team programs established pursuant to § 9.1-187;

48. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia;

49. Register tow truck drivers in accordance with § 46.2-116 and carry out the provisions of § 46.2-117;

50. Administer the activities of the Virginia Sexual and Domestic Violence Program Professional Standards Committee by providing technical assistance and administrative support, including staffing, for the Committee;

51. In accordance with § 9.1-102.1, design and approve the issuance of photo-identification cards to private security services registrants registered pursuant to Article 4 (§ 9.1-138 et seq.);

52. In consultation with the State Council of Higher Education for Virginia and the Virginia Association of Campus Law Enforcement Administrators, develop multidisciplinary curricula on trauma-informed sexual assault investigation;

53. In consultation with the Department of Behavioral Health and Developmental Services, develop a model addiction recovery program that may be administered by sheriffs, deputy sheriffs, jail officers, administrators, or superintendents in any local or regional jail. Such program shall be based on any existing addiction recovery programs that are being administered by any local or regional jails in the Commonwealth. Participation in the model addiction recovery program shall be voluntary, and such program may address aspects of the recovery process, including medical and clinical recovery, peer-to-peer support, availability of mental health resources, family dynamics, and aftercare aspects of the recovery process;

54. Establish compulsory minimum training standards for certification and recertification of law-enforcement officers serving as school resource officers. Such training shall be specific to the role and responsibility of a law-enforcement officer working with students in a school environment and shall include (i) relevant state and federal laws; (ii) school and personal liability issues; (iii) security awareness in the school environment; (iv) mediation and conflict resolution, including de-escalation techniques; (v) disaster and emergency response; (vi) awareness of systemic and individual racism, cultural diversity, and implicit bias; (vii) working with students with disabilities, mental health needs, substance use disorders, or past traumatic experiences; and (viii) student behavioral dynamics, including current child and adolescent development and brain research;

55. Establish a model policy for the operation of body-worn camera systems as defined in § 15.2-1723.1 that also addresses the storage and maintenance of body-worn camera system records;

56. Establish compulsory minimum training standards for detector canine handlers employed by the Department of Corrections, standards for the training and retention of detector canines used by the Department of Corrections, and a central database on the performance and effectiveness of such detector

canines that requires the Department of Corrections to submit comprehensive information on each canine handler and detector canine, including the number and types of calls and searches, substances searched for and whether or not detected, and the number of false positives, false negatives, true positives, and true negatives;

57. Establish compulsory training standards for basic training of law-enforcement officers for recognizing and managing stress, self-care techniques, and resiliency;

58. Establish guidelines and standards for psychological examinations conducted pursuant to subsection C of § 15.2-1705;

59. Establish compulsory in-service training standards, to include frequency of retraining, for law-enforcement officers in the following subjects: (i) relevant state and federal laws; (ii) awareness of cultural diversity and the potential for bias-based profiling as defined in § 52-30.1; (iii) de-escalation techniques; (iv) working with individuals with disabilities, mental health needs, or substance use disorders; and (v) the lawful use of force, including the use of deadly force, as defined in § 19.2-83.3, only when necessary to protect the law-enforcement officer or another person;

60. 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;

61. Adopt statewide professional standards of conduct applicable to all certified law-enforcement officers and certified jail officers and appropriate due process procedures for decertification based on serious misconduct in violation of those standards;

62. Establish and administer a waiver process, in accordance with §§ 2.2-5515 and 15.2-1721.1, for law-enforcement agencies to use certain military property. Any waivers granted by the Criminal Justice Services Board shall be published by the Department on the Department's website;

63. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to include crisis intervention training in accordance with clause (ii) of § 9.1-188;

64. Advise and assist the Department of Behavioral Health and Developmental Services, and support local law-enforcement cooperation, with the development and implementation of the Marcus alert system, as defined in § 37.2-311.1, including the establishment of local protocols for law-enforcement participation in the Marcus alert system pursuant to § 9.1-193 and for reporting requirements pursuant to §§ 9.1-193 and 37.2-311.1; and

65. *In conjunction with the Commonwealth's Attorneys' Services Council, establish compulsory training standards for the investigation of criminal sexual offenses. Such standards shall include sensitivity to and awareness of cultural diversity when interviewing or questioning victims of sexual offenses and techniques for conducting such interview or questioning in such a manner that does not place undue blame on the victim; and*

66. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

§ 19.2-163.03. Qualifications for court-appointed counsel.

A. Initial qualification requirements. An attorney seeking to represent an indigent accused in a criminal case, in addition to being a member in good standing of the Virginia State Bar, shall meet the specific criteria required for each type or level of case. The following criteria shall be met for qualification and subsequent court appointment:

1. Misdemeanor case. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a misdemeanor, the attorney shall:

a. If an active member of the Virginia State Bar for less than one year, have completed eight hours of MCLE-approved continuing legal education developed by the Indigent Defense Commission, two of which shall cover the representation of individuals with behavioral or mental health issues and individuals with intellectual or developmental disabilities as defined in § 37.2-100;

b. If an active member of the Virginia State Bar for one year or more, either complete the eight hours of approved continuing legal education developed by the Commission, two of which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100, or certify to the Commission that he has represented, in a district court within the past year, four or more defendants charged with misdemeanors; or

c. Be qualified pursuant to this section to serve as counsel for an indigent defendant charged with a felony.

2. Felony case.

a. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a felony, the attorney shall (i) have completed the eight hours of MCLE-approved continuing legal education developed by the Commission, two of which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental

disabilities as defined in § 37.2-100, and (ii) certify that he has participated as either lead counsel or co-counsel in four felony cases from their beginning through to their final resolution, including appeals, if any.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past year, as lead counsel in four felony cases through to their final resolution, including appeals, if any, the requirement to complete eight hours of continuing legal education and the requirement to participate as co-counsel shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years, as lead counsel in five felony cases through to their final resolution, including appeals, if any, the requirement to participate as either lead counsel or co-counsel in four felony cases within the past year shall be waived.

3. Juvenile and domestic relations case.

a. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district court pursuant to subdivision C 2 of § 16.1-266, the attorney shall (i) have completed the eight hours of MCLE-approved continuing legal education developed by the Commission, two of which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100, (ii) have completed four additional hours of MCLE-approved continuing legal education on representing juveniles developed by the Commission, and (iii) certify that he has participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and domestic relations district court.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has, within the past year, been lead counsel in four cases involving juveniles in juvenile and domestic relations district court, the requirement to complete the 12 hours of continuing legal education shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement to participate as either lead counsel or co-counsel in four juvenile cases shall be waived.

To initially qualify to serve as appointed counsel pursuant to § 19.2-159 for an indigent defendant or in juvenile and domestic relations district court pursuant to subsection C 2 of § 16.1-266, the attorney shall have completed at least eight hours of MCLE-approved continuing legal education developed by the Commission on the topic of diversity, racial bias, or cultural sensitivity when interviewing, cross-examining, or representing the victim of a criminal sexual offense.

B. Requalification requirements. After initially qualifying as provided in subsection A, an attorney shall maintain his eligibility for certification biennially by notifying the Commission of completion of at least eight hours of Commission and MCLE-approved continuing legal education, two of which shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100. The Commission shall provide information on continuing legal education programs that have been approved.

In addition, to maintain eligibility to accept court appointments under subdivision C 2 of § 16.1-266, an attorney shall complete biennially thereafter four additional hours of MCLE-approved continuing legal education on representing juveniles, certified by the Commission.

C. Waiver and exceptions. The Commission or the court before which a matter is pending, may, in its discretion, waive the requirements set out in this section for individuals who otherwise demonstrate their level of training and experience. A waiver of such requirements pursuant to this subsection shall not form the basis for a claim of error at trial, on appeal, or in any habeas corpus proceeding.