

Virginia State Crime Commission

Special Conservators of
the Peace and Private
Police Departments

2014

Special Conservators of the Peace and Private Police Departments

Executive Summary

Special Conservators of the Peace

During the Regular Session of the 2014 General Assembly, Delegate L. Scott Lingamfelter, Chairman of the House Militia and Police Committee, formally requested Secretary of Public Safety and Homeland Security Brian Moran to create a bipartisan Task Force to study the issue of special conservators of the peace in Virginia. Pursuant to this request, Secretary Moran created a Task Force which met four times in 2014: June 25, July 24, August 27, and September 29. The Task Force examined the issue of required training for special conservators of the peace, as well as other topics concerning the appointment process and jurisdictional issues. The Task Force was able to come to consensus on a number of issues: the number of training hours required to become a special conservator of the peace is inadequate; the order forms appointing special conservators of the peace should be made uniform; the application form should be standardized; and, all special conservators of the peace should be required to be registered by the Virginia State Police and the Virginia Department of Criminal Justice Services. However, there were a number of other issues where the Task Force was unable to reach a clear consensus. For example, while there was consensus that special conservators of the peace require more training, there was no consensus on how many additional hours should be required. Also, while there was a general consensus that appointment orders for special conservators of the peace should specify the exact geographical area in which the special conservator is allowed to exercise his authority, there was no agreement on what the statutory limits of such areas should be.

Secretary Moran, along with staff from the Virginia Department of Criminal Justice Services, presented the findings and conclusions of the Task Force to the Crime Commission at its October meeting. The Crime Commission requested that staff from the Department of Criminal Justice Services prepare two pieces of draft legislation, one containing only those items that were consensus items from the Task Force, and the other containing the additional non-consensus measures, including specifically increased training requirements.

At its December meeting, the Crime Commission unanimously endorsed the draft legislation concerning special conservators of the peace that contained consensus items that were substantially agreed to by the Task Force. A general request was made to draft a second bill containing additional items, including specific increases in the number of training hours for special conservators of the peace; however, this was not a formal motion and no votes were taken.

Draft legislation to modify Virginia's special conservator of the peace statutes, which consisted of the consensus items that were discussed by the Crime Commission at its December meeting, was introduced as Senate Bill 1194 by Senator Thomas Norment during the Regular Session of the 2015 General Assembly. A second bill containing non-consensus items, Senate Bill 1195, was also introduced by Senator Norment during the Regular Session. Two other special conservator of the peace bills were independently introduced by other legislators as well: Delegate Jeffery Campbell

introduced House Bill 2206, and Delegate Mark Berg introduced House Bill 2369. All of these bills were amended during the course of the legislative process. Ultimately, Senate Bill 1194 was left in the Senate, while Senate Bill 1195 and House Bill 2206 went into Conference, and were then conformed to each other, with amendments. Both bills were then passed by the General Assembly. The Governor proposed numerous technical and substantive amendments to the bills during Reconvened Session, some of which were rejected by the General Assembly. Both bills, now identical, were signed into law by the Governor on April 30, 2015.

Private Police Departments

Also at the Crime Commission's October meeting, Dana Schrad, the Executive Director of the Virginia Association of Chiefs of Police, presented on the topic of private police departments. There are nine private police departments in Virginia: Aquia Harbor Police Department, Babcock & Wilcox Police Department, Bridgewater Airpark Police Department, Carillion Clinic Police and Security Services Department, Kings Dominion Park Police Department, Kingsmill Police Department, Lake Monticello Police Department, Massanutten Police Department, and Wintergreen Police Department. All of them have been in existence for decades. Although they are funded by private corporations, and all of their officers are technically special conservators of the peace, the training these officers receive is much greater than that normally received by special conservators. In fact, all of the officers go through a criminal justice training academy and receive training that is practically identical to that received by regular law enforcement. These nine private police departments had been recognized as "private police departments" by the Virginia Department of Criminal Justice Services, and had relied upon the status granted by this recognition. All of them had entered into mutual aid agreements with local law enforcement agencies, all of them contributed to a criminal justice training academy, and all of them currently had access to Virginia's Criminal Information Network, which is maintained by the Virginia State Police. However, in 2013, a letter sent from the Attorney General of Virginia to the Department of Criminal Justice Services stated that without express recognition by the Virginia legislature, the Department could not recognize these departments as "private police departments." In order to maintain the current operational status of these police departments, the Virginia Association of Chiefs of Police sought legislation to recognize these departments as official "private police departments." At the same time, such legislation should make clear that any future private police departments could only be created by the General Assembly. The Crime Commission requested that the Virginia Association of Chiefs of Police provide legislation to review at the Commission's December meeting.

At its December meeting, the Crime Commission unanimously endorsed the draft legislation relating to private police departments that was presented by the Virginia Association of Chiefs of Police. The proposed legislation to formally recognize the nine existing private police departments, and specify that no other private police departments may be created without explicit approval of the General Assembly, was introduced as Senate Bill 1217 by Senator Thomas Norment and House Bill 1809 by Delegate Charniele Herring during the Regular Session of the 2015 General Assembly. House Bill 1809 was referred to the House Militia and Police Committee, and was left in Committee. Senate Bill 1217 passed the Senate with amendments in the nature of a substitute, and was amended in the House. The Senate accepted the House amendments, and the bill was signed by the Governor on March 16, 2015. With this new law, which contained an emergency enactment clause and went into effect immediately upon the Governor's signature, the nine existing private police departments became officially recognized as such. In addition, it has now been codified that "[n]o entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly."

Background

During the Regular Session of the 2014 General Assembly, Delegate L. Scott Lingamfelter, Chairman of the House Militia and Police Committee, formally requested Secretary of Public Safety and Homeland Security Brian Moran to create a bipartisan Task Force to study the issue of special conservators of the peace (SCOPs) in Virginia. The request specifically noted the topic of the appropriate number of hours of training that should be required of special conservators of the peace, as well as referring generally to the subject of improvements that might be made to relevant sections in the Code of Virginia. Pursuant to this request, Secretary Moran created a Task Force, which met four times in 2014: June 25, July 24, August 27, and September 29.

At the June meeting of the Task Force, staff from the Crime Commission was invited to present a brief, historical overview of SCOPs in Virginia, and how the relevant Code sections had evolved from their initial enactment in 1860. Other topics covered at the June meeting were the current role the Virginia Department of Criminal Justice Services (DCJS) plays in the appointment process and in the regulation of SCOPs, and the available data on the numbers of people who currently hold court orders appointing them as SCOPs. The July meeting focused on training, qualifications and responsibilities for SCOPs and certified law enforcement officers, as well as the roles played by circuit court judges, circuit court clerks, DCJS, and the Virginia State Police (VSP) in the current SCOP system. The August meeting focused on civil liability issues related to SCOPs, as well as general constitutional issues related to the performance of their duties. At the September meeting, the Task Force reviewed all areas of the current SCOP system, and formulated several consensus points for possible legislative changes. Some of the consensus points were detailed; e.g., mandatory order forms should be used by judges when appointing SCOPs, for the sake of uniformity and consistency throughout the Commonwealth. Other consensus points were more general; i.e., while there was consensus that the amount of training SCOPs receive should be increased, there was no specific agreement as to how many additional hours of training there should be.

Presentations to the Crime Commission

October Commission Meeting

Secretary Moran, along with DCJS staff, presented the findings and general conclusions of the Task Force to the Crime Commission at its October meeting, as well as the specific issues on which consensus had been reached. It was noted that under current law, the entry-level training that the Virginia Criminal Justice Services Board may require of SCOPs is limited to no more than 24 hours for unarmed SCOPs, and no more than 40 hours for armed SCOPs.¹ This is in stark contrast with the amount of entry-level training required of regular law enforcement officers—480 hours of academy training, with an additional 100 hours of field training.² For law enforcement officers, these are minimum, and not maximum requirements; many law enforcement officers receive training in excess of 1,000 hours before they are permitted to begin their regular duties. Similarly, armed security officers, who are licensed and regulated by DCJS, are required to have a minimum of 50 hours of entry-level training.³ Many other occupations that are regulated in Virginia have minimum entry-level training standards that are greater than 40 hours. As an example, licensed nail technicians are generally required to have received at least 150 hours of instruction, in addition to apprenticeship requirements, before they can begin their careers.⁴ Information was also presented that the total number of SCOPs doubled from 2005 to 2013. Specifically, the number of armed

SCOPs increased by 121%, and the number of unarmed SCOPs increased by 76%. Although DCJS does not have a precise count of the number of SCOPs in Virginia, due to the fact that law enforcement officers who have been appointed as a SCOP do not register with them, there are approximately 450 armed, and 300 unarmed SCOPs in the Commonwealth according to their records. Lastly, it was demonstrated that many SCOPs have badges and uniforms that are practically indistinguishable from the badges and uniforms worn by regular law enforcement. At the conclusion of the presentation, it was requested that the staff at DCJS draft possible legislation in the form of two bills. One bill would contain only the consensus items that had been agreed to by the Task Force, while the other bill would contain additional measures, including specific enhanced training requirements for SCOPs. These bills would be considered by the Commission at its December meeting.

Also at the October meeting, Dana Schrad, the Executive Director of the Virginia Association of Chiefs of Police (VACP), gave a presentation on the related topic of private police departments. There are nine private police departments that currently operate in Virginia; each of them has been in existence for decades.⁵ They are private departments that are funded by corporations. Therefore, their officers are sworn as SCOPs and not as regular law enforcement.⁶ However, all of the officers in these private police departments receive standard law enforcement training, a minimum of 480 hours, and are graduates of a criminal justice training academy. All of the private police departments have mutual aid agreements and memoranda of understanding with local sheriffs' offices or police departments in their areas, and are paying members of a Virginia criminal justice academy. These departments have long relied on their status as private police departments being recognized by DCJS to operate. Without such state recognition, they would not be able to participate in mutual aid agreements with regular law enforcement agencies, join criminal justice training academies, or comply with basic operational standards, such as record keeping, preserving evidence, or receiving official accreditation from the Virginia Law Enforcement Professional Standards Commission.

In 2013, the Attorney General of Virginia sent a letter to DCJS, stating that because the Virginia General Assembly had not specifically given legislative authority for these departments to be recognized as "private police departments," DCJS must cease recognizing them or certifying them as such. This loss in status for the nine departments meant that potentially millions of dollars in police services, currently funded by private corporations, could be jeopardized. No longer would these departments have access to the Virginia Criminal Information Network (VCIN) maintained by the VSP, and the status of pending criminal cases, where the arresting officer was employed by one of these departments, could be thrown into doubt.

Therefore, the VACP indicated they sought to specifically recognize these nine police departments as official "private police departments." The legislation would be limited to these nine departments, and would further clarify that no other private police departments may be created except with the express authorization of the General Assembly. Recognizing the nine private police departments as a distinct category would ensure they remain distinguishable from private security businesses and corporations that employ SCOPs. It was requested that the VACP provide possible legislation for the Crime Commission to consider at its December meeting.

December Commission Meeting

At its December meeting, the Crime Commission reviewed the two proposed SCOP bills prepared by DCJS staff. After discussion on which issues were consensus items agreed to by all of the members

of the Task Force, and which issues were not, a better understanding of the true consensus items was developed. Consensus items included the following:

- Current training standards are insufficient;
- The application process for all SCOPs should be standardized;
- The appointment order for all SCOPs should be standardized;
- A copy of the SCOP application should be given to the chief law enforcement officer and the Commonwealth’s Attorney in the jurisdiction where application is made;
- Every SCOP must be registered with DCJS and VSP, with no exceptions or exemptions;
- The appointment order for a SCOP should precisely describe exactly the geographic location where conservator powers may be lawfully exercised; and,
- The Virginia Code should be made clear that the appointing court has the authority to revoke an order of appointment for good cause.

Items for which there was not a clear consensus included:

- The number of training hours that should be required for SCOPs;
- Whether a SCOP who works in multiple jurisdictions would require a separate appointment order for each jurisdiction;
- Whether a SCOP who works for a corporation should be limited in his authority to the real property owned by the corporation, or whether a court could extend those boundaries;
- The use of the word “Police” on badges or automobiles;
- The use of the Seal of the Commonwealth on badges or automobiles; and,
- The use of blue lights on automobiles.

The Crime Commission voted unanimously to endorse the drafting of a bill that would encompass all of the consensus issues. Staff was requested to draft legislation for all of the remaining non-consensus items that the Crime Commission later endorsed.

The Crime Commission also reviewed the proposed legislation prepared by the VACP, which would establish the nine existing private police departments as official “private police departments,” while mandating that any additional private police departments in the future would have to be specifically approved by the General Assembly. The Crime Commission voted unanimously to endorse the VACP proposed legislation.

Summary of SCOP Legislation

Draft legislation to modify Virginia’s SCOP statutes, which consisted of the consensus items that were discussed by the Crime Commission at its December meeting, was introduced as Senate Bill 1194 (SB 1194) by Senator Thomas Norment during the Regular Session of the 2015 General Assembly. A second bill containing non-consensus items, Senate Bill 1195 (SB 1195), was also introduced by Senator Norment during the Regular Session. Two other SCOP bills were introduced

as well: Delegate Jeffery Campbell introduced House Bill 2206 (HB 2206), and Delegate Mark Berg introduced House Bill 2369 (HB 2369).

All of these bills were amended during the course of the legislative process; ultimately, SB 1194 was left in the Senate, while SB 1195 and HB 2206 went into Conference, and were then conformed to each other, with amendments. Both bills were then passed by the General Assembly. After some proposed amendments by the Governor were accepted by the General Assembly, with others being rejected, both bills, now identical, were then signed into law by the Governor on April 30, 2015.⁷

House Bill 2369 was amended in the House of Delegates, and was then amended in the nature of a substitute in the Senate. The bill ultimately went to Conference, and was amended, before being passed by the General Assembly. All of the provisions in this amended version of the bill were also contained in the final amended versions of SB 1195 and HB 2206. House Bill 2369 was then signed into law by the Governor on March 26, 2015.⁸

The final language of these bills resulted in the following changes to the SCOP statutes in Virginia, which go into effect on July 1, 2015:

- The exemption from training requirements for current law enforcement officers is maintained, but if the officer has been decertified, he must then take the required entry-level training before becoming a SCOP.
- All SCOPs, even those that are current law enforcement, must be registered with both DCJS and VSP.
- All SCOPs will be required to have an insurance policy; cash or surety bonds will no longer be acceptable.
- The entry-level training standards are increased: 98 hours for an unarmed SCOP, and 130 hours for an armed SCOP.
 - Existing SCOPs have 36 months from July 1, 2015, to comply with these new minimum training standards.
- The training that potential SCOPs receive must be provided by either an official criminal justice training academy, or at a private security training school that is certified by DCJS.
- Potential SCOPs must undergo not just a criminal background check (current law), but also a background investigation performed a law enforcement agency.
- Prior to entering an order appointing a person to be a SCOP, the court shall transmit a copy of the application to the local Commonwealth's Attorney and local law enforcement, who may submit the to the court a sworn, written statement indicating whether the appointment order should be granted.
- The appointing court will retain jurisdiction over its order for 4 years, and may revoke a SCOP's appointment order for good cause.
- The Commonwealth's Attorney for the jurisdiction, or the sheriff or chief of police of the jurisdiction, or DCJS, may file a sworn petition to revoke the appointment order of a SCOP.
 - Prior to a revocation, a hearing must be set, and the SCOP must be given the opportunity to be heard.

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- The court may suspend the appointment order pending the revocation hearing, for good cause shown.
 - If an appointment order is revoked, the clerk of the court shall notify DCJS, VSP, the SCOP's employer, and the applicable law enforcement agencies in all cities and counties where the SCOP had been authorized to serve.
 - For SCOPs appointed pursuant to an application from a corporation, the authority of the SCOP is limited to:
 - The real property where the corporate applicant is located;
 - Any real property contiguous to such real property;
 - Any real property owned or leased by the corporation in other specifically named cities and counties; the clerk of the appointing court must transmit the appointment order to the VSP and the clerk of court and law enforcement for each of the other jurisdictions; and,
 - An extended geographical area, if permitted by the court, in which a fleeing suspect may be arrested if the SCOP is in close pursuit; the court may delineate a limitation or distance beyond which such an arrest may no longer be made.
 - The appointment order must specify that the SCOP must comply with all of the requirements of the Virginia and United States Constitutions.
 - The appointment order must specifically state that the SCOP is not a “qualified law-enforcement officer” within the meaning of the federal Law Enforcement Officer Safety Act.
 - The appointment order may not identify the SCOP to be “a law-enforcement officer pursuant to Va. Code § 9.1-101.”
 - However, the order may identify the SCOP to be a law enforcement officer for purposes of Chapter 8 of Title 37.2 and Article 16 of Chapter 11 of Title 16.1 (allowing them to transport civilly committed persons).
 - Upon request and for good cause shown, the appointment order may authorize the SCOP to use the Seal of the Commonwealth of Virginia, and may authorize the use of the word “police” on badges and uniforms.
 - The appointment order shall prohibit the use of blue flashing lights, but upon request and for good cause shown, may permit the use of flashing lights and sirens on any vehicles used by the SCOP while in the performance of his duties.
 - All applications and appointment orders shall be submitted on forms developed by the Office of the Executive Secretary of the Supreme Court.
 - No one who is required to register as a sex offender may become a SCOP.
 - A SCOP must report to DCJS and the chief law-enforcement officer of all localities in which he is authorized to serve if he is arrested, charged with, or convicted of any misdemeanor or felony offense within 3 days of his arrest.
 - If a SCOP is convicted of a disqualifying criminal offense (crimes of moral turpitude, felonies, misdemeanors involving assault and battery, damage to property, controlled substances, sexual behavior, or firearms), he may be the subject of a petition to suspend or revoke his appointment order.

- If a SCOP leaves employment, his employer must notify DCJS, the VSP, the circuit court, and the chief law enforcement officer of all localities in which the SCOP is authorized to serve.
- The governing body of any locality, or the sheriff of a locality where there is no police department, may enter into a mutual aid agreement with any entity located in such locality that employs SCOPs.
 - While performing their duties under such a mutual aid agreement, the SCOP shall have the same authority as lawfully conferred on him within his own jurisdiction.

Summary of Private Police Department Legislation

The proposed legislation to formally recognize the nine existing private police departments, and specify that no other private police departments may be created without explicit approval of the General Assembly, was introduced as Senate Bill 1217 by Senator Thomas Norment and House Bill 1809 by Delegate Charniele Herring during the Regular Session of the 2015 General Assembly. House Bill 1809 was referred to the House Militia and Police Committee, and was left in Committee. Senate Bill 1217 passed the Senate with amendments in the nature of a substitute, and was amended in the House. The Senate accepted the House amendments, and the bill was signed by the Governor on March 16, 2015.⁹ With this new law, which contained an emergency enactment clause and went into effect immediately upon the Governor’s signature, the nine existing private police departments became officially recognized as such.¹⁰ In addition, it has now been codified that “[n]o entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly.”¹¹

¹ VA. CODE ANN. § 9.1-150.2 (2014).

² 6 Va. Admins. Code 20-20-21 (2014).

³ 6 Va. Admins. Code 20-171-350 (2014).

⁴ 18 Va. Admins. Code 41-20-200 (5)(c) (2014).

⁵ Aquia Harbor Police Department, Babcock & Wilcox Police Department, Bridgewater Airpark Police Department, Carillion Clinic Police and Security Services Department, Kings Dominion Park Police Department, Kingsmill Police Department, Lake Monticello Police Department, Massanutten Police Department, and Wintergreen Police Department.

⁶ They derive their conservator powers from a court order, and must petition the issuing circuit court for a new order of appointment every four years. VA. CODE ANN. § 19.2-13(A) (2014). This is in contrast with regular law enforcement, who maintain their police authority as long as they are employed by a regular police department or sheriff’s office, and have not been decertified for a criminal conviction or failing to meet continuing training requirements.

⁷ 2015 Va. Acts chs. 766,772.

⁸ 2015 Va. Acts ch. 602.

⁹ 2015 Va. Acts ch. 224.

¹⁰ *Id.*, see *supra* note 5.

¹¹ *Id.*