

Virginia State Crime Commission

Law Enforcement Officers Procedural Guarantee Act

2010

Law Enforcement Officers Procedural Guarantee Act

Executive Summary

Senate Bill 287 (SB 287) was introduced by Senator Creigh Deeds in the 2010 Regular Session of the General Assembly. It was referred to the Senate Courts of Justice Committee, where it was carried over, by unanimous vote, until 2011. The subject matter of the bill was referred to the Crime Commission by letter pursuant to Senate Rule 20(L). The bill proposes to include deputy sheriffs in the Law Enforcement Officers Procedural Guarantee Act (sometimes referred to as the Police Officers Bill of Rights); currently, sheriffs' deputies are explicitly excluded from coverage under the Act's provisions.

The subject matter of SB 287 is identical to two bills that were introduced in 1992, and which were carried over for a year, pending a study by the Crime Commission. Senate Bill 309 (SB 309), patroned by Senator Stolle and House Bill 291 (HB 291), patroned by Delegate Cooper, both proposed to modify the Law Enforcement Officers Procedural Guarantee Act, by including deputy sheriffs within its provisions. Additionally, House Joint Resolution 166 (HJR 166), introduced during the 1992 Regular Session, directed the Crime Commission to study "the feasibility of extending the 'Police Officers Bill of Rights' to deputy sheriffs in Virginia." In response to HJR 166, a special subcommittee of the Crime Commission was formed to examine this issue. The special subcommittee, and then the full Crime Commission, both recommended that deputy sheriffs not be included in the Police Officers Bill of Rights. The Crime Commission issued a report of this study, which was published as House Document No. 25 (1993). Ultimately, neither SB 309 nor HB 291 were passed.

A close reading of House Document 25 reveals practically no changes in the law, either statutory or by court decision, since that time. While the relevant Code sections have been renumbered, due to Title recodifications, their substance is nearly identical. All of the court opinions referenced in the Crime Commission's report are still valid and binding today; none have been reversed or substantially modified. As part of the 1992 study, Crime Commission staff surveyed law enforcement agencies and received testimony from various representatives of the law enforcement community, such as the Virginia State Police, deputy sheriffs, and police officers. Appendix F of the report, which contains summaries of the official positions of various agencies and organizations, demonstrates that each entity's position is exactly what one would expect. For instance, the Virginia State Sheriffs Association was completely opposed to the idea of expanding the Police Officers Bill of Rights to include deputy sheriffs, while the Fraternal Order of Police, VA State Lodge, was completely in favor of this.

In essence, as this question is a political one, in that it is inextricably tied in with the role of constitutional officers in Virginia and their relationships with their employees, there was currently no need for staff of the Crime Commission to replicate any of the surveys or solicitations for opinions that were carried out in 1992. Unless some objective metric can be proposed that might have some useful bearing on this question, it should be recognized that there is nothing further to be done in regards to studying this particular issue. Ultimately, this question can only be decided by the Virginia legislature. Therefore, it would be entirely appropriate, if the Crime Commission so decided, to simply refer HB 287 back to the Virginia General Assembly with no recommendation.

Analysis of Senate Bill 287

Senate Bill 287 proposes to modify Va. Code § 9.1-500, which is the first section of the Law Enforcement Officers Procedural Guarantee Act, by including deputy sheriffs within the Act's provisions. Currently, deputy sheriffs are not covered by the Act, and have no recourse to any of its protections. Instead, deputy sheriffs are deemed to be "employees at will," who serve at the discretion of the elected sheriff.¹ This is both a long standing feature of Virginia's system of elected constitutional officers, and is specifically codified in Va. Code § 15.2-1603, which states that "Any such deputy may be removed from office by his principal [i.e., the sheriff]."²

The idea of giving deputy sheriffs the same employment protections as other law enforcement officers, by including them within the Law Enforcement Officers Procedural Guarantee Act, has been proposed before. In 1992, SB 309 and HB 291 were introduced, each of them nearly identical to SB 287, and were held over for a year, pending a study of the issue by the Crime Commission. Also in 1992, HJR 166 was passed, specifically directing the Crime Commission to study the topic. In response to HJR 166, the Crime Commission formed a subcommittee to examine the issue. The subcommittee conferred with and received testimony from members of the law enforcement community, including sheriffs, deputy sheriffs, chiefs of police, employees of police departments, and the Virginia State Police. Crime Commission staff conducted an extensive legal review of the topic to determine what the implications would be if deputy sheriffs were to be covered by the Law Enforcement Officers Procedural Guarantee Act. Based upon all of the information before it, the subcommittee recommended that the law not be changed. The full Crime Commission concurred with the subcommittee's recommendation. Ultimately, neither SB 309 nor HB 291 were passed.

The Crime Commission's report of the study was published as House Document 25 in 1993. Read today, the report is still valid in terms of its legal findings. None of the court cases referred to in the report have been overturned or substantially modified in the intervening years. The main statutes that are referred to in the report are essentially the same today.³

The report quotes the case of U.S. v. Gregory, which states, "[A] deputy is under the control and supervision of the sheriff and has no civil service protection but serves at the pleasure of the sheriff. Thus, deputies have no expectations of continued employment nor are they covered by the 'Police Officers' Bill of Rights'....Deputy sheriffs, therefore, have no property interest in their positions as deputies and are not entitled to any due process rights as a result of state law."⁴

The report notes that this state of affairs could be changed by the Virginia legislature, by amending the Law Enforcement Officers Procedural Guarantee Act to include deputy sheriffs, while simultaneously modifying the Virginia Code provision which explicitly states that "deputies may be removed from office by their principal."⁵ To do this, the report comments, would change the unique relationship between sheriffs and their deputies that has historically existed in Virginia. No longer would the following description of this relationship necessarily be the law:

In Virginia...the relationship between the sheriff and his deputy is such that he is not simply the 'alter ego' of the sheriff, but he is one and the same as the sheriff. The public policy of Virginia with regard to the relationship between the sheriff and his deputy is grounded upon common law and is stated in Miller v. Jones, 50 Va. (9 Gratt.) 584 (1853). Not only is the sheriff civilly liable for the acts of his

deputy in Virginia, but he is also liable criminally and can be fined for the conduct of his deputy. The most significant parts of the foregoing law which is today the public policy of Virginia are the words that as between a sheriff and his deputy they are as 'one person.' There can be no doubt that the statute regarding the appointment of deputies in Virginia is grounded upon a very good foundation. Since the sheriff is liable absolutely for all the acts of his deputies, the sheriff should have complete and unfettered control over who his deputies are....⁶

The report concludes by stating:

A simple answer to the question of whether or not to extend the "Police Officers' Bill of Rights" to sheriffs' deputies does not exist. Those on both sides of the issue raised strong and valid arguments for their positions. (See, Appendix F.) [Notably, and somewhat predictably, the Virginia State Sheriffs Association was categorically opposed to the idea, while the Fraternal Order of Police, VA State Lodge, completely supported it].

On the one hand, "if it ain't broke; [sic] don't fix it" is compelling....On the other hand, a hard-working law enforcement officer (who happens to be a deputy rather than a police officer) can be left without recourse whatsoever in the face of a complaint against him. He can be summarily dismissed without any opportunity to defend his position.

Ultimately, the subcommittee concluded that the bond of loyalty and trust is an invaluable asset in a political arena and that a sheriff's deputy is, indeed, a political appointee. Despite the acknowledged possibility of a wrongful

discharge of a deputy in some circumstances, the subcommittee considered that the integrity of the constitutional office of sheriff is better protected in Virginia by maintaining the existing hiring and firing procedure and, therefore, made the following recommendation, [not to change the law in this manner], with which the full Commission concurred.⁷

Conclusion

Nothing has changed, in regards to these basic facts, since 1993. As the previous Crime Commission report indirectly states, the question posed by the current SB 287 is not so much a public policy question, as a political one. Allowing deputy sheriffs to be protected by the Law Enforcement Officers Procedural Guarantee Act would modify, in a not insignificant way, the hiring authority of sheriffs, and thus would diminish the ability of these constitutional officers to run their offices as they see fit. It would also create an inconsistency between sheriffs and the other constitutional officers in Virginia in this regard. Because SB 287 proposes to modify, at least slightly, the authority of this group of elected officials, it would represent a change in political governance in the Commonwealth.

Barring any claim that the current system of at will employment for deputy sheriffs somehow impacts public safety, SB 287 does not represent a true policy decision; it remains a political one, and therefore, there is little for staff to study on this issue.⁸ Surveys, opinion polls, and solicitation of comments might prove illuminating, from a political perspective, but would not provide a "conclusive" answer or recommendation either for or against this proposal.

While the Crime Commission could take a position on this question, as it did back in

1992, it would also be appropriate to simply refer SB 287 back to the General Assembly without any recommendation, thereby recognizing this issue as one that is political, and thus intrinsically impossible to “answer” correctly in any meaningful way.

The Crime Commission did not take any action on this bill.

¹ It should be noted, though, that both Title VII of the federal Civil Rights Act of 1964 and Va. Code § 15.2-1604 prohibit employment decisions by sheriffs that are made on the basis of race, color, religion, sex or national origin.

² This Code section also applies to the deputies for treasurers, commissioners of the revenue, and clerks of circuit courts.

³ They are numbered differently, due to the recodifications of Title 2.1 to Title 2.2 and Title 15.1 to Title 15.2, but otherwise they are almost identical, word for word.

⁴ U.S. v. Gregory, 582 F. Supp. 1319, 1321 (W.D. Va. 1984).

⁵ As noted above, this statutory language is currently found in Va. Code § 15.2-1603; at the time of the Crime Commission’s report, it was found in Va. Code § 15.1-48.

⁶ Whited v. Fields, 581 F. Supp. 1444, 1444-1445 (W.D. Va. 1984).

⁷ Va. House of Delegates, H. Doc. No. 25, at 11-12 (1993).

⁸ At the current time, staff is unaware of any claim that the at will employment of deputy sheriffs has a negative impact on public safety. Even if such claim were made, there would not seem to be any valid methodological process to evaluate this claim in isolation from any number of other factors that might account for differences between counties in such measures as crime rate, emergency response time, etc.