Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1809
(Patron – Herring)

LD#: 15102662 **Date:** 1/9/2015

Topic: Definition of Law Enforcement Officer

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** None ($0)
- **Local Adult Correctional Facilities:** None ($0)
- **Adult Community Corrections Programs:** None ($0)

- **Juvenile Correctional Centers:** None ($0)*
- **Juvenile Detention Facilities:** None ($0)*

* Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal modifies §§ 2.2-3701 and 9.1-101 to add private police departments to these provisions. Currently, there are 17 private police departments in Virginia.[1] The number of sworn private police officers who are not defined as "law enforcement officers" in existing statutes is unknown. Under the proposed modifications to § 2.2-3701, private police departments would be considered public bodies for the provisions of the Virginia Freedom of Information Act that are applicable to access to public records.

The proposal would also expand the definition of "law enforcement officer" in § 9.1-101 to include employees of a private police department who are responsible for the prevention and detection of crime and the enforcement of laws of the Commonwealth. Currently, this definition only applies to employees of a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof. By modifying § 9.1-101 to include officers from private police departments, the proposal also expands the applicability of a few criminal statutes that use the definition of law enforcement officer set forth in § 9.1-101. Under the proposal, § 18.2-31, relating to the capital murder of a law enforcement officer, would apply in instances where the victim is a private police officer. In addition, the Class 6 felony and six month mandatory minimum term established under § 18.2-186.4 for publishing an officer's personally identifying information to coerce or harass would also include instances where the victim is a private police officer. The proposal would not impact other statutes pertaining to crimes against law enforcement officers that use a narrower definition of law enforcement officer, such as assault offenses defined in §§ 18.2-51.1, 18.2-57, and 18.2-57.02.

[1] According to the Department of Criminal Justice Services, there are 17 private police departments in the Commonwealth, but only seven are recognized by statute. Private police departments in Virginia that are not recognized by statute are: Aquia Harbour Police Department, Babcock & Wilcox Police Department, Bridgewater Airpark Police Department, Carilion Clinic Police Department, Kings Dominion Police Department, Kingsmill Police Department, Lake Monticello Police Department, Lynchburg Regional Airport Police Department, Massanutten Police Department, Wintergreen Police Department. The number of sworn officers is unknown.

Analysis:

According to the Circuit Court Case Management System (CMS) for fiscal year (FY) 2013 and FY2014, there were no convictions under § 18.2-31 for a completed act of the capital murder of a law enforcement officer. There were, however, seven cases that included the attempted capital murder of a law enforcement officer. Of these, one resulted in a life sentence while the remaining six received a state-responsible (prison) sentence, with a median sentence length of 20 years. Most of these offenders had a number of additional serious offenses and/or a prior criminal record.

According to Circuit Court CMS data for FY2009 through FY2014, there were no convictions involving use of a law enforcement officer's identifying information to coerce or harass under § 18.2-186.4 during this time period.

Impact of Proposed Legislation:

State adult correctional facilities. Expanding the existing definition of "law-enforcement officer" under § 9.1-101 to include private police officers is unlikely to increase the state-responsible (prison) bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

First, since private police officers currently represent a small portion of the total number of sworn officers, any impact that might be related to a larger number of officers against whom an offense could be committed would be small.

Second, offenders who might be convicted of the capital murder of a private police officer under § 18.2-31 currently can be convicted of first-degree murder. Nearly all offenders convicted of first degree murder receive sentences in excess of six years. Therefore, any potential impact associated with additional offenders being given life sentences would occur beyond the six-year forecast window required by § 30-19.1:4. The potential impact, if any, associated with increased death penalty cases, could be a slight reduction in prison beds needed, as the average time served prior to execution is seven years.[2]

Finally, since there have been no recent convictions under § 18.2-186.4 for publishing personal identifying information to coerce or harass a law enforcement officer, it is unlikely that the addition of a relatively small number of law enforcement officers will result in convictions under this provision.

Local adult correctional facilities. The proposal is unlikely to affect local-responsible (jail) bed space needs.

Adult community corrections resources. The proposal is unlikely to affect adult community corrections programs.

Virginia's sentencing guidelines. Virginia's sentencing guidelines do not cover offenses defined in either §§ 18.2-31 or 18.2-186.4. Such convictions, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the proposal is not expected to increase juvenile correctional center bed space needs.

[2] Department of Corrections, *State Responsible Offender Population Trends FY2009 - FY2013*, p. 13, http://vadoc.virginia.gov/about/facts/research/new-statsum/offenderpopulationtrends_fy09-fy13.pdf.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $0 for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.

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