Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 239

(Patron – Janis)

LD#: 10101582 **Date:** 1/22/2010

Topic: Animal Protection Officers

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)

Summary of Proposed Legislation:

The proposal amends §§ 9.1-101 and 15.2-632 relating to animal protection officers in localities with a county manager form of government. Specifically, the proposal adds the position of animal protection police officer, under § 15.2-632, to the list of "law-enforcement officers" as defined by § 9.1-101. In addition, the proposal amends § 15.2-632 by adding animal protection police officers to the list of those who may be appointed to a county's department of public safety. The proposal under § 15.2-632 would allow animal protection police officers to have all of the powers of an animal control officer conferred by general law and all of the powers vested in law-enforcement officers as defined in § 9.1-101, provided they have met the minimum qualifications and have been certified under §§ 15.2-1705 and 15.2-1706.

Currently, the definition of "law-enforcement officer" under § 9.1-101 does not include animal control officers. Certain criminal statutes, such as capital murder of a law enforcement officer (§ 18.2-31) and use of a law enforcement officer's identity to coerce or harass (§ 18.2-186.4), do refer to § 9.1-101 when defining law-enforcement officer. However, several other statutes pertaining to crimes against law enforcement officers, such as assault (§§ 18.2-51.1, 18.2-57, and 18.2-57.02), define "law enforcement officer" more narrowly within those statutes and do not refer to the definition provided in § 9.1-101. The proposed definition of "law enforcement officer" under § 9.1-101 would, therefore, not affect these statutes.

In the 2003 session, the General Assembly added conservation officer of the Department of Conservation and Recreation to the definition of a law enforcement officer in § 9.1-101.

Analysis:

As of January 8, 2010, the Office of Veterinary Services within the Department of Agriculture and Consumer Services estimates that there are 430 animal control officers employed by 132 animal control agencies across Virginia. Of the 430 animal control officers currently employed, 43% are already sworn law-enforcement officers who carry out the duties of an animal control officer, four percent are special

conservators of the peace, and the remaining 53% are animal control officers with authority granted by § 3.2-6555.

The proposal will only affect crimes that use the definition of a law enforcement officer found in § 9.1-101, such as using of a law enforcement officer's identity to coerce or harass and capital murder of a law enforcement officer. According to fiscal year (FY) 2000 through FY2009 Circuit Court Automated Information System (CAIS) data, there were no convictions involving use of a law enforcement officer's identity to coerce or harass (§ 18.2-186.4); in 2003, one person was charged under the statute, but was convicted of making a harassing telephone call under § 18.2-187 (a Class 1 misdemeanor).

According to fiscal year (FY) 2007 and FY2008 Pre-Sentence Investigation (PSI) data, there was one case involving capital murder of a law enforcement officer (§ 18.2-31), in which the defendant received a sentence of death. During the same time period, there were 17 cases involving attempted capital murder of a law enforcement officer. Nearly all of these offenders were given a state-responsible (prison) term with a median sentence of 20.5 years.

According to the Department of Corrections (DOC), there were 14 Virginia inmates serving under a death sentence as of December 10, 2009. Since January 1, 2007, four offenders have been received onto death row. DOC data indicate that inmates remain on death row for an average of 6.2 years prior to execution (based on the last 65 inmates executed).

Impact of Proposed Legislation:

State adult correctional facilities. The proposal expands the existing definition of law-enforcement officer as defined in § 9.1-101 to include animal protection police officers. However, the proposed legislation 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.

Offenders who might be convicted of capital murder (§ 18.2-31) under the proposal can currently 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 may lead to a reduction in prison beds needed, as some offenders given the death penalty are executed within six years of their sentence.

Regarding offenders who might be convicted of using of a law enforcement officer's identity to coerce or harass (§ 18.2-186.4), there have been no convictions recorded for this offense in the last eight years. It is unlikely that the addition of animal control officers who are not already sworn law-enforcement officers will result in convictions under this provision.

For these reasons, the proposal is not expected to increase state-responsible (prison) bed space needs.

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

Adult community corrections programs. 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 (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

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.

leo01_1582