



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 439 (Patron – Obenshain)

LD#: 12103855

Date: 1/10/2012

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)

Summary of Proposed Legislation:

The proposal would add approximately 40 Office of the Attorney General Investigators to the definition of “law enforcement officer” in § 9.1-101 of the *Code of Virginia*. Currently, investigators are not considered law enforcement officers and are excluded from certain statutes that refer to the definition in § 9.1-101, including:

- publishing an officer’s personal identifying information to coerce or harass (§ 18.2-186.4), a Class 6 felony, with a mandatory minimum sentence of six months; and
- capital murder of a law enforcement officer (§ 18.2-31), for which the punishment is death or life in prison.

The proposal would not impact other statutes pertaining to crimes against law enforcement officers that use a more narrow definition of “law enforcement officer,” such as assault offenses defined in §§ 18.2-51.1, 18.2-57, and 18.2-57.02.

Further, this proposal would add Office of the Attorney General Investigators to § 18.2-308 to afford them the rights and responsibilities of law enforcement officers concerning carrying concealed weapons and concealed weapons permits.

In addition, the proposal would add § 32.1-320.1 to the *Code of Virginia*, giving the Attorney General the power to designate persons as investigators and issue a badge, which may include the Seal of the Commonwealth in its design, to investigators. Individuals who are designated as investigators by the Attorney General would become law enforcement officers sworn to:

- enforce the criminal laws of the Commonwealth, and
- investigate allegations of:
 - fraud in the administration of the State Plan for Medical Assistance (Medicaid);

- fraud in the provision of medical assistance;
- fraudulent activities by providers of medical assistance under the State Plan for Medical Assistance (Medicaid);
- abuse or neglect of adults;
- misappropriation of a patient's private funds while the patient is in the care and custody of others; and
- other violations of Virginia law.

Under the proposal, investigators for the Office of the Attorney General would also have the authority to seize evidence of crimes that they discover in the course of their investigations and to transfer the evidence to other local, state, or federal law enforcement officers.

Finally, the proposal would authorize the Director of the Department of Criminal Justice Services to waive the requirement that investigators pass the law-enforcement certification examination if they have at least five years of continuous experience as a local, state, or federal law enforcement officer and have not been terminated from a law enforcement officer position because of misconduct or incompetence.

Analysis:

According to the Circuit Court Automated Information System (CAIS) for fiscal years 2010 and 2011, there were no convictions under § 18.2-31 for a completed act of the capital murder of a law enforcement officer. There were, however, nine cases that included the attempted capital murder of a law enforcement officer. Of these, five resulted in a life sentence, while the remaining four received a state-responsible (prison) sentence with a median of 34.6 years. Each of these offenders had a number of additional serious offenses and/or a prior criminal record. Also, one case included a conviction for accessory before the fact to the capital murder of a law enforcement officer, resulting in a state-responsible term of 10.7 years.

According to FY 2008 through FY 2011 data from the Circuit Court Automated Information System, there have been no convictions involving use of a law enforcement officer's identity to coerce or harass in violation of § 18.2-186.4.

Impact of Proposed Legislation:

State adult correctional facilities. Expanding the existing definition of "law enforcement officer," as defined in § 9.1-101, to include Office of the Attorney General Investigators 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 Office of the Attorney General Investigators would represent an increase of only 0.2 %¹ in the total number of sworn law enforcement officers, any impact that might be related to a larger number of officers against whom an offense could be committed would be quite small.

Second, offenders who might be convicted of capital murder of a law enforcement 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

¹ Virginia State Police, *Crime in Virginia, 2010*, p.80, http://www.vsp.state.va.us/downloads/Crime_in_Virginia_2010.pdf

sentences, 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 a small number of additional 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.

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.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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² Virginia Department of Corrections, *State Responsible Offender Population Trends FY2006 - FY2010*, p. 14, http://www.vadoc.state.va.us/about/facts/research/new-statsum/offenderpopulationtrends_fy06-fy10.pdf.