



## History of SCOP Statutes in Virginia

*June 25, 2014*

### Overview



- Early Statutes
- Findings of the HJR 471 (1995) Study
- Findings of the SJR 69 (2002) Study
- Subsequent Amendments to the Special Conservators of the Peace statute

## Early Statutes



- Both the special conservators of the peace statutes, and the now defunct special police statutes, were created in their original form by the General Assembly in 1860.
  - 1859-1860 Va. Acts p. 172, c. 63, § 1 *et seq.*; c. 64, § 1 *et seq.*

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## Early Statutes



- Previously, courts of the Commonwealth had the authority to appoint constables, coroners and sheriffs.
- Superior courts of chancery were statutorily required to appoint marshals, beginning in 1815.
  - 1815 Va. Acts, c. 8, § 7.
- All of the above officials were considered to be conservators of the peace, within their specified jurisdictional areas, *virtute officii*.
  - See, Code of Virginia of 1819, c. 74 [Passed January 7, 1818].

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## Early Statutes



- The Superior courts of chancery were replaced by Circuit Superior Courts of Law and Chancery.
- Virginia's Constitution of 1851 made the offices of constables and sheriffs electable positions, rather than appointments by a court.
- Shortly thereafter, in 1860, the General Assembly gave the county courts the authority, "if they deem it advisable" to appoint a "special police force, to consist of not less than twelve suitable and discreet persons."
  - This number was changed to two by 1889-1890 Va. Acts, p. 17.

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## Early Statutes



- This early statute was the genesis of Virginia's special police statutes through all later editions of the Code.
- "The jurisdiction and authority of said police shall extend no further than the limits of the county in which they are appointed." Code of Virginia of 1849, as updated in 1860, Ch. 201, § 11.
- It is their duty to apprehend all persons for whom there are warrants, or whom they have cause to suspect have violated the laws, or intend to do so.
- There are no bond requirements for these special police.

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## Early Statutes



- The same Act of the General Assembly also created the very first special conservator of the peace statute.
- “The county court...may, upon the application of the owners or proprietors of [any] watering place, appoint some citizen of the commonwealth conservator of the peace, whose jurisdiction shall extend over the grounds attached to such watering place, within such limits as shall be prescribed in the order appointing such conservator.”

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## Early Statutes



- Later amendments added “the University of Virginia,” other state colleges, manufacturing plants, natural caverns, and various other locations to the original “watering place.”
- Originally, these conservators of the peace held their offices for one year, and within the limits prescribed for his jurisdiction, per the Code of Virginia of 1849, as updated in 1860, Ch. 201, § 22.

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## Early Statutes



- Both of these early statutes continued on, in recognizable form, up through 2003.
- Special conservators of the peace always required an application by a private citizen who was the owner of property.
- Special police were appointed by courts, *sua sponte*; later, as requirements were added (e.g., to be eligible for appointment, you had to be a voting citizen of the Commonwealth), the statutes allowed citizens to apply directly to the circuit court for consideration.

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## Findings of HJR 471



- In 1995, the General Assembly passed House Joint Resolution 471, directing the Crime Commission to study specially appointed police officers.
- The study resolution noted that “specially appointed police officers have the same powers and authority as conservators of the peace.”
- Also noted was, “the current training requirements [for special police officers] are undefined.”

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## Findings of HJR 471



- The Crime Commission broadened the study request to also examine special conservators of the peace, "whose duties and responsibilities and mode of appointment are similar to the special police."
- The Commission's final report for HJR 471 was published in 1996 as House Document 39.

## Findings of HJR 471



- The executive summary of HD 39 notes that there was "concern that [special police officers] are easily appointed without the requirement for any formal police training and without consistent criteria governing their qualifications statewide."

## Findings of HJR 471



- Specially appointed police officers are authorized by Virginia Code § 15.1-144.
  - Can only be appointed by county circuit courts.
- Special conservators of the peace are authorized by Virginia Code § 19.2-13.
  - Appointed by circuit courts, in both cities and counties.

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## Findings of HJR 471



- Neither special policemen nor special conservators of the peace are required to receive any training.
- Both special police and special conservators have the powers of conservators of the peace: warrantless arrests, conduct warrantless searches (within statutory and Constitutional limits), carry a concealed weapon, impose "peace bonds."

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## Findings of HJR 471



- Special conservators of the peace are required to have a background check.
- Special policemen may be required by the court to have a background check.
- Special policemen must post a bond of \$1,000 (unless he is a town police officer).
- Special conservators of the peace may be required by the court to post a bond.

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## Findings of HJR 471



- Special policemen are limited in their jurisdiction to the county wherein they were appointed.
  - This jurisdiction may be limited to a portion of the county, or may be extended to an adjoining county, but not a city or town.
- They are to be under the supervision of the chief of police of the county, if any, and shall have, if so ordered by the court, full authority to issue civil and criminal process as if a deputy sheriff.
- They shall also have the power to execute arrest and search warrants.

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## Findings of HJR 471



- Special conservators of the peace have jurisdiction throughout the entire Commonwealth, OR within such geographical limitations as the court may deem appropriate.
- May be appointed upon application of an "owner, proprietor, or authorized custodian of any place within the Commonwealth."
- May also be appointed upon the application of a corporation authorized to do business in the Commonwealth.

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## Findings of HJR 471



- A special policeman is appointed for up to four years.
- A special conservator of the peace does not have a definite term of appointment.

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## Findings of HJR 471



- A special policeman shall apply in writing and name his employer.
  - No criteria or need for appointment required.
  - If there is no chief of police in his county, it is unclear to whom the special policeman reports.
- Corporations or owners/custodians of "any place" apply for someone to be made a special conservator of the peace.
  - The "sponsor" must show a necessity for the security of property or the peace.

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## Findings of HJR 471



- The court may limit the carrying of weapons by a special policeman.
- No such potential limitation is placed on special conservators of the peace.

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## Findings of HJR 471



- The Crime Commission broadly recommended that the roles of special policemen and special conservators of the peace be clarified and distinguished.

## Findings of HJR 471



- The Commission's specific recommendations were as follows:
  - Special policemen should be appointed pursuant to a request by a law enforcement agency.
    - He will be under the supervision of the requesting person or agency.
  - Special conservators should continue to be appointed pursuant to a request and a justification by a private entity.
  - For both groups, appointments shall be for four years.

## Findings of HJR 471



- **Specific recommendations (continued):**
  - For both groups, a bond should be posted in an amount set by the court, unless the prospective appointee is a law enforcement officer.
  - For both groups, a background check should be required, unless the prospective appointee is a law enforcement officer.
  - Give the court the discretion to limit or prohibit the carrying of firearms by SCOPS, unless the prospective appointee meets current police training requirements.
    - Existing SCOPS would be grandfathered in.

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## Findings of HJR 471



- **Specific recommendations (continued):**
  - Eliminate the distinction between city and county appointments. Special police can be appointed in cities as well as counties, though not towns.
  - If the jurisdiction of a special policeman is extended into an adjoining city or county, the special circumstances necessitating such extension must be set forth in the order .
  - The employer or principal of a special policeman should be civilly liable for misconduct, as is currently the law, by statute, for special conservators.

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## Findings of HJR 471



- **Specific recommendations (continued):**
  - The authority of special policemen to arrest people who are suspected of being about to commit a crime should be removed.
    - Instead, their arrest authority should be the same as for law enforcement and other conservators of the peace, per Va. Code § 19.2-71 *et seq.*
  - Their authority to require the assistance of civilians in making an arrest should also be eliminated.

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## Findings of HJR 471



- Essentially, all of the Crime Commission's recommendations were enacted into law in 1996.
- Enactment clauses were added to the Commission's proposed bill, specifying that none of the provisions of the Act would apply to:
  - Special police officers regulated by the Nuclear Regulatory Commission or the Dept. of Defense.
  - Any existing special policemen or special conservators.

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## Findings of HJR 471



- Two other notable differences in the enacted legislation from the Crime Commission's recommendations:
  - Courts were given the discretion to prohibit any new special conservators from carrying firearms, regardless of their previous training.
  - The requirement of showing a necessity for the security of property or the peace was made applicable to special police, as well as special conservators.

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## Findings of SJR 69



- In 2002, the General Assembly passed Senate Joint Resolution 69, directing the Crime Commission to study special conservators of the peace and special police.
- The study resolution noted that circuit courts may require both groups to have the same training as a law enforcement officer, but the law does not require them to do so.
- The resolution focused on the training needs of both groups.

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## Findings of SJR 69



- The Commission requested from every circuit court all copies of existing orders of appointment for both special policemen and special conservators of the peace.
  - 97% (117 of 121) of the clerks responded.
- The Commission's final report, with recommendations, was published in 2003 as Senate Document 12.

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## Findings of SJR 69



- Analyzing all of the appointments orders that were provided to the Commission (2,848 orders), non-compliance with the goals of the 1996 changes in the law were found in a large number of instances.
  - 88% (2,507) of the orders did not have the SSN of the appointee.
  - 17% (486) of the orders did not address the issue of the duration of the appointment.
  - 11% (318) exceeded the four year limit of appointment.

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## Findings of SJR 69



- Analysis of the appointment orders (cont.):
  - 76% (1,804) did not specify that the duration of the appointment and the use of conservator powers was contingent on the appointee's continued employment.
  - 61% (2036) did not address the requirements of the bond mandated in Va. Code § 19.2-13.

## Findings of SJR 69



- Analysis of the appointment orders (cont.):
  - When a bond was required, the majority of the orders required a bond of \$1,000 or less.  
Out of 812 orders:
    - 56 required a bond of \$100
    - 17 required a bond of \$500
    - 665 required a bond of \$1,000
    - 35 required a bond of \$2,000
    - 1 required a bond of \$2,500
    - 38 required a bond of more than \$2,500



## Findings of SJR 69



- The orders revealed that no attention was being paid to the differences between special police and special conservators of the peace.
- 25% of special conservators of the peace were appointed for law enforcement or corrections departments.
- 30% of special police were appointed for private business entities.

## Findings of SJR 69



- The Crime Commission concluded, broadly, that:
  - The 1996 goals of consistency, uniformity, and limitations to persons with conservator of the peace powers have not been achieved with the current statutes or system;
  - Bond requirements, time limitations on appointments, and qualifications related to employment are not uniformly required by courts;
  - There are no systemic differences in the types of entities applying for and granted powers under the special police and special conservator statutes.

## Findings of SJR 69



- The Crime Commission concluded (cont.):
  - There is still the potential for thousands of persons to have law enforcement powers without any training, liability coverage or qualifications;
  - The current system does not ensure that local law enforcement agencies are even aware of persons authorized with conservator powers that are in their jurisdiction.

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## Beneficiaries of Trafficking



- Based on these findings, the Crime Commission made eleven recommendations:
  - 1: Effective January 1, 2004, DCJS shall regulate, certify, and register special conservators of the peace, as they do private security officers.
  - 2: Persons employed as law enforcement officers or private police officers shall be exempt from the registration requirements.
  - 3: Special police shall be eliminated from the Code of Virginia. Sheriffs and chiefs of police will apply for special conservators to be appointed.

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## Findings of SJR 69



- Recommendations (cont.):
  - 4: Applicants for special conservator of the peace must provide DCJS registration materials to the circuit court prior to the granting of powers.
  - 5: All previous appointments of special conservators and special police shall be repealed effective January 1, 2004, at the time the new requirements become effective.
  - 6: Require DCJS to develop a uniform ID card for special conservators.

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## Findings of SJR 69



- Recommendations (cont.):
  - 7: Add a special conservator of the peace to the Private Security Services Advisory Board.
  - 8: Request the Supreme Court to develop a model court order for special conservator of the peace appointments, that includes the mandated criteria.
  - 9: Require the State Police to include additional information on special conservators in VCIN (applying authority, dates of appointment, geographic limitations).

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## Findings of SJR 69



- Recommendations (cont.):
  - 10: Require the clerk of court to transmit a copy of the appointment order to the local law enforcement agency.
  - 11: Allow DCJS to charge a fee to applicants to recover the costs of regulation, registration, and certification of special conservators.

## Findings of SJR 69



- The Crime Commission's proposed bill also strictly limited the geographical limitations of the special conservator's authority to the county, city or town where the application was made.
- The bond requirement was made "no less than \$10,000;" or, in the alternative, evidence of a liability insurance policy or self-insurance in an amount fixed by the Board of DCJS.
- All of the Crime Commission's recommendations were enacted into law in 2003, with the exception of the automatic repeal of the previous appointments of special conservators.

## Findings of SJR 69



- Two amendments were made to the Commission's bill before it was passed:
  - While DCJS was authorized to establish minimum training standards for special conservators of the peace, they were prohibited from adopting compulsory, minimum, entry-level training standards in excess of 24 hours for unarmed special conservators, and 40 hours for armed special conservators.
  - Appointments orders may allow a special conservator of the peace to use the title 'police' on any badge or uniform.

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## Subsequent Amendments



- In 2004, all previous appointments of special conservators of the peace were made void, effective September 15, 2004, unless they had obtained a valid registration from DCJS.
- In 2005, the registration exemption for private police officers was changed to an exemption for individuals employed by a criminal justice agency.
- Also in 2005, the geographical limitations for SCOPs appointed pursuant to a corporate application were expanded to all cities and counties where the corporation or its subsidiary owns real property.

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## Subsequent Amendments



- In 2006, it was inserted into Va. Code § 19.2-13 that the appointment order may allow a special conservator to “affect arrests, using up to the same amount of force as would be allowed to a law-enforcement officer,” provided the conservator has completed the minimum training standards.

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## Subsequent Amendments



- In 2007, the geographical limitations on special conservators appointed pursuant to a corporate “or business” application were slightly increased.
- “For good cause shown, [the appointment may include] any real property owned or leased by the corporation or business, including any subsidiaries, in other specifically named cities and counties, but...do not extend beyond the boundaries of such real property.

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## Subsequent Amendments



- In 2008, Va. Code § 19.2-13 was amended to state that a circuit court judge “shall,” instead of “may,” appoint a special conservator of the peace.
- However, the judge may still deny the appointment for good cause, and shall state the specific reasons for the denial in writing in the order denying the appointment.

## Subsequent Amendments



- In 2010, Va. Code § 19.2-13 was amended to allow the appointment order to include permission for the special conservator of the peace to use the seal of the Commonwealth in a badge or other credential of office.
- Circuit courts previously had the authority to provide that a special conservator was a “law enforcement officer” for purposes of the involuntary temporary detention statutes; the psychiatric treatment of minors statutes were added as well.

## Subsequent Amendments



- Lastly, in 2013, state owned museums gained the ability to apply to circuit courts for a special conservator of the peace appointment to be made.

