



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation(s)	6 VAC20-230
Regulation title(s)	Regulations Relating to Special Conservators of the Peace
Action title	Amend the Initial and Renewal Registration Applications Requirements Regarding Bond or Insurance Verification.
Date this document prepared	June 6, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Criminal Justice Services Board (CJSB) seeks to amend the minimum amount and type of liability or self insurance for special conservators of the peace as required by Virginia Code § 19.2-13(C). The Criminal Justice Services Board further seeks to remove the language allowing a special conservator of the peace to be covered by a cash or surety bond to conform to the changes in the Code of Virginia during the 2015 General Assembly as a result of SB1195.

The proposed changes will reflect the CJSB's decision in June 2014 to amend the \$10,000 general liability or self insurance policy to a minimum of \$500,000 in professional law enforcement liability insurance. The CJSB further voted to increase the minimum coverage amount for a cash or surety bond from \$10,000 to \$100,000 but will not pursue proposing this increase based on recent legislative action that strikes this requirement from the Code of Virginia § 19.2-13(C) pursuant to Chapter 772 of the 2015 Acts of Assembly, effective July 1, 2015.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- CJSB – Criminal Justice Services Board
- DCJS – Department of Criminal Justice Services
- DRM – Division of Risk Management, Virginia Department of Treasury
- PSSAB - Private Security Services Advisory Board
- SCOP – Special Conservator of the Peace
- VML – Virginia Municipal League

Surety bond - A contractual arrangement between the surety, the principal and the obligee whereby the surety agrees to protect the obligee if the principal defaults in performing the principal’s contractual obligations. A bond is the instrument that binds the surety.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On March 24, 2016, the CJSB unanimously voted to approve that 6VAC230-30 and 6VAC20-230-90 be sent to the final stage.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

The *Code of Virginia* requires persons appointed as a special conservator of the peace to be covered by insurance or self-insurance in an amount and with coverage as fixed by the Criminal Justice Services Board. Virginia Code § 19.2-13(D).

The Criminal Justice Services Board is statutorily authorized to establish the amount and type of insurance coverage required for special conservators of the peace.

Virginia Code § 19.2-13(D).

“D. Each person registered as or seeking registration as a special conservator of the peace shall be covered by evidence of a policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Board. Any person who is aggrieved by the misconduct of any person registered as a special

conservator of the peace and recovers a judgment against the registrant, which is unsatisfied in whole or in part, may bring an action in his own name against the insurance policy of the registrant.”

The Board also has the statutory authority to adopt regulations establishing the qualifications of applicants for registration and to administer the regulatory system promulgated by the Board.

Virginia Code § 9.1-150.2.

“The Board may also adopt regulations that (i) establish the qualifications of applicants for registration; (ii) cause to be examined the qualifications of each applicant for registration; (iii) provide for collection of fees for registration and renewal that are sufficient to cover all expenses for administration and operation of a program of registration; (iv) ensure continued competency and prevent deceptive or misleading practices by practitioners; (v) effectively administer the regulatory system promulgated by the Board; (vi) provide for receipt of complaints concerning the conduct of any person whose activities are regulated by the Board; (vii) provide for investigations, and appropriate disciplinary action if warranted; and (viii) allow the Board to revoke, suspend or refuse to renew a registration, certification, or license for just cause as enumerated in regulations of the Board.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Special conservators of the peace (SCOPS) are unique actors in that they are typically citizens granted full arrest authority equivalent to law enforcement officers. SCOPS can carry firearms and use lethal force when effecting arrests; they can use the seal of the Commonwealth and the word “police” on their badges and uniforms. SCOPS engage in similar activities as law enforcement officers, such as enforcing the laws of the Commonwealth, making arrests and dealing with dangerous people and situations while on duty. Because their authority, responsibilities and actions are similar to that of law enforcement officers, SCOPS need to be adequately and similarly protected from potential claims of wrongdoing. Unlike governmental actors, who enjoy a certain degree of protection, insurance liability coverage and in some cases, immunity, SCOPS employed by private corporations likely enjoy no immunity for their actions and therefore need adequate coverage when claims are made against them. For the same reasons, citizens interacting with SCOPS must also be afforded some degree of protection or ability to be made whole after suffering wrongdoings or misconduct committed by SCOPS.

Until June 31, 2015, SCOPs had to demonstrate proof of a cash or surety bond, or proof of insurance. The bond requirement was removed from the Code of Virginia pursuant to Chapter 772 of the 2015 Acts of Assembly.

The Code of Virginia authorizes the CJSB to fix the amount and type of insurance coverage. The CJSB recently evaluated the current minimum insurance requirements (\$10,000 in a general liability policy) to determine whether it adequately protected individual SCOPS, employers of SCOPS and private citizens interacting with SCOPS.

To this end, the CJSB sought additional information and input from DCJS and the Private Security Services Advisory Board (PSSAB). An expert from the Virginia Municipal League (VML) and an expert from the Virginia Department of Taxation, Division of Risk Management (DRM), both presented information to the CJSB about bonds and insurance as it relates to the coverage of individuals with arrest authority. VML is statutorily authorized to provide insurance and its members include local governments,

towns and counties. VML is the insurance company for 150 police departments in Virginia. The DRM protects Virginia's state government, other public entities, and certain qualified individuals from financial loss caused by legal liability, loss to property, and other hazards. DRM protects a diverse range of exposures for state government, constitutional officers, local governments, and others throughout Virginia. Both VML and DRM provide insurance coverage for SCOPs employed by local and state governments.

The experts advised the PSSAB and CJSB of different types of insurance available in the market. General liability insurance covers situations resulting in injury or damage to another person or property. Self insurance of one's property or interests against possible loss is established through a special fund for that specific purpose, instead of seeking coverage with an underwriter. Self insurance is typically used by local and state governments.

The experts further explained that general liability insurance does not cover professionals engaged in activity where errors of judgment occur. As such, professional liability insurance exists for several types of professionals, including medical professionals, lawyers and individuals with arrest powers.

"Law enforcement liability insurance" is a type of professional insurance available for public and private individuals with arrest powers, including law enforcement officers and security guards. Although the name implies that the insurance is for law enforcement officers, it is widely available to both public and private actors. This type of professional insurance covers what general liability insurance does not, namely actions and misconduct arising out of arrests or the enforcement of criminal laws. Law enforcement liability insurance covers errors of judgment (what the SCOP/law enforcement officer *should* have done), excessive use of force, wrongful detention, racial profiling and infliction of mental anguish. Most claims against people with arrest powers are for errors of judgment and excessive use of force and, to a lesser degree, claims for racial profiling and mental anguish. The main difference between professional law enforcement liability and general liability insurance is that professional law enforcement liability covers specific actions arising out of law enforcement duties and actions.

The experts advised both the PSSAB and the CJSB that the industry standard for coverage of individuals with arrest authority is \$1,000,000 in professional law enforcement coverage. For example, VML insures all its member officers and special conservators of the peace for at least \$1,000,000 per occurrence and that many police departments pay for additional coverage. By statute, sheriffs are covered by a \$1,500,000 liability policy. The experts informed the CJSB that there is a healthy, commercial market available for the purchase of professional law enforcement liability.

In summary, the experts advised that a \$10,000 general liability insurance plan was not adequate coverage to: (1) provide recourse for an individual harmed by SCOP actions or misconduct, or (2) protect the SCOP from claims arising out of his law enforcement activities.

Prior to making a decision, the CJSB also sought advice from the Private Security Services Advisory Board. Members of PSSAB expressed that \$10,000 may be too low to adequately protect SCOPs but that \$1,000,000 was something to strive for in the future. Increasing the insurance requirement from \$10,000 to \$1,000,000 was thought to be very drastic so they decided \$500,000 was a reasonable compromise and achievable for registrants. Ultimately, the PSSAB made a recommendation to the CJSB to increase the insurance amount and type to \$500,000 in a general liability insurance plan.

The CJSB also sought advice from DCJS. As a matter of compromise, DCJS recommended changing the insurance amount to \$500,000 and changing the type to professional law enforcement liability insurance.

After considering all information and recommendations from experts, DCJS and PSSAB, and mindful of ensuring the health, safety and welfare of citizens and special conservators of the peace arising out of the law enforcement duties of SCOPs, the Criminal Justice Services Board unanimously decided in June 2014, pursuant to their direct authority in Virginia Code Section 19.2-13(D), that special conservators of

the peace must maintain \$500,000 professional law enforcement liability in order to become eligible for registration and appointment. The CJSB was cognizant of the fact that SCOPS share similar responsibilities and have the same arrest powers as law enforcement officers and therefore face similar types of complaints and lawsuits. The CJSB learned that professional liability insurance protects individuals with arrest powers from liability arising from claims that they erred in judgment. Unlike regular liability insurance, which only covers personal injuries or damage to property, professional law enforcement liability insurance covers actions and misconduct arising out of effecting an arrest or the enforcement of criminal laws. Because SCOPs have arrest powers and can be authorized to carry firearms and use deadly force, the CJSB was concerned about protecting individual special conservators from claims against them, as well as having adequate recourse for citizens who are harmed by actions of special conservators.

On May 7, 2015, the CJSB unanimously decided to remove the proposal to increase the surety or cash bond and to strike the requirement from the regulations to conform to statutory language as enacted in Chapter 772 of the 2015 Acts of Assembly (SB1195).

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The proposed changes will reflect the CJSB’s statutory authority to amend the current insurance requirement to a minimum of \$500,000 in professional law enforcement liability insurance. Further, the proposed changes will reflect the removal of the cash or surety bond option to conform to the change in the Code of Virginia as enacted in Chapter 772 of the 2015 Acts of Assembly (SB1195).

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage to the public is ensuring an increased opportunity for civil recourse in the event that an individual is harmed as a result of interacting with a SCOP.

Individual SCOPS are also provided with increased liability protection for actions arising out of their conduct. The current requirements do not protect the individual SCOP from defending against actions arising out of their errors of judgment.

There are no disadvantages to the public, agency or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The vast majority of localities will not be particularly affected by the proposed regulation. As mentioned above, many governmentally employed SCOPS already have equal or more insurance coverage than is proposed by the new regulation. There may be up to five localities that had previously utilized surety or cash bonds to cover their SCOPS. However, in 2015, when the General Assembly deleted statutory language which allowed employers to maintain bonds for SCOPs, those localities were required to provide insurance.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no anticipated impact on the institution of the family and family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change

No changes were made at the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Michael Youlen	Town Hall Comment - The SCOP program is not a law enforcement program and should be treated differently.	<p>DCJS agrees that special conservators of the peace are not law enforcement officers as defined in Section 9.1-101 of the Code of Virginia. However, both law enforcement officers and special conservators of the peace share similar responsibilities and have arrest powers.</p> <p>Professional law enforcement liability insurance is available to law enforcement and non-law enforcement personnel in both the private and public sectors. The purpose of this particular professional liability insurance is to protect individuals who are granted arrest powers from liability arising from claims that they erred in judgment. Unlike regular liability insurance, which only covers personal injuries or damage to property, professional law enforcement liability insurance covers actions and misconduct arising out of effecting an arrest or the enforcement of criminal laws. Because special conservators of the peace have arrest powers and can be authorized to carry firearms and use deadly force, the agency and the Board were concerned about protecting individual special conservators from claims against them, as well as having adequate recourse for citizens who are harmed by actions of special conservators.</p>
John Hall	Town Hall and email comment – SCOPs are not law enforcement. General liability insurance provides the same level of protection and law enforcement liability insurance is not accessible to the private industry, is cost prohibitive and burdensome to obtain.	<p>DCJS agrees that special conservators of the peace are not law enforcement officers as defined in Section 9.1-101 of the Code of Virginia. However, both law enforcement officers and special conservators of the peace share similar responsibilities and have arrest powers.</p> <p>Professional law enforcement liability insurance is available to law enforcement and non-law enforcement personnel in both the private and public sectors. The purpose of this particular professional liability insurance is to protect individuals who are granted arrest powers from liability arising from claims that they erred in</p>

		<p>judgment. Unlike regular liability insurance, which only covers personal injuries or damage to property, professional law enforcement liability insurance covers actions and misconduct arising out of effecting an arrest or the enforcement of criminal laws. Because special conservators of the peace have arrest powers and can be authorized to carry firearms and use deadly force, the agency and the Board were concerned about protecting individual special conservators from claims against them, as well as having adequate recourse for citizens who are harmed by actions of special conservators.</p>
<p>Delegate Scott Lingamfelter</p>	<p>Letter to DCJS – Requiring SCOPs to have \$500,000 in professional law enforcement liability insurance is unjustified and will harm small businesses.</p>	<p>Thank you for sharing with DCJS your thoughts on the regulations relating to Special Conservators of the Peace (6VAC20-230). I appreciate you taking the time to communicate your perspective on the impact the regulatory action may have on this industry.</p> <p>As you know, the Criminal Justice Services Board is statutorily authorized to promulgate regulations for Special Conservators of the Peace and is specifically authorized to set the amount and type of insurance requirements for these professionals. DCJS will review your comments and suggestions before proceeding further. The non-exempt regulatory process often takes at least 18 to 24 months from start to finish; thus an opportunity exists to reflect upon your observations.</p> <p>DCJS and the Board continue to be committed to ensuring that Special Conservators of the Peace are protected from claims by individuals and that the public has adequate recourse for errors in judgment committed by Special Conservators of the Peace.</p>
<p>Scott Allen</p>	<p>Email comment – The new insurance requirement could be impossible to obtain because it is cost prohibitive. My agency is prepared to meet the new requirements.</p>	<p>DCJS agrees that special conservators of the peace are not law enforcement officers as defined in Section 9.1-101 of the Code of Virginia. However, both law enforcement officers and special conservators of the peace share similar responsibilities and have arrest powers.</p> <p>Professional law enforcement liability insurance is available to law enforcement and non-law enforcement personnel in both the private and public sectors. The purpose of this particular professional liability insurance is to protect individuals who are granted arrest powers from liability arising from claims that they erred in</p>

		<p>judgment. Unlike regular liability insurance, which only covers personal injuries or damage to property, professional law enforcement liability insurance covers actions and misconduct arising out of effecting an arrest or the enforcement of criminal laws. Because special conservators of the peace have arrest powers and can be authorized to carry firearms and use deadly force, the agency and the Board were concerned about protecting individual special conservators from claims against them, as well as having adequate recourse for citizens who are harmed by actions of special conservators.</p>
<p>John W. Price, III</p>	<p>Letter comment – my existing liability insurance covers all my actions as a SCOP and I have not been able to obtain a new policy.</p>	<p>DCJS agrees that special conservators of the peace are not law enforcement officers as defined in Section 9.1-101 of the Code of Virginia. However, both law enforcement officers and special conservators of the peace share similar responsibilities and have arrest powers.</p> <p>Professional law enforcement liability insurance is available to law enforcement and non-law enforcement personnel in both the private and public sectors. The purpose of this particular professional liability insurance is to protect individuals who are granted arrest powers from liability arising from claims that they erred in judgment. Unlike regular liability insurance, which only covers personal injuries or damage to property, professional law enforcement liability insurance covers actions and misconduct arising out of effecting an arrest or the enforcement of criminal laws. Because special conservators of the peace have arrest powers and can be authorized to carry firearms and use deadly force, the agency and the Board were concerned about protecting individual special conservators from claims against them, as well as having adequate recourse for citizens who are harmed by actions of special conservators.</p>

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section	Proposed new section	Current requirement	Proposed change and rationale
-----------------	----------------------	---------------------	-------------------------------

number	number, if applicable		
6VAC20-230-30		Section A sites Virginia Code § 19.2-13 (F)	The proposed change will change (F) to (G), reflecting a technical change made by the General Assembly in 2015.
6VAC20-230-30		Section C provides a citation to 6VAC230-50	The proposed language will change the citation to 6VAC20-230-50, a technical correction.
6VAC20-230-30		Documentation verifying a secured surety bond or cash bond in the amount not to be less than \$10,000 or a policy of comprehensive general liability insurance with a minimum coverage of \$10,000.	<p>The proposed changes will strike the language allowing a cash or surety bond and amend the \$10,000 general liability or self insurance to a minimum of \$500,000 in professional law enforcement liability insurance.</p> <p>The proposed changes will better protect the individual SCOP, his employer and the public from misconduct and errors in judgment arising out of his law enforcement type duties.</p>
6VAC20-230-90		Prohibits DCJS from reinstating SCOP registration that has become null and void by virtue of the SCOP not maintaining adequate surety bond coverage.	The proposed change will strike the language referencing the surety bond coverage as this is no longer required under the Code of Virginia.