

OP. NO. 04-072

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL
CORRECTIONAL FACILITIES – DUTIES OF SHERIFFS.**

2004 APPROPRIATION ACT: COMPENSATION BOARD.

Authority for sheriff and chief judge of circuit, general district, or juvenile and domestic relations general district court to designate number, type, and working schedules of courtroom deputies by agreement and only within parameters of relevant appropriations act. For cases presenting substantial security risk, judge may order sheriff to provide additional security; may not designate specific personnel.

The Honorable Robert J. McCabe
Sheriff for the City of Norfolk
October 7, 2004

Issue Presented

You ask whether a district court judge has the authority to designate individuals to provide courtroom security without the advanced knowledge or permission of the sheriff.

Response

It is my opinion that § 53.1-120 authorizes the chief judge of the circuit, general district, or juvenile and domestic relations general district court to designate the number, type, and working schedules of courtroom security deputies only by agreement with the sheriff and then only within the parameters established by the relevant appropriation act. It is further my opinion that for cases presenting substantial security risks, a judge may order a sheriff to provide additional security, but may not designate the specific personnel.

Applicable Law and Discussion

The designation of deputies to provide courthouse security is a joint function exercised by the sheriff and the chief judge of the respective circuit, general district, or juvenile and domestic relations general district court ("chief judge"). Section 53.1-120 provides:

- A. Each sheriff shall ensure that the courthouses and courtrooms within his jurisdiction are secure from violence and disruption and shall designate deputies for this purpose....
- B. The chief circuit court judge, the chief general district court judge and the chief juvenile and domestic relations district court judge shall be responsible by agreement with the sheriff of the jurisdiction for the designation of courtroom security deputies for their respective courts. If the respective chief judges and sheriff are unable to agree on the number, type and working schedules

of courtroom security deputies for the court, the matter shall be referred to the Compensation Board for resolution in accordance with existing budgeted funds and personnel.

C. The sheriff shall have the sole responsibility for the identity of the deputies designated for courtroom security.

Primary authority for the courthouse and courtroom security lies with the sheriff.¹ The sheriff's authority covers the selection of specific deputies.² The chief judge and the sheriff, however, have a joint responsibility to evaluate courtroom security needs and to designate, by agreement, the number and schedules of the deputies.³ Accordingly, § 53.1-120 does not confer sole authority upon either the chief judge or the sheriff to designate the number of courtroom deputies.

Should the chief judge and the sheriff be unable to reach an agreement regarding courtroom security, they must refer the issue to the Compensation Board.⁴ Thus, when the chief judge and sheriff disagree, neither may designate a deputy until the Compensation Board resolves the matter.

The 2004 Appropriation Act⁵ supplies additional parameters to the authority granted in § 53.1-120 for designating deputies.⁶

Notwithstanding the provisions of § 53.1-120, or any other section of the Code of Virginia, unless a judge provides the sheriff with a written order stating that a substantial security risk exists in a particular case, no courtroom security deputies may be ordered for civil cases, not more than one deputy may be ordered for criminal cases in a district court, and not more than two deputies may be ordered for criminal cases in a circuit court. In complying with such orders for additional security, the sheriff may consider other deputies present in the courtroom as part of his security force.^[7]

By employing the language, "[n]otwithstanding the provisions of § 53.1-120," the General Assembly evinces a clear intent that, to the extent any conflict exists between § 53.1-120 and the 2004 Appropriation Act, the Act prevails.⁸ While the Act limits the number of deputies that may be designated, it does not alter the requirement that the sheriff and the chief judge must agree on the number, type, and working schedules of the deputies, except when the judge determines there is a substantial security risk.⁹

A prior opinion of this Office concludes that a local sheriff is not required to provide an additional deputy for courtroom security unless the judge enters an order finding that there is a substantial security risk.¹⁰ When a judge finds that a particular case poses a substantial security risk, the personnel limits established by the 2004 Appropriation Act may be exceeded. In that instance, no agreement between the judge and the sheriff is required. The Act does not, however, authorize a judge to designate deputies without notifying the sheriff, nor does it alter the sheriff's authority to appoint specific deputies. Although the Act contemplates that a sheriff will comply with a judge's order for additional security in a particular case, the sheriff retains the authority to determine the specific personnel for such security.

Conclusion

Accordingly, it is my opinion that § 53.1-120 authorizes the chief judge of the circuit, general district, or juvenile and domestic relations general district court to designate the number, type, and working schedules of courtroom security deputies only by agreement with the sheriff and then only within the parameters established by the relevant appropriation act. It is further my opinion that for cases presenting substantial security risks, a judge may order a sheriff to provide additional security, but may not designate the specific personnel.

¹1998 Op. Va. Att'y Gen. 33, 34-35.

²1987-1988 Op. Va. Att'y Gen. 467, 468-69.

³*Id.* at 468.

⁴See Va. Code Ann. § 53.1-120(B) (LexisNexis Supp. 2004).

⁵2004 Va. Acts Spec. Sess. I ch. 4, available at <http://leg1.state.va.us/042/sb2.htm>.

⁶An appropriation act may validly change codified law. See *Terry v. Wilder*, 29 Va. Cir. 418, 435 (1992) (citing *Commonwealth v. Dotson*, 176 Va. 281, 305, 11 S.E.2d 120, 131 (1940)); 1985-1986 Op. Va. Att'y Gen. 10, 11.

⁷2004 Va. Acts, *supra* note 5 (quoting Item 64(C)), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?042+bud+21-64>.

⁸See Op. Va. Att'y Gen.: 2002 at 242, 243; 1993 at 56, 57-58; see also *Standard Drug Co. v. Gen. Elec. Co.*, 202 Va. 367, 378, 117 S.E.2d 289, 297 (1960) (finding that, to extent conflict exists between two statutes, later enacted prevails).

⁹1993 Op. Va. Att'y Gen., *supra* note 8, at 57-58.

¹⁰2002 Op. Va. Att'y Gen., *supra* note 8, at 244.

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