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Final Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6 VAC 20-230
Regulation title	Regulations Relating to the Special Conservator of the Peace
Action title	Special Conservator of the Peace
Document preparation date	12-9-2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 proposed regulation establishes compulsory minimum entry-level training, in-service training, and a registration process to include a fingerprint based background check, registration fees, and administration of the regulatory system. It authorizes the department to receive complaints concerning the conduct of any person whose activities are monitored by the Board; conduct investigations; issue disciplinary action; revoke, suspend, and refuse to renew a registration.

These regulations are established to protect the citizens of the Commonwealth from unqualified, unscrupulous, and incompetent persons engaging in the activities of a Special Conservator of the Peace.

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 December 9, 2004, the Criminal Justice Services Board adopted the proposed Special Conservator of the Peace regulations along with the recommended changes by ERRATA Sheet and noted here in the section "Changes made since the proposed."

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal authority to regulate the Special Conservator of the Peace is found in Section §9.1-150.2 of the Virginia Code, effective July 1, 2003, authorizes the Criminal Justice Board of the Department to adopt regulations for the Special Conservator of the Peace appointed pursuant to § 19.2-13. The Office of Attorney General has certified that the agency has the statutory authority to promulgate the regulations.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

These regulations establish a registration process that includes a fingerprint based background check, registration fees, compulsory minimum entry-level training standards, and administration of the regulatory system. The regulation also authorizes the department to receive complaints concerning the conduct of any person whose activities are monitored by the Board; conduct investigations; issue disciplinary action; revoke, suspend; and refuse to renew a registration. These procedures are established to protect the citizens of the Commonwealth from unqualified, unscrupulous, and incompetent persons engaging in the activities of a Special Conservator of the Peace.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The regulation establishes a registration process, registration fees, compulsory minimum entry-level training standards including firearms training and qualifications, standards of conduct, and administration of the regulatory system. It outlines procedures for receiving complaints concerning the conduct of any person whose activities are monitored by the Board; procedures for conducting investigations; issuing disciplinary action; and revoking, suspending, refusing to renew a registration, and provides an appeal process pursuant to the administrative process act.

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 advantages that these regulations provide to the general public are that they:

- (i) Set forth standards, procedures, and requirements that serve to protect the safety and welfare of the general public against incompetent, unscrupulous, and unqualified persons by establishing methods of registration that serve to enhance the competency of persons performing or engaged in the activities of a Special Conservator of the Peace.
- (ii) The regulation also establishes a method for the public to make a complaint regarding the conduct of a Special Conservator of the Peace and have it reviewed by an independent Board. Disciplinary action may be taken by the Board after an investigation and include the possibility of revoking, suspending, or refusing to renew a registration.

A possible disadvantage of these regulations is that the program it prescribes receives no moneys from the General Fund; therefore, the cost to administer the program must be absorbed by the affected individuals.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	Word change	“unarmed special conservator...” definition. In line 2 strike “has” and insert “have”	Grammatical
30.C.7	Delete entire sentence	Documentation verifying completion of initial training with a certified training school, private security services training school or documentation for training exemption for prior training.	Documentation is submitted by the training schools
30.D	Amend to read	“Upon completion of the initial registration application requirements, the department may issue a temporary registration letter for <u>not more than 120 days at a time while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.</u> a period not to exceed 12 months. This temporary registration letter shall be taken to the circuit court where seeking appointment for special conservator of the peace.	Correction

30.E	The department may issue a letter of temporary registration for not more than 120 days while awaiting the results of the state and national fingerprint search provided the applicant has met the necessary conditions and requirements.	Delete section	This was combined into the previous section for clarity.
30.H	Amend to read	“Once the individual has met the requirements and received a temporary registration letter, he then shall appear before <u>petition</u> the circuit court <u>for appointment</u> in the jurisdiction where the individual will be employed to seek appointment. ”	Clarification
30.F-J	Change letter designation	Change Letters to reflect 6VAC20-230.E-I	Grammatical
30.J	Amend to read	Upon completion of an appointment by a circuit court, the individual shall file <u>with the department</u> a copy of the court order granting appointment as a special conservator of the peace. authority and jurisdiction with the department. A final registration letter then will be issued to the individual by the department. <u>This registration letter</u> shall be submitted to a specified entity for a <u>state-issued</u> photo identification card.	Clarification
40.C	Amend to read	Fingerprint cards that are found to be unclassifiable will be returned to the applicant <u>will suspend</u> A action on the application will be suspended pending the resubmittal of <u>a</u> classifiable fingerprint card. The applicant shall be so notified in writing and shall submit <u>a</u> new fingerprint cards and the applicable, nonrefundable fee to the department before the processing of his application shall resume. However, no such <u>the applicable, nonrefundable</u> fee may be required if the rejected fingerprint cards are included and attached to the new fingerprint cards when resubmitted and the department is assessed additional processing fees.	This is based on an internal procedural change on how unclassifiable cards are handled
60	Amend header to read	“Application procedures and requirements”	Correction

50	Addition	<u>E. Applicants denied registration based upon a positive drug and alcohol test will be ineligible for registration for a period of five years.</u>	Addition, based on recommendation from the AG's office.
70.B.1	Amended sentence	second line, remove "firearms" and insert "requirements" after the word training.	Correction
70.C.3	Deletion	delete and re-number C 4 to C 3	Correction
80.1	Amend sentence	insert "duplicate/replacement" in front of application	Clarification of the type of form
90.B	Amend sentence	4 th line, delete "expiration date", 5 th line, insert "the" after the word during	Correction
140.B	Change letter to number	delete "B" change to "8"	Correction
150.A.7	Amend sentence	amend 2 nd sentence, delete the word "only" after the word "duties" and insert "only" after the word "Perform"	Clarification
150.A.8	Amend sentence	Maintain a valid firearms verification if he carries or has immediate access to firearms while on duty and <u>is</u> authorized by the circuit court, and He may only carry <u>only</u> those firearms that he has been trained with and is qualified to carry.	Clarification
150.A.11	Amend sentence	delete the duplicated words "full compliance"	Correction
150.A.14	Amend sentence	second line, delete "the" after the word that	Correction
160.C.1.a-f	Amend Sections	See the following corrections	Based on comments from training academies, the entry level training sections was amended in order to restructure, reduce redundancy and provide flexibility to the training school.
160.C.1.a	Amend sub sections	A. Orientation – 2 hours (1) Virginia Law and Regulations (2) Code of Ethics and Professional <u>Conduct</u> (3) General Duties and Responsibilities (4) Definitions (5) (4) <u>Registrations and Training Requirements</u> (6) (5) Violations and Disciplinary Actions, <u>Sanctions</u>	Clarification
C.1.b	Delete this section	This section is deleted and restructured later within the next few sections.	Restructure and Clarification
C.1.b-f	Change number	Page 21-24, 6 VAC 20-230-160 C 1 b-f – re-	Clarification after

	designation	number and amend as follows:	change above.
C.1.c	Amend sentence	eb. Basic Law <u>Code of Virginia</u> – 4 Hours (1) Juvenile Law (2) Crimes Against Peace & Order (3) Crimes Against Persons (4) Crimes Against Property (5) Crimes Against Health & Safety (6) Crimes Involving Fraud	Clarification
C.1.	Addition	c. <u>Constitutional Law, Civil Law, Due Process, Legal Procedures</u> – 4 hours (1) <u>United States Constitution</u> (2) <u>Virginia Constitution</u> (3) <u>Legal terminology and definitions</u> (4) <u>Limitations and Liability</u> (5) <u>Magistrates, Grand Jury and Courts</u>	This is part of the restructuring based on section C.1.b. which was removed.
C.1.	Addition	d. <u>Arrest Procedures</u> – 8 hours (1) <u>Legal authority and related issues</u> (2) <u>Probable Cause</u> (3) <u>Laws of Arrests</u> (4) <u>Warrants</u> (5) <u>Summons</u>	This is part of the restructuring based on section C.1.b which was removed.
C.1.d	Amend sub section	d.e. Laws Regarding the Use of Force <u>Liability Issues</u> – 4 hours (1) Use of Force <u>Confrontation Management</u> (2) Liability Issues (3) Justifiable deadly <u>Deadly force</u> (4) <u>Use of Restraints</u>	Edification, based on comments from certified training academies, add the two additional topics, Confrontation Mgmt and Use of Restraints
C.1.e	Deletion	e. Obtaining an Arrest Warrant/Virginia Uniform Summons – 4 hours (1) Appearing before a magistrate (2) Types of Warrants (3) Serving a Warrant (4) Issuing a Virginia Uniform Summons	This was deleted and restructured under C.1.d.
C.1.f	Amend sub section	f. Rules of Evidence – 1 hour (1) Definition of Evidence (2) Rules (3) (1)Types of Evidence (4) <u>Requirements</u> (5) <u>Admissibility of Evidence</u> (6) <u>Integrity of Evidence</u> (7) (2)Chain of Custody (3) <u>Admissibility of Evidence</u>	Clarification
180	Move section	remove entire paragraph and insert after 6 VAC 20-230-240	Clarification

190-240	Change number designation	re-number to reflect 180-240	Clarification after change above
220	Designation change	Change “A” to 1 and “B” to 2	Correction
230	Word change	delete “Firearms training” insert “Training”	Correction
240	Add letter designation	Amend 1 st paragraph to reflect as subsection A	Correction
240	Addition	B. Persons previously employed as special conservator of the peace who have not terminated or been terminated from said employment more than five years prior to the application date must submit official documentation of the following with the application for partial exemption:	This was due to a recommendation from DPB to help clarify the training exemptions.
240.3	Change designation	Change to B.1	Clarification after change above
240	Addition	C. <u>Or persons having completed pre-approved special conservator of the peace training conducted by a Virginia law enforcement academy, not certified as a private security services training school but authorized by the department to conduct special conservator of the peace training.</u>	Per DCJS, this failed to be added to the proposed regulations
240	Moved section	after re-numbering – insert verbiage from 6 VAC 20-230-180 and change A to 1, B to 2 and C to 3.	Clarification

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.

Commenter	Comment	Agency response

A summary of the comments are attached in matrix form (Attached as Appendix A)

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section	Proposed new section	Current requirement	Proposed change and rationale

number	number, if applicable		

This is a new regulation; changes to the proposed regulations are as stated above.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The regulations indirectly impact the family who may come into contact with a Special Conservator of the Peace by providing a regulatory requirement encompassing a background check that protects the public from unscrupulous, incompetent or unqualified persons engaging in the activities of Special Conservator of the Peace.

APPENDIX A

SUMMARY MATRIX OF COMMENTS AND RECOMMENDATIONS REGARDING “PROPOSED” REGULATIONS RELATING TO SPECIAL CONSERVATORS OF THE PEACE

<i>Regulation Cite</i>	<i>Comments/Issues/Recommendations</i>	<i>Respondent(s)</i>	<i>Agency Response</i>
6 VAC 20-230-20	FEES		
6 VAC 20-230-20	Opposed to one public agency having to pay fees to another public agency	Tom Ratliff Richmond Re-development and Housing Authority	The Private Security Services Section is a special funded program and receives no funding from the General Fund.
6 VAC 20-230 30	INITIAL REGISTRATION APPLICATION		
6 VAC 20-230-30 C.6	Insurance certificate expiration date may not coincide with the licensure date and worries of license becoming Null and Void when he in fact has insurance.	Tom Ratliff Richmond Re-development and Housing Authority	As long as continued insurance coverage can be verified then the registration will remain valid. (we will provide 30-day reminder notice prior to the date of expiration on file).
6VAC 20-230-30 J	ID Cards – having to go to the DMV each year upon SCOP registration renewal for a new ID card. The renewal decal system in place for contract security guards doesn’t apply to SCOPs?	Thomas Turner Roanoke College PSSAB Bruce Hagerman Mariner’s Museum	Yes it does apply under 6VAC-20-230-70 D. The department is currently working to find alternative ways to issue the state photo Id, which is why the verbiage “specified entity” is used instead of specifying DMV, this enables the department to consider other options.
6 VAC 20-230 70	RENEWAL REGISTRATION APPLICATION		

6VAC 20-230-70 D	Annual registration renewal is too frequent – concerns that the SCOP registration should be good for two years (or longer) as long as in-service training requirements are met.	Thomas H. Turner Roanoke College PSSAB Tom Ratliff, Richmond Redevelopment & Housing Authority	By having the registration expire consecutively with the expiration of training prevents the Special Conservator of the Peace from continuing to carry an “active” card, in the case that training requirements are not met. If the card is issued for two years and training is not met, our department would need to revoke the registration and ensure each is confiscated which puts undue burden on our small staff.
6 VAC 20-230 160	ENTRY LEVEL TRAINING		
6VAC 20-230-160.	Please add handcuffing, ASP, OC Spray certified Practical for filling out CCF’s Summons and Warrants (graded) Practical, walk through for Juvenile intake procedures of local facility	Gordon Passauer Mid Atlantic Training Academy	Agree, the Department will add a section for Use of restraints and confrontation management. This could incorporate handcuffing, however the regulations reflect the minimum training standards required, schools have the flexibility to expand their training with additional topics and/or practical exercises.
6 VAC 20-230-160	Reduce redundancy, provide sub-headings and restructure topics, request expanded lesson plans, provide instructor flexibility to cover material in allotted time, suggested SCOP to have to attend the Basic Law Enforcement course, the proposed SCOP training is difficult to cover in 40 hours.	Angela Landes Central Shenandoah Training Academy	We have restructured the proposed regulations to provide sub-headings, reduce redundancy and provide greater trainer flexibility. DCJS must provide the minimum training standards to include appropriate time constraints. Schools have the flexibility to expand their training with additional topics and/or

			<p>practical exercises.</p> <p>We are limited by Code to 40 hours of training and therefore having the SCOP going through the Basic Law Enforcement course would be impractical.</p>
6 VAC 20-230 170	IN SERVICE TRAINING		
6VAC 20-230-170	Training – some are confused about the content of the annual 8 hr in-service training requirements	<p>Thomas Turner Roanoke College PSSAB</p> <p>Bruce Hagerman Mariner’s Museum</p>	<p>The regulations reflect the minimum hours of in-service training. Schools have the flexibility to expand their training with additional topics and/or practical exercises. Since entry level is limited to 40 hours, the in-service allows for additional training in legal authority as well as job related training.</p>