

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Private Security

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



House Document No. 11

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**



COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

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IN RESPONSE TO
THIS LETTER TELEPHONE
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ROBERT E. COLVIN
EXECUTIVE DIRECTOR

MEMBERS:

FROM THE SENATE OF VIRGINIA:
ELMON T. GRAY, CHAIRMAN
HOWARD P. ANDERSON
ELMO G. CROSS, JR.

FROM THE HOUSE OF DELEGATES:
ROBERT B. BALL, SR., VICE CHAIRMAN
V. THOMAS FOREHAND, JR.
RAYMOND R. GUEST, JR.
A. L. PHILPOTT
WARREN G. STAMBAUGH
CLIFTON A. WOODRUM

APPOINTMENTS BY THE GOVERNOR:
ROBERT C. BOBB
ROBERT F. HORAN, JR.
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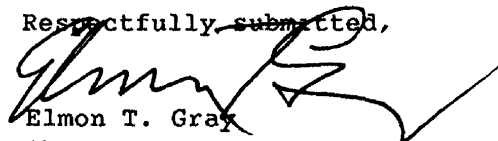
ATTORNEY GENERAL'S OFFICE
H. LANE KNEEDLER

October 18, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia,
and Members of the General Assembly:

House Joint Resolution 168, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to study the powers of arrest and other matters related to private security officers in Virginia. In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's private security officers.

Respectfully submitted,



Elmon T. Gray
Chairman

ETG.tes

ENCLOSURE

MEMBERS OF THE

VIRGINIA STATE CRIME COMMISSION

From the Senate of Virginia:

Elmon T. Gray, Chairman

Howard P. Anderson

Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman

A. L. Philpott

V. Thomas Forehand, Jr.

Raymond R. Guest, Jr.

Warren G. Stambaugh

Clifton A. Woodrum

Appointments by the Governor:

Mr. Robert C. Bobb

Robert F. Horan, Jr.

George F. Ricketts, Sr.

Attorney General's Office:

Mr. H. Lane Kneedler

Subcommittee

Studying

Private Security

Members:

Delegate Raymond R. Guest, Jr., Chairman
Delegate Robert B. Ball, Sr.
Mr Robert C. Bobb
Senator Elmo G. Cross, Jr.
Delegate V. Thomas Forehand, Jr.
Senator Elmon T. Gray
Mr. H. Lane Kneedler
Delegate Warren G. Stambaugh

Staff:

Robert E. Colvin, Executive Director
Susan E. Foster, Research Assistant
Tammy E. Sasser, Executive Administrative Assistant
Kris Ragan, Secretary

The subcommittee expresses its sincere appreciation to the Director and staff of the Department of Criminal Justice Services, particularly Mr. Lex Eckenrode, Division Director; Mr. Byran Childress, Section Chief, and Mr George Gotschalk, Section Chief, for their technical advice and assistance in conducting this study. Similarly, we want to thank Mr. James S. Goalder, and Mr. C. R. Hormachea of Virginia Commonwealth University for their support and contribution to the study

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I. Authority for Study

House Joint Resolution 168, sponsored by Delegate Frederick H. Creekmore and passed by the 1988 General Assembly, authorized the Virginia State Crime Commission to study the private security profession to determine "(1) what powers of arrest and detention are appropriate for private security guards and (11) whether private security guards should be granted immunity from civil liability for actions incidental to arrest, and if so, what actions" The Commission was requested to submit its formal legislative and administrative recommendations to the Governor and the 1989 General Assembly.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "the Commission shall have the duty and the power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125..., and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission "to conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the private security study as directed by House Joint Resolution 168.

II. Members Appointed to Serve

Also during the April 19, 1988 meeting of the Crime Commission, its chairman, Senator Elmon T. Gray of Sussex, selected Delegate Raymond R. Guest, Jr. to serve as chairman of this subcommittee. Members of the Crime Commission who serve on the subcommittee are:

Delegate Raymond R. Guest, Jr. of Front Royal, Chairman
Delegate Robert B. Ball, Sr. of Henrico
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr. of Hanover
Delegate V. Thomas Forehand, Jr. of Chesapeake
Senator Elmon T. Gray of Sussex
Mr. H. Lane Kneedler (Attorney General's Office)
Delegate Warren G. Stambaugh of Arlington

III. Executive Summary

Under the Code of Virginia, §54-729.33, an armed contractual private security guard has the authority to effect an arrest for an offense (not limited to shoplifting offenses) occurring in his presence while on the premises he was contracted to protect or in the presence of a merchant with probable cause to believe the arrestee has committed willful concealment of goods. This broad grant of authority to armed contractual security guards raised concern on the part of industry personnel and the public due to the guards minimal training. According to the compulsory training standards established by the Criminal Justice Services Board, an armed contractual security guard is required to undergo only 16 hours of training, only 4 of which are in the study of legal authority.

The subcommittee recommends that §54-729.33 be retained in its current form. In addition, the subcommittee recommends that the Virginia State Crime Commission request the Criminal Justice Services Board to reevaluate the firearms training requirements for armed guards.

In contrast, unarmed contractual security guards have no arrest authority under the Code of Virginia. Rather, they have only the arrest authority of an ordinary citizen. According to the training standards established by the Criminal Justice Services Board, unarmed contractual security guards must undergo 12 hours of training. This training is identical to that of armed guards absent the 4 hours of firearms training; nevertheless, unarmed guards are without arrest authority.

The subcommittee recommends that the Commission refrain from taking official action regarding the arrest authority of unarmed contractual security guards, but continue to monitor the industry to determine whether corrective action proves necessary.

IV. Background

Chapter 737 of the 1976 Acts of Assembly provided that a registered employee of a private security services business shall have the power to effect an arrest for offenses occurring on the premises which the service was hired to protect. In 1978, legislation narrowed the scope of this broad grant of arrest authority to include only those offenses on the premises committed in the presence of the security employee or the presence of a merchant, agent or employee of a merchant with probable cause to believe that the person arrested has shoplifted or committed willful concealment of goods.

As a result of legislation which became effective July 1, 1988, the unarmed branch of the private security services industry is deregulated. Specifically, the 1988 legislation inserts "armed" into the statute to describe guards, thereby impliedly excluding unarmed guards from the statutory coverage. Lastly, the statute only addresses contractual security personnel. A "guard", as defined in the statute, refers only to a "person employed by a private security services business..." which does not include within its parameters proprietary or in-house security service personnel. Further, §54-729.28 explicitly states that "regular employees of persons engaged in other than the private security business, where the regular duties of such employees primarily consist of protecting the property of their employers," i.e. proprietary security guards, are exempt from application of the statute

According to §18.2-105 of the Code of Virginia, a merchant who causes the arrest or detention of any person is immune from civil liability for false imprisonment, false arrest, assault and battery or unlawful detention, if detention does not exceed one hour, provided the merchant acted with probable cause to believe the person has shoplifted or committed willful concealment of goods and merchandise. Although the statute protects a proprietary security guard as an employee of the merchant, the statutory definition of an "agent" of a merchant arguably does not encompass a contractual private security guard. Therefore, it is unclear to what extent, if any, a contractual private security guard is immune from civil liability under the above circumstances

V. Scope of the Study

The study included the following topics:

1. Arrest authority of private security personnel
2. Minimum training standards for private security guards mandated by the Department of Criminal Justice Services
3. Feasibility of civil immunity for private security personnel

VI. Recommendations

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. Pursuant to HJR 168 (1988) the Law Enforcement Subcommittee studying private security guards met on August 16, 1988 to determine whether private security guards should have arrest authority and whether private security guards should be immune from civil liability. After careful consideration, the subcommittee made the following findings and recommendations:

Unarmed Contractual Private Security Guards

1. Refrain from taking official action regarding the arrest authority of unarmed contractual security guards.
2. Continue to monitor the unarmed branch of the private security industry.

Armed Contractual Security Guards

1. Retain §54-729.33 in its current form.
2. The Virginia State Crime Commission should formally request that the Criminal Justice Services Board reevaluate the firearms training requirements for armed guards.

Civil Immunity for Private Security Guards

1. The subcommittee made no recommendation regarding the issue of civil immunity for private security guards.

VII. Work of the Subcommittee

The subcommittee held one extensive staff briefing on June 21, 1988, one public hearing on July 21, 1988 in Richmond, Virginia to solicit input from concerned individuals and organizations, and one work session in Richmond on August 16, 1988. In addition, the Subcommittee reviewed studies on the private security industry as well as 83 responses to a 12-question survey mailed statewide to private security services companies employing armed and unarmed security guards.

A. Testimony and Survey

Based on the public testimony and the survey results, opinion is divided, even within the industry, as to whether contractual private security guards should have the authority to effect an arrest. However, almost all agreed that the current minimum training standards are inadequate.

B. Parallel or Similar National Studies

Private Police in the United States: Findings and Recommendations is a five-volume report describing a 16-month study of the private security industry conducted by the Rand Corporation in 1971. The purpose of the study was "to describe the nature and extent of the private police industry in the United States, its problems, its present regulation, and how the law impinges on it. And second,... to evaluate the benefits, costs and risks to society of current private security and to develop preliminary policy and statutory guidelines for improving its future operations and regulation."

Among its findings, those of particular interest to the current Crime Commission Study were the following:

Services provided by private security personnel complement, rather than supplement, those rendered by public law enforcement.

The forecasted continued growth of private security expenditures based, in part, on rising crime rates, high insurance premiums in the absence of guards and anxious businessmen, is 11%.

In general, private security personnel tend to be older, less educated, much lower paid and more transient than their public police counterparts. In addition, private security personnel have minimal, if any, training.

Results of a survey of private security guards in the Southern California area indicate that they misunderstand their role and legal authority. However, the study also indicated that guards are aware of their "incomplete comprehension of their role."

Abuse of authority, such as assault or unnecessary use of force (with and without a gun), false imprisonment and false arrest, improper search and interrogation, impersonation of a public police officer, trespass, illegal bugging and wiretapping, breaking and entering, gaining entry by deception, false reporting, and improper surveillance, were identified as problems, potential or actual, within the private security industry.

Current law has not always provided an adequate remedy for persons injured by private security personnel

State regulation and licensing of the private security industry is minimal or nonexistent and characterized by a lack of uniformity. At the time this study was conducted, no state had a "model law." In addition, no state had mandatory regulation of in-house guards or investigators.

Based on its findings, the Rand study recommended:

"state licensing and registration requirements including mandatory job-specific training, mandatory bonding or insurance requirements, certain job-specific personnel background and experience standards "

Provisions imposing sanctions for violations or proscribed conduct

Establishment of a research center funded by the federal government to continuously evaluate the cost effectiveness of the private security industry.

Report of the Task Force on Private Security is a 400-page study of the private security industry conducted by the National Advisory Committee on Criminal Justice Standards and Goals in 1976. This study constituted the first attempt to codify industry standards. The task force was comprised of experts and practitioners in the private security industry who were to suggest ways to upgrade the quality of private security personnel and increase the overall effectiveness of private security services in crime prevention. The task force

made recommendations "for the selection and training of private security personnel, the development of technology and procedures for crime prevention systems, and the relationship of the private security industry with law enforcement agencies."

The Growing Rate of Private Security was a comprehensive 30-month study of the private security industry conducted by Hallcrest Systems, Inc. The purpose of the study was to gather information regarding the existing private security industry, to describe the contribution to crime prevention and order maintenance made by the private security industry, and to describe the interrelationship between public law enforcement and the private security industry. The private security study was funded by the National Institute of Justice as part of its research on effective use and deployment of police resources. The private security industry was viewed as a possible cost-effective means of meeting the increasing demands on public law enforcement.

The study found:

Total expenditures for private security currently exceed law enforcement expenditures and will continue to increase while expenditures for public law enforcement will stabilize.

More than \$20 billion is spent annually for private security services

There is little cooperation between public law enforcement and the private security industry in crime prevention and public safety. To the extent cooperative efforts exist, most are initiated by the private sector. Two major obstacles to improved police-private security interaction are police moonlighting within the private security industry and the excessive number of burglary alarms to which the police must respond.

Law enforcement executives who were surveyed rated the overall contribution to crime prevention by private security guards as only "somewhat effective." Of primary concern to law enforcement is the quality of private security personnel, e.g., less than half of the states have provisions for licensing and training security officers

Both public law enforcement and the private security industry are willing to consider an expanded role for private security -- private security guards responding to minor criminal incidents occurring on the premises the service was hired to protect and performing non-crime-related police tasks.

Within businesses and institutions, there exist "private justice systems," internal mechanisms to resolve many criminal acts thus diverting the task of their resolution from the public justice system.

To promote police-security interaction and cooperation, the Hallcrest study recommended.

Improve the quality of private security personnel by requiring criminal background checks and establishing minimum training standards

Increase police awareness of the role of private security

Increase interaction between public law enforcement and the private security industry, e.g., develop policies for sharing investigative information.

Experiment with transfer of police activities which do not require police authority.

C. Parallel or Similar Virginia Studies

The Private Security Industry in Virginia was prepared in 1972 by the Research Department of the Division of Justice and Crime Prevention. The purpose of the report was to describe the private security industry in Virginia. The results of the study provided further support for the conclusions of the Rand Study. Specifically, the study examined the use of private security agencies and personnel, forecasted future growth of the industry at the national and state level, created a profile of private security personnel, identified abuses within the industry and described the cooperative relationship between police and private security. While much of the statistical data set out in the report is outdated, many of its conclusions remain authoritative. Of particular interest to the Crime Commission study were the following:

In the private sector, contract security employment is increasing whereas employment of in-house security is declining. This trend is largely due to economic conditions. Specifically, in-house security costs approximately 20% more than contract security.

Private security guards were poorly educated, inadequately trained and unmotivated. However, contrary to expectations, the victim of this inadequate service is the consumer of the protective service, not the general public. The user of the service receives little more than a "scarecrow in blue" or a "body". Yet, the consumer is unwilling to pay the greater cost necessary to attract more qualified personnel.

Incidence of complaints in Virginia against private security personnel is likely underestimated because: the existence of local agencies whose purpose is to receive complaints may be unpublicized, the public, unaware of the limited legal authority of private security guards, may not realize that a guard's conduct is unlawful, many abuses causing only insignificant damages are dismissed as trivial.

Battery, assault, intentional infliction of emotional harm, false imprisonment, malicious prosecution, trespass to land, trespass to personal property, negligence, defamation and invasion of privacy were identified as the torts most commonly committed by private security personnel.

Where proprietary security services exist, the user of the service is liable to the victim under the theory of respondeat superior for tortious conduct of a security guard. Where contract security services exist, the user of the service is liable to the victim only if the guard is considered an employee of the user rather than an independent contractor, a question of fact to be determined on a case-by-case basis. The report concluded that imposing liability upon the recipient of guard services would provide victims with a solvent defendant and encourage on-premises supervision of guards.

Report of the Virginia State Crime Commission to the Governor and the General Assembly of Virginia on Private Security.

In 1975, the Crime Commission conducted a comprehensive study of the private security industry. The Crime Commission found:

A lack of any uniform statewide regulation

A problem with the caliber of a substantial number of industry personnel

A problem of impersonation of public police officers

A lack of firearms training

An absence of statutory authorization to conduct a criminal records check on personnel from the F.B.I. or other law enforcement agency.

The Commission recommended regulation of contractual private security personnel and those proprietary security personnel who have contact with the public. The suggested regulation would include registration and licensing requirements, bond requirements and certification requirements for armed personnel. These recommendations were subsequently incorporated into House Bill #1581. The General Assembly failed to approve House Bill #1581. However, in 1976 similar legislation was passed.

Report of the Committee on Law Enforcement and Private Security Cooperation was conducted in 1987 by a committee composed of representatives from the private security industry, the Virginia State Sheriff's Association and the Virginia Association of Chiefs of Police. The study examined the negative perception and image of the private security industry, the uncooperative relationship between public law enforcement and the private security industry, the unique problems presented by public law enforcement officers moonlighting as private security guards and the adequacy of private security training. In each area, the Committee made recommendations and analyzed potential impact.

Report of the Virginia Board of Commerce on the Study of the Establishment of a Private Investigator's Board.

The Board of Commerce was requested by the 1987 General Assembly to study the desirability of establishing a Private Investigator's Board. The Board of Commerce determined that the existing regulatory law was sufficient to protect the public health, safety and welfare; therefore, it recommended that no action be taken to enact a Private Investigator's Board.

The Second Decade: A Study on the Regulation of the Private Security Industry in Virginia

In 1988, Carroll Hormachea and James Goalder conducted a study of the private security industry in Virginia on behalf of the Department of Criminal Justice Services. The scope of the study was limited to private security guard firms and private investigators. The purpose of the study was to evaluate the effectiveness of the current regulatory system in Virginia, identify recurring problems and develop a three year plan for the efficient regulation of the industry as well as implementation strategies.

Although the Hormachea/Goalder Study only addressed the arrest authority of private security guards tangentially, several of its findings are of particular interest to the Crime Commission study. According to the results of a telephone survey of 20 private security firm managers, most indicated that unarmed guards, armed guards and security firm owners and managers, respectively, should be trained in "powers of arrest" as part of their minimum training requirements. Seven of the security firm managers surveyed knew of at least one case of mistaken or illegal arrest by private security personnel. Private security training instructors surveyed were confused as to the current arrest authority of private security personnel. Some stated that private security guards lack arrest authority, others stated guards have arrest authority. Others simply admitted they did not know. Instructors suggested additional training in the areas of arrest authority, arrest powers, search and seizure, protection under the 4th, 5th and 6th Amendments, and liability related to arrest.

Only four of 19 managers believed their business would be hurt if they were not allowed to make arrests. Twelve of the firms had made no arrests within the past year. Nevertheless, arrest authority, or the threat of arrest, remained very important to a small percentage of firms.

VIII. Discussion of Issues

A. Qualifications and Training

Current Law and Situation:

The private security industry is currently regulated by two state agencies: the Department of Criminal Justice Services and the Department of Commerce. Specifically, §9-182 of the Code of Virginia authorizes the Criminal Justice Services Board to establish compulsory minimum training standards for private security services business personnel. On the other hand, §54-729.30 authorizes the Department of Commerce to promulgate rules and regulations to secure the public safety and welfare against incompetent, unqualified, unscrupulous or unfit persons engaging in the private security industry.

According to the Department of Commerce records, as of June 3, 1988, 15,989 private security registrations were outstanding. The Department of Commerce has no means to determine how many of this total are guards, as registrations are also issued to private investigators, armored car personnel and guard dog handlers. However, the Commerce Department's past experience indicates that most of this total represents guards.

To be employed as a private security guard, an individual must be at least 18 years old and undergo a background check before the end of the 120 day application period. In addition, according to the compulsory training standards for private security services business personnel established by the Criminal Justice Services Board, an unarmed contractual security guard receives 12 hours of training and an armed contractual security guard receives 18. The training consists of the following standards:

Administration and Security Orientation	3 hours
Legal Authority	4 hours
Emergency and Defensive Procedures	5 hours
Firearms (only applicable to armed guards)	4 hours

However, under §54-729.29(c), an unarmed guard may be employed for up to 120 days without having completed even minimal training. Given the high turnover rate plaguing the industry, it is not uncommon for untrained guards to be employed without training.

In contrast, law enforcement officers must complete approximately 315 hours of classroom training and 60 hours of field training. To qualify, an individual must be a U. S. citizen, undergo a background check prior to employment, possess a high school diploma or its equivalent, possess a Virginia driver's license if required by the duties of the position, and undergo a physical examination.

As of July 1, 1988, unarmed guards are no longer required to register with the Department of Commerce as a condition to employment with a private security services business. The task of ensuring that unarmed security guards have satisfied the compulsory minimum training standards has been relegated to compliance agents, employees of the private security services company. As defined under the Code, a compliance agent is "a natural person who is an owner of or employed by a licensed private security services business."

The Department of Commerce requires a compliance agent to pass an examination on the regulations and laws governing the private security services business, meet the training requirements and hold a registration in at least one registration category in which the firm offers private security services. Neither the Code nor the Department of Commerce requires the compliance agent to be on the premises or an active participant in the daily operations of the private security services business.

The Criminal Justice Services Board does not mandate training for in-house, or proprietary, security guards. At the public hearing, several speakers stated that there was no valid justification for this differential treatment and that in-house guards should be required to complete the same training as contractual security guards.

According to our survey results, 82% of the respondents believe the current training is inadequate and require more than the mandated state minimum for their employees. Areas listed as needing greater emphasis include legal authority (73%), emergency and defensive procedures (51%), firearms (42%), administration and security orientation (34%), first aid, public relations and liability.

B. ARREST AUTHORITY

Current Law and Situation:

Chapter 48 of the 1988 Acts of Assembly provides that a registered armed guard of a private security services business shall have the power to effect an arrest for an offense (not limited to shoplifting offenses) occurring in his presence while on the premises he was contracted to protect or in the presence of a merchant, agent or employee of the merchant the private security business has contracted to protect, if such merchant, agent or employee had probable cause to believe the person arrested had shoplifted or committed willful concealment of goods.

Neither unarmed contractual security guards nor in-house security guards have arrest authority under the Code of Virginia. Rather, they have only the arrest authority of an ordinary citizen. Under Virginia common law, a citizen may effect an arrest for (1) a felony which has been committed provided the citizen has probable cause to believe the suspect committed it or (2) for

breaches of the peace committed in his presence.

In addition, a security guard may seek appointment as a conservator of the peace. Under Sections 19.2-13 and 19.2-81 of the Code of Virginia, the circuit court of any county or city, upon a showing of necessity for the security of property or the peace, may appoint conservators of the peace. A conservator of the peace, within the area and for the time specified, shall have, inter alia, the authority to effect a warrantless arrest for any crimes committed in his presence; a felony not committed in his presence where he has probable cause to believe the suspect committed the offense; misdemeanors not committed in his presence which involve shoplifting, an assault and battery or destruction of property located on premises used for business or commercial purposes when the arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense.

Testimony revealed that many firm owners misunderstand the statutory arrest authority of armed guards. Several stated that the arrest authority should extend beyond shoplifting offenses to include any act occurring on the protected site. In fact, however, the statutory arrest authority of armed guards is not restricted to shoplifting offenses, but includes any offense committed on the protected premises. Opinions of various Attorneys General have construed the arrest authority of an armed security guard to be the same as a fully-trained law enforcement officer while on the property he is contracted to protect.

81% of the private security companies who responded to our survey believe that armed contractual security guards should have arrest authority. On the other hand, only 59% believed unarmed contractual security guards should have arrest authority. However, according to testimony and our survey results, many of the private security companies, as a matter of policy, prohibit their employees from making arrests. Our survey shows that 37% of the private security companies in Virginia made no arrests within the past year, 34% made less than 10, only 8% made more than 100.

Conclusion

The subcommittee concludes that because the unarmed branch of the industry was deregulated only as of July 1, 1988, the impact of the deregulation is not yet ascertainable. The subcommittee needs to monitor the unarmed branch of the industry to determine whether the deregulation has created problems requiring corrective action.

The subcommittee also concludes that no substantial problems have been caused by §54-729.33 of the Code of Virginia authorizing armed contractual security guards to effect arrests in certain situations. However, the subcommittee believes the existing firearms training requirements are inadequate.

C. CIVIL IMMUNITY:

Current Law and Situation

According to §18.2-105 of the Code of Virginia, a merchant who causes the arrest or detention of any person is immune from civil liability for false imprisonment, false arrest, assault and battery or unlawful detention if the detention does not exceed one hour, provided the merchant acted with probable cause to believe the person has shoplifted or committed willful concealment of goods and merchandise. Although the statute protects a proprietary security guard as an employee of the merchant, the statutory definition of an "agent"

of a merchant does not encompass a contractual private security guard. Therefore, it is unclear to what extent, if any, a contractual private security guard is immune from civil liability under the above circumstances

There is no consensus within the industry regarding the appropriateness of civil immunity for contractual security guards. Some firm owners, concerned about potential abuses, oppose it. One respondent likened it to "turning the fox loose in the hen house." Others favor certain good faith probable cause protections for contractual security guards.

APPENDICES

APPENDIX A

HJR 168

1988 SESSION

LD4122306

1 HOUSE JOINT RESOLUTION NO. 168

2 Offered January 26, 1988

3 *Requesting the Virginia State Crime Commission to study what arrest powers should be*
4 *permitted private security guards and whether private security guards should be*
5 *granted immunity from civil liability for actions incidental to arrest.*

6
7 Patron—Creekmore

8
9 Referred to the Committee on Rules

10
11 WHEREAS, private security guards are required to be registered and their profession is
12 regulated by the Department of Commerce; and

13 WHEREAS, a guard is defined as any person employed by a private security services
14 business to safeguard and protect persons and property or to prevent theft, loss or
15 concealment of any tangible or intangible personal property; and

16 WHEREAS, some private security guards are armed, meaning they carry or have
17 immediate access to a firearm or other deadly weapon in the performance of their duties;
18 and

19 WHEREAS, although private security guards have some of the powers of
20 law-enforcement officers they are not required to have the extensive training required of
21 law-enforcement officers; and

22 WHEREAS, private security guards often work in retail establishments for the purpose
23 of preventing shoplifting; and

24 WHEREAS, questions have been raised concerning the extent to which private security
25 guards should have the power to arrest and detain individuals; and

26 WHEREAS, merchants, agents and employees of the merchant who cause the arrest or
27 detention of a person pursuant to certain sections of the Code of Virginia are immune from
28 civil liability for slander, malicious prosecution, false imprisonment, false arrest, assault and
29 battery and unlawful detention, if such detention does not exceed one hour and if the
30 merchant, agent or employee of the merchant causing the arrest or detention had probable
31 cause to believe that the person had shoplifted or committed willful concealment of goods
32 or merchandise; and

33 WHEREAS, questions have been raised as to whether private security guards should be
34 granted similar immunity from civil liability; now, therefore, be it

35 RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State
36 Crime Commission is requested to conduct a study of the profession of private security
37 guards to determine (i) what powers of arrest and detention are appropriate for private
38 security guards and (ii) whether private security guards should be granted immunity from
39 civil liability for actions incidental to arrest and, if so, which actions.

40 The Virginia State Crime Commission shall submit its recommendations to the 1989
41 General Assembly

42 The direct costs of this study are estimated to be \$3,820, and such amount shall be
43 allocated to the Virginia State Crime Commission from the general appropriation to the
44 General Assembly

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APPENDIX B

Existing Virginia Legislation

V. Applicable Law

- A. Virginia Code §54-729.33. Power of guard to effect an arrest.
- B. Virginia Code §54-729.27. Guard: person employed by a private security services business who undertakes to safeguard and protect persons and property or undertakes to prevent theft, loss, or concealment of any tangible or intangible personal property.
- C. Virginia Code §54-729.28. Persons exempt from application of this chapter: A guard who is also a full-time public law enforcement officer.
- D. Virginia Code §18.2-105. Merchant exemption from civil liability in connection with arrest or detention of suspect.
- E. Virginia Code §18.2-106. Agents of the merchant defined.
- F. Virginia Code §19.2-13. Special conservators of the peace; authority; jurisdiction; bond; liability of employers.

§ 54-729.33. Power of armed guard to effect arrest. — The compliance with the provisions of this chapter shall not of itself authorize any person to carry a concealed weapon or exercise any powers of a conservator of the peace. A registered armed guard of a private security services business while on a location which such business is contracted to protect shall have the power to effect an arrest for an offense occurring in his presence on such premises or in the presence of a merchant, agent, or employee of the merchant the private security business has contracted to protect, if such merchant, agent, or employee had probable cause to believe that the person arrested had shoplifted or committed willful concealment of goods as contemplated by § 18.2-105. For the purposes of § 19.2-74, a registered armed guard of a private security services business shall be considered an arresting officer. (1976, c. 737; 1978, c. 560; 1980, c. 425; 1988, c. 48.)

The 1988 amendment inserted "armed" throughout the section.

§ 54-729.27 Definitions. — For the purposes of this chapter and subsection A of § 9-182 of the Code of Virginia, the following definitions shall apply, unless the context requires a different meaning:

"Armed guard" means a guard, as defined below, who carries or has immediate access to a firearm or other deadly weapon in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another, money, negotiable instruments, jewelry, art objects, or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery

"Board" means the Criminal Justice Services Board or any successor, board or agency designated by law to replace the Board.

"Compliance agent" means a natural person who is an owner of or employed by a licensed private security services business. The compliance agent shall assure the compliance of the private security services business with this title.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

"Department" means the Department of Commerce or the agency designated by law to replace the Department.

"Guard" means any person who is employed by a private security services business who undertakes to safeguard and protect persons and property or undertakes to prevent theft, loss, or concealment of any tangible or intangible personal property

"Guard dog handler" means any person who is employed by a private security services business and handles dogs in the performance of duty in protection of property or persons.

"License" or "licensing" means a method of regulation whereby engaging in a private security services business is unlawful without the issuance of a license by the Department of Commerce pursuant to this title.

"Natural person" means an individual, not a corporation.

"Person" means any individual, firm, company, group of individuals, corporation, partnership, business, trust, association, or other legal entity

"Private investigator" or "private detective" means any person who engages in the business of, or accepts employment to make, investigations for the purpose of obtaining information with reference to (i) crimes or civil wrongs; (ii) [Repealed.] (iii) the location, disposition, or recovery of stolen property; (iv) the cause of responsibility for accidents, fires, damages, or injuries to persons or to property; or (v) securing evidence to be used before any court, board, officer or investigative committee.

"Private security services business" means any person engaging in the business of providing, or who undertakes to provide, armored car personnel, guards, private investigators, private detectives, couriers, or guard dog handlers, to another person under contract, express or implied.

"Registration" means a method of regulation whereby certain personnel employed by a private security services business are required to obtain a registration from the Department pursuant to this title.

"Unarmed guard" means a guard who does not carry or have immediate access to a firearm or other deadly weapon in the performance of his duties. (1976, c. 737, 1977, c. 376; 1980, c. 425; 1984, cc. 57, 779.)

The 1984 amendments. — The first 1984 amendment, in the first paragraph, substituted "9-152" for "§ 9-111.2" added the present second paragraph, which defines "armed guard" in the present fourth paragraph substituted "Board" for "Commission" in three places and inserted "board" added the present fifth paragraph, which defines "compliance agent" added "or the agency designated by law to replace the Department" in the present seventh paragraph; deleted "of Professional and Occupational Regulation" following "Department" in the present tenth paragraph; added the present eleventh paragraph, defining "nat-

ural person" added the last paragraph, which defines "unarmed guard"; and deleted the subsection designations A through K from the present third, fourth, sixth through tenth, and twelfth through fifteenth paragraphs, respectively.

The second 1984 amendment substituted "subsection A of § 9-182" for "§ 9-111.2" in the introductory paragraph, substituted "Board" for "Commission" twice in the present fourth paragraph, and substituted "Commerce" for "Professional and Occupational Regulation" in the present tenth paragraph.

§ 54-729.28. Persons exempt from application of chapter. — The provisions of this chapter shall not apply to the following:

A. An officer or employee of the United States of America, or of this Commonwealth or a political subdivision of either, while the employee or officer is engaged in the performance of his official duties.

B. A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or a person engaged in the business of a consumer reporting agency as defined by the Federal Fair Credit Reporting Act.

C. An attorney-at-law licensed to practice in Virginia or his employees.

D. The legal owner of personal property which has been sold under any security agreement while performing acts relating to the repossession of such property

E. A person receiving compensation for private employment as a guard who also has full-time employment as a law-enforcement officer employed by the Commonwealth or any political subdivision thereof.

F. Any person appointed under § 56-277.1 or § 56-353 while engaged in the employment contemplated thereunder.

G. Regular employees of any person who are employed to investigate accidents or to adjust claims and who do not carry weapons in the performance of their duties.

H. Regular employees of persons engaged in other than the private security services business, where the regular duties of such employees primarily consist of protecting the property of their employers. Any such employee who carries a firearm and is in direct contact with the general public in the performance of his duties shall possess a valid registration with the Department as provided in § 54-729.29 B. "General public" shall mean individuals who have access to areas open to all and not restricted to any particular class of the community.

I. Persons, sometimes known as "shoppers," employed to purchase goods or services solely for the purpose of determining or assessing the efficiency, loyalty, courtesy, or honesty of the employees of a business establishment.

J. Licensed or registered private investigators from other states entering Virginia during the course of an investigation originating in their state of licensure or registration when the other state offers similar reciprocity to private investigators licensed and registered by the Commonwealth of Virginia.

K. Unarmed regular employees of telephone public service companies where the regular duties of such employees consist of protecting the property of their employers and investigating the usage of telephone services and equipment furnished by their employers, their employers' affiliates, and other communications common carriers. (1976, c. 737, 1977, c. 376; 1981, c. 538; 1983, c. 569; 1984, c. 375.)

The 1983 amendment substituted "Commonwealth" for "State" in subdivisions A and E, deleted "as defined in § 9-108 of the Code of Virginia" at the end of subdivision E, divided the former first sentence of subdivision H into the present first and second sentences, by

deleting "provided that" at the beginning of the present second sentence, inserted "where" and substituted "such" for "which" in the present first sentence of subdivision H, and added subdivision J.

The 1984 amendment added subdivision K.

§ 18.2-105. Exemption from civil liability in connection with arrest or detention of suspected person. — A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of § 18.2-95 or § 18.2-96 or § 18.2-103, shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an antishoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise. (Code 1950, § 18.1-127; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 515; 1980, c. 149; 1985, c. 275.)

§ 18.2-106. "Agents of the merchant" defined. — As used in this article "agents of the merchant" shall include attendants at any parking lot owned or leased by the merchant, or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant. (Code 1950, § 18.1-128; 1960, c. 358; 1975, cc. 14, 15.)

§ 19.2-13. Special conservators of the peace; authority; jurisdiction; bond; liability of employers. — Upon the application of any corporation authorized to do business in the Commonwealth or the owner, proprietor or authorized custodian of any place within the Commonwealth and the showing of a necessity for the security of property or the peace, the circuit court of any county or city, in its discretion, may appoint one or more special conservators of the peace, who, within the area and for the time specified in the order of appointment, shall have all of the powers, functions, duties, responsibilities and authority of any other conservator of the peace. The order of appointment may provide that a special conservator of the peace shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace throughout the Commonwealth, or within such geographical limitations as the court may deem appropriate, whenever such special conservator of the peace is engaged in the performance of his duties as such. Prior to granting an application for appointment, the circuit court shall order the local law-enforcement agency to investigate the background and character of the prospective appointee and file a report of such investigation with the court.

When the application is made by a corporation, the circuit court shall specify in the order of appointment the geographic jurisdiction of the special conservator of the peace, and this jurisdiction may include any or all counties and cities of the Commonwealth wherein the corporation does business. The clerk of the appointing circuit court shall certify a copy of the order of appointment to the circuit court of every jurisdiction specified in said order, and each special conservator of the peace so appointed on application of a corporation shall present his credentials to the chief of police or sheriff of all such jurisdictions.

Every person appointed as a special conservator of the peace pursuant to the provisions of this section, before entering upon the duties of such office, may be required by the court to enter into a bond with approved surety before the clerk of the circuit court of the county or city wherein such duties are to be performed, in the penalty of such sum as may be fixed by the court, conditioned upon the faithful performance of such duties. Such bond shall be conditioned upon the faithful performance of such duties in any locality in which he is authorized to act pursuant to the order of the court.

If any such special conservator of the peace be the employee, agent or servant of another, his appointment as special conservator of the peace shall not relieve his employer, principal or master, from civil liability to another arising out of any wrongful action or conduct committed by such special conservator of the peace while within the scope of his employment. (Code 1950, § 19.1-28; 1960, c. 366; 1974, cc. 44, 45; 1975, c. 495; 1976, c. 220; 1982, c. 523.)

The 1982 amendment inserted the second sentence of the first paragraph.

APPENDIX C

Private Security Survey



COMMONWEALTH of VIRGINIA

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

MEMBERS:

FROM THE SENATE OF VIRGINIA:
ELMON T. GRAY, CHAIRMAN
HOWARD P. ANDERSON
ELMO G. CROSS, JR.

FROM THE HOUSE OF DELEGATES:
ROBERT B. BALL, SR., VICE CHAIRMAN
V. THOMAS FOREHAND, JR.
RAYMOND R. GUEST, JR.
A. L. PHILPOTT
WARREN G. STAMBAUGH
CLIFTON A. WOODRUM

APPOINTMENTS BY THE GOVERNOR:
ROBERT C. BOBB
ROBERT F. HORAN, JR.
GEORGE F. RICKETTS, SR.

ATTORNEY GENERAL'S OFFICE
H. LANE KNEEDLER

June 30, 1988

Dear Colleague:

The Virginia State Crime Commission is currently studying the private security industry. Specifically, the Commission is considering whether private security guards should have arrest powers and whether private security guards should be granted immunity from civil liability for actions incidental to arrest. As part of its study, the Commission is conducting a survey to obtain input from private security businesses operating in Virginia. The data collected will be used solely for statistical purposes.

Please take a few minutes to complete the enclosed survey and return it in the enclosed stamped self-addressed envelope no later than July 22, 1988. Your participation is important to the outcome of the study. Thank you for your assistance in this endeavor. If you have any questions, please contact our staff research assistant, Susan Foster, at (804) 225-4534.

Sincerely,

*Robert E. Colvin
Executive Director*

ENCLOSURE

Private Security Guard Survey

Please answer the following questions based on the experiences within the past year of private security guards employed by your security service

1 How many registered private security guards does your company employ?

	Armed Guards	Unarmed Guards
Full-Time		
Part-Time		

2 Does your company require a high school education or its equivalent as a precondition to employment with your company?

_____ yes

_____ no

3 Does your private security services Business require its employees to undergo more training than the mandated state minimum?

_____ yes

_____ no

If yes, what area(s) of training do you believe need greater emphasis

_____ Administrative and Security Orientation

_____ Legal Authority

_____ Emergency and Defensive procedures

_____ Firearms (in case of armed guards)

_____ Other -- Please specify _____

4 Does your company compensate its private security guards for time spent in training?

_____ Yes

_____ No

5 Approximate percentage of private security personnel employed by your company who are also engaged in full-time public law enforcement or who are retired law enforcement officers? _____

6 Please fill in the following chart with the appropriate average hourly wage

	Armed Guard	Unarmed Guard
Beginning Hourly Wage		
Maximum Hourly Rate		

- 7 Approximate number of arrests made, within the past year, in the performance of duty by private security guards employed by your company? _____
- 8 Approximate number of private security guards employed by your company who were required to use force to detain/arrest an individual within the past year? _____
- 9 Approximate number of private security employees that have sustained injuries requiring medical attention within the past year in the course of detaining/arresting a suspect _____
- 10 Does your company carry personal liability insurance which will protect the individual security guard from
- a false arrest? _____
 - b liability due to negligent actions? _____
- 11 How do you believe the public perceives the effectiveness of private security guards in loss prevention and crime control?
- _____ ineffective
 - _____ somewhat effective
 - _____ very effective
- 12 In your opinion, should Private Security guards have arrest authority?
- | | |
|--------------|----------------|
| <u>Armed</u> | <u>Unarmed</u> |
| _____yes | _____yes |
| _____no | _____no |

Additional Comments _____

PRIVATE SECURITY SURVEY RESULTS

I. Private Security Profile:

These statistics are based on the 83 surveys we received.

1. 71% of private security companies require a high school education
29% do not require a high school education

2. 18% of private security companies require only that training mandated by the State (12 hours for unarmed guards, 16 hours for armed guards)
82% require more training than the mandated State minimum

3. Areas of training private security companies believe need greater emphasis:
 - 34% - Administrative and Security Orientation
 - *73% - Legal Authority
 - 51% - Emergency and Defensive Procedures
 - 42% - FirearmsOther areas mentioned were:
 - First Aid
 - Public Relations
 - Liability

4. 63% of private security companies compensate their employees for training time
37% do not compensate their employees

5. Approximate percentage of private security guards also engaged in full-time law enforcement:

45% of the private security companies indicated that **NONE** of their employees were engaged in full-time law enforcement.

22% - 1-5% engaged in full-time law enforcement

17% - 6-10% engaged in full-time law enforcement

13% - 11-25% engaged in full-time law enforcement

4% - 26+% engaged in full-time law enforcement

6. Beginning wage of an ARMED guard:

29% - between \$3.35 and 4.00

23% - between \$4.01 and 5.00

12% - between \$5.01 and 6.00

12% - \$6.01+

Maximum wage of an ARMED guard:

28% - between \$3.50 and 5.00

12% - between \$5.01 and 6.00

10% - between \$6.01 and 7.50

13% - between \$7.51 and 9.00

7% - \$9.01+

7. Beginning wage of an UNARMED guard:

38% - between \$3.35 and 4.00

30% - between \$4 01 and 5.00

7% - between \$5.01 and 6.00

7% - \$6 01+

Maximum wage of an UNARMED guard:

34% - between \$3.50 and 5.00

13% - between \$5.01 and 6.00

18% - between \$6.01 and 7.50

4% - between \$7.51 and 9.00

6% - \$9.01+

8. Approximate number of arrests made by Virginia private security firms within the past year:

37% - 0 arrests

24% - 5 or less

10% - 6 to 10

10% - 11 to 25

5% - 26 to 50

6% - 50 to 99

8% - 100+

9. Approximate number of times a private security guard used force to effect an arrest within the past year:

63% - 0 times

25% - less than 5

6% - 6 to 10

6% - 11+

10. Number of security guards injured within the past year:

88% - None of its employees were injured

12% - less than 5% of its employees were injured

11. Percentage of security companies who have insurance in the following areas:

A. False Arrest

78% - yes

22% - no

B. Negligence

83% - yes

17% - no

12. How private security companies believe the industry is perceived by the public:

5% of private security companies indicated the public perceives the industry as ineffective

55% somewhat effective

40% very effective

13. Industry's feeling on Arrest Authority:

A. Armed Guards

81% of private security companies indicated that armed guards should have arrest authority

16% no arrest authority

B. Unarmed Guards

59% should have arrest authority

31% no arrest authority

QUOTES FROM PRIVATE SECURITY SURVEY

1. "I feel it is necessary for guards to have the power of arrest because in major incidents time is of the essence, and in large areas many police forces are extremely busy and an officer is not always close by or available when needed. I feel that there should be instruction available for arrest procedures." (Received from a security guard company with 5 guards who made approximately 107 arrests within the past year)
2. "Until there is a complete school set up for security guards and companies and their customers realize that it takes more than just a gun and badge to enforce the law, only qualified police officers should have that responsibility." (Received from a security guard company with 72 armed guards)
3. "I believe that except for armored car personnel, the industry would be wise to gravitate to a highly trained watchman type service. The clientele at present cannot or will not pay for an effectively trained person empowered to make arrests." (Received from a security guard company with 100 unarmed guards)
4. "I believe private security guards should be trained and given arrest authority for any crime committed in their presence anywhere within the Commonwealth." (Received from a private security guard company with 11 guards)
5. "With no arrest power, no one will hire security guards to protect their business." (Received from the owner of a security guard company with 4 unarmed guards)
6. "This is a profession that is growing and will be a very valuable service to the State so I feel it is time for the State of Virginia to look out for its people as well as itself and make private security get on the stick. They do not have proper authority to be able to make arrests and therefore there is no way they can be immune from civil liability. That would be like turning the fox loose in the hen house." (Received from a private security guard company with no employees at this time)
7. "I believe that the armed guard should have the same arrest authority as police officers, but at the same time be required to pass the same training as police officers as it pertains to firearms and arrest authority. Also, the security guard and company he or she works for should be held civilly and criminally responsible for any wrongs that they commit." (Received from a private security company with 6 unarmed guards who have not made any arrests within the past year)

8. "Having arrest authority is very important and needed by security company owners. Our contracts want us to be able to effect an arrest if needed. This power is also a selling point for us and makes the client feel more secure." (Received from the President of a company with 6 armed guards)
9. "In my opinion, larger companies do not want their security personnel to have arrest powers; liability attaches and their insurance is prohibitive. Small companies like mine are solely Virginia owned and operated. To eliminate arrest powers would place them in a non-competitive status, according to their own statements, because clients prefer armed guards and to reduce arrest powers statewide, would reduce their premiums, satisfy their company directives and policies and keep them competitive at the sacrifice of the "little Virginia owned" companies." (Received from an owner of a private security company with 5 armed guards who made approximately 77 arrests within the past year)
10. "A classification should be set up. After an employee meets (time, experience, and training) requirements, he could achieve a second level of unarmed guard and given the power of arrest." (Received from a private security company with 29 guards, armed and unarmed)
11. "The knowledge that on duty security officers are empowered with the ability to effect an arrest on a suspect serves as a psychological deterrent and aids the officers in protecting the client, his property, employees, or tenants." (Received from a private security company with 54 guards, armed and unarmed, who made 77 arrests within the past year)

