

**REPORT OF THE VIRGINIA DEPARTMENT OF
CRIMINAL JUSTICE SERVICES**

**Fire Marshal Work Group
(SB1046) Summary of Findings
(Chapter 672, 2023)**

TO THE GENERAL ASSEMBLY OF VIRGINIA



SENATE DOCUMENT NO. 5

**COMMONWEALTH OF VIRGINIA
RICHMOND
2024**



COMMONWEALTH of VIRGINIA

Department of Criminal Justice Services

The Honorable Jackson H. Miller
Director

Tracy Louise Winn Banks, Esq.
Chief Deputy Director

Washington Building
1100 Bank Street
Richmond, Virginia 23219
(804) 786-4000
www.dcjs.virginia.gov

February 13, 2024

Members of the Virginia General Assembly
General Assembly Building
201 North 9th Street
Richmond, Virginia 23219

Re: Report from Fire Marshal Work Group (SB 1046)

On March 23, 2023, SB 1046 was enacted (2023 Va. Acts Ch. 672). The bill directed the Virginia Department of Criminal Justice Services (DCJS) to convene a work group comprised of various stakeholders within the criminal justice and fire service communities to examine and make recommendations on the inclusion of fire marshals with police powers and duties in the definition of a law-enforcement officer. The bill provides that the working group shall complete its work and submit findings and recommendations to the General Assembly no later than November 1, 2023.

This report is attached. Please let me know if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jackson H. Miller".

Jackson H. Miller
Director

Attachment



Fire Marshal Work Group (SB1046)

Summary of Findings

Prepared on October 19, 2023

Summary of Legislation

On March 23, 2023, SB 1046 was enacted (2023 Va. Acts Ch. 672). The bill would have amended the definition of “law-enforcement officer” in the *Code of Virginia* § 9.1-101 to include fire marshals who have been appointed with police powers. This definition of law enforcement officer is used throughout the *Code of Virginia*. SB1046 contained a reenactment clause requiring that its provisions adding certain fire marshals to the definition of law-enforcement officer would not become effective unless reenacted during the 2024 Session of the General Assembly.

The bill also directs the Virginia Department of Criminal Justice Services (DCJS) to convene a work group comprised of various stakeholders within the criminal justice and fire service communities to examine and make recommendations on the inclusion of fire marshals with police powers and duties in the definition of a law-enforcement officer. The bill provides that the working group shall complete its work and submit findings and recommendations to the General Assembly no later than November 1, 2023.

Relevant Historical Information

The term *fire marshal* appears frequently in the *Code of Virginia* and is generally defined as an individual whose job involves the investigation of fires and fire or bombing-related criminal offenses. According to the Virginia Department of Fire Programs (DFP), there are approximately 250 fire marshals with police powers currently employed in the Commonwealth of Virginia. The *Code* differentiates between two types of fire marshals: state fire marshals and local fire marshals. Each is identified and acknowledged in separate sections of the *Code of Virginia*.

A point of confusion in discussions regarding the term “fire marshal” is that fire professionals have numerous types of investigatory designations within their organizations. There are, as previously stated, state fire marshals and local fire marshals. However, there are also fire investigators and fire inspectors. A fire investigator is someone who can investigate the cause and origin of a fire, and if they have completed basic law enforcement training as outlined in the *Code of Virginia* § 27-34.2:1, act with police powers. A fire inspector can inspect for violations of the Statewide Fire Prevention Code and local fire safety ordinances. Fire marshals can be both a fire inspector and fire investigator or neither.

Under Chapter 3 (*Code of Virginia* § 27-30 et seq.) of Title 27, local fire marshals may be appointed for each county, city, or town, by the governing body thereof whenever, in the opinion of such body, the appointment shall be deemed expedient. The *Code of Virginia* § 27-31 provides that these local fire marshals have the duty to investigate into the origin and cause of every fire and explosion occurring within the locality for which they are appointed.

Under the *Code of Virginia* § 27-34.2, local fire marshals, upon being authorized by the governing body, have certain powers in relation to fire prevention and fire safety laws, including “the authority to arrest, to procure and serve warrants of arrest and to issue summons in the manner authorized by general law for violation of fire prevention and fire safety laws and related ordinances.”

Further, the *Code of Virginia* § 27-34.2:1 provides that the governing body of the locality appointing the local fire marshal to have the same police powers as other law-enforcement officers.

In addition to such other duties as may be prescribed by law, the local fire marshal and those assistants appointed pursuant to § [27-36](#) designated by the fire marshal shall, if authorized by the governing body of the county, city, or town appointing the local fire marshal, have the same police powers as a sheriff, police officer, or law-enforcement officer.” [emphasis added]

There appears to be an inherent conflict between the two sections of the *Code of Virginia* cited above, §§ 27-34.2 and 27-34.2:1. The *Code of Virginia* § 27-34.2 expressly limits the authority of local fire marshals to enforcing fire-related laws. In contrast, § 27-34.2:1 state that local fire marshals have the full and complete authority of any law enforcement-officer.

This conflict was recognized in 1990, two years after the *Code of Virginia* § 27-34.2:1 was revised. The County Attorney of Fairfax requested a formal opinion from the Attorney General’s Office regarding the state scope of fire marshal authority.

In 1990, Va. AG LEXIS 59, Opinion 156, the Attorney General Mary Sue Terry examined the conflict and concluded:

“Based upon the comparison of the pre-1988 and current versions of § 27-34.2:1 discussed above, I am of the opinion that a local governing body may grant to its fire marshal and those assistants designated by the fire marshal the same police powers as are exercised by a sheriff, police officer or other law-enforcement officer, [*4] without limitation as to the types of offenses for which the fire marshal or assistant fire marshals may exercise those police powers”

While this opinion is 33 years old, and Virginia law enforcement has changed dramatically in 33 years, there is nothing to contradict it. Absent any reason to believe that it should no longer be

considered valid, at the state level, fire marshals under the *Code of Virginia* § 27-34.2:1 have the full scope of police powers like any certified law enforcement officer.

Additionally, the *Code of Virginia* § 9.1-206 establishes the creation of state fire marshals who have broad, statewide authority to enforce the Statewide Fire Prevention Code and other fire-related regulations. State fire marshal's generally serve large areas of the Commonwealth of Virginia, which may obviate the need for the employment of a local fire marshal in those areas served. This same section of the *Code of Virginia* requires that these state fire marshals meet the same training requirements set forth for local fire marshals. The *Code of Virginia* § 9.1-206 further provides that state fire marshals are “*authorized to enforce the Statewide Fire Prevention Code*” and “*shall have the authority to arrest, to procure and serve warrants of arrests, and to issue summonses in the manner authorized by general law for violation of the Statewide Fire Prevention Code. The authority granted in this section shall not be construed to authorize the State Fire Marshal to wear or carry firearms.*” Unlike local fire marshals, no provision of the *Code* authorizes state fire marshals to have the same police powers as other law-enforcement officers, and the police powers of state fire marshals are strictly limited to enforcing the provisions of the Statewide Fire Prevention Code.

Senate Bill 1046 would include a “*fire marshal appointed pursuant to § 27-30 where such fire marshal has police powers as set out in § 27-34.2 and §27-34.2:1*” in the definition of law-enforcement officer. The legislation only adds local fire marshals to the definition of law-enforcement officer, and not state fire marshals, which was likely in consideration of the differing degrees of police powers local and state fire marshals may possess under the *Code of Virginia*. However, any change to training for local fire marshals will necessarily result in a change to the training of state fire marshals as the *Code of Virginia* § 9.1-206 requires state fire marshals to comply with the same training standards of local fire marshals.

Composition of Fire Marshal Work Group

DCJS held an in-person meeting at the Richmond Police Training Academy on July 12, 2023. To ensure all the relevant stakeholders envisioned by SB 1046 participated, invitations were extended to representatives from DFP, the Virginia Professional Fire Fighters, the Virginia Fire Prevention Association, the Virginia Fire Chiefs Association, the Virginia Association of Chiefs of Police, the Virginia Law Enforcement Sheriffs, the Virginia Sheriffs' Association, local fire marshals' offices, and other relevant stakeholders and criminal justice professionals. Those individuals included representatives of the Office of the Attorney General, the Virginia Retirement System, and DCJS staff. DCJS would like to thank the individuals listed below for their valuable insight and participation in this working group.

Chief Travis Christian, Petersburg Police Department	Jeff Cooke, Arlington County Fire Marshal's Office	Jeremy Key, Office of the Attorney General
Chris Harding, Chesterfield Fire Marshal's Office	Sheriff Brad Nunnally, Powhatan County Sheriff's Office/Virginia Sheriff's Association	Director Jackson Miller, Virginia Department of Criminal Justice Services (DCJS)
Garrett Dyer, Virginia Fire Services Board	Andy Feagans, Virginia Retirement System	Harvey Powers, DCJS
Leif Sundberg, Loudoun County Fire Marshal's Office	David Cotter, Virginia Retirement System	Rick Collins, DCJS
Steven Sites, City of Fairfax Fire Marshal's Office	Billy Hux, State Fire Marshal	Sharon Gray, DCJS
Brian Acors, City of Richmond Fire Marshal's Office	John Applewhite, Newport News Fire Marshal's Office	Bob McHale, DCJS
Spencer Willett, Department of Fire Programs	Dana Schrad, Virginia Association of Chiefs of Police/ Virginia Association of Campus Law Enforcement Administrators	Kristi Shalton, DCJS
Erik Smith, Office of the Attorney General		Todd Blair, DCJS
		Jon Banberger, DCJS
		Raquel Walker, DCJS
		Frank Pitzer, DCJS
		Tim Wyatt, DCJS
		Matt Doyle, DCJS

Issues Identified and Potential Solutions

DCJS and all working group members present on July 12, 2023, identified and discussed a myriad of practical issues if SB 1046 is reenacted in 2024 as currently written, and fire marshals with police powers are added to the definition of law-enforcement officer in the *Code of Virginia* § 9.1-101. As a whole, however, the fire marshal representatives unanimously agreed that the approximately 250 individuals currently employed as fire marshals with police powers and duties in the Commonwealth of Virginia should be held to the same training standards and regulatory requirements as individuals certified in the function of a law-enforcement officer, if included in the *Code of Virginia* definition. As such, DCJS staff presented the requirements for certification of law-enforcement officers in the Commonwealth to the group. These requirements include the successful completion of a basic law-enforcement training program at a DCJS certified criminal justice academy, taking and passing the state certification examination as proctored by DCJS staff, and the completion of field training with a law-enforcement agency. These three requirements must be completed within 12 months of the date of hire, as currently prescribed in 6 VAC 20-20-40.

Several issues were raised during the group's discussion. At the outset, it is important to stress that local law enforcement is currently under a high-level of scrutiny, and fire marshals having or obtaining police powers and duties would absolutely need to comply with all laws and regulations pertaining to certified law-enforcement officers in the Commonwealth.

One major topic of discussion among the group was the absence of a grandfather clause covering current fire marshals in SB 1046. Thus, if the amendments in SB 1046 are enacted as currently written, the nearly 250 current fire marshals would be required to complete a basic law-enforcement curriculum, successfully pass the state examination, and complete field training in order to comply with current laws and regulations listed in Administrative Code. Any subsequent legislation to add fire marshals with police powers to the definition of law-enforcement officer could contain a grandfather clause for current fire marshals with police powers that would (i) exempt them from training requirements or (ii) partially exempt them from academy

requirements, but still require fire marshals complete field training and the state certification exam. If, instead, any subsequent legislation enacted does not provide any such exemption for current fire marshals, the nearly 250 fire marshals may simultaneously file, through their agency, for the approval of training waivers by the Director of DCJS. This would create a significant challenge for DCJS as each waiver request must be examined on a case-by-case basis. This additional workload would likely require additional personnel and/or external assistance.

An additional major issue that the working group identified with the inclusion of fire marshals in the definition of law-enforcement officer in the *Code of Virginia* is field training. Currently, certified law-enforcement officers must successfully complete a field training program with a law-enforcement agency for a minimum of 100 hours (the minimum field training hours is being increased to 240 hours as part of a current regulatory action). Fire marshals currently do not complete a regulated field training program, although some agencies utilize an abbreviated field training program established and conducted by various local law-enforcement entities and other fire marshals. Field training for these individuals is not tracked or currently regulated by DCJS and would need to be in the same manner as for certified law-enforcement officers.

A potential solution, proposed by fire marshals in attendance, was that the locality appointing a fire marshal would need to enter into a memorandum of understanding (MOU) with the law-enforcement agency that would be conducting the fire marshal's field training and provide a copy of the MOU to DCJS and the criminal justice training academy prior to the fire marshal entering law-enforcement training. As further discussed, however, notification to the criminal justice academy where the fire marshal will complete field training may not be a viable solution. Compliance, oversight, and responsibility of a field training program is currently delegated to the employing agency. Due to the liability issues attached, DCJS would need to be provided with the MOU regarding field training in order to ascertain a full understanding of how criteria (on the standardized B-13 Field Training Form) would be satisfied. Additionally, the B-13 form must be signed by the agency administrator or his or her designee, so confusion arose as to whether this

would mean the Police Chief/Sheriff or the Fire Chief of the locality. Language, whether legislative or regulatory, specifying who would sign the B-13 form and oversee field training would need to be developed. These issues and questions were all raised during the meeting with the various stakeholders who would be affected by the change in legislation.

Potential legislation could waive the need for fire marshals with police powers to complete field training. However, that would make fire marshals the only certified law-enforcement officers (of the nearly 20,000 in Virginia) with this exemption, and the working group questioned whether this was a practical solution. Another idea discussed was classifying fire marshals under their local law-enforcement agency instead of the fire department, which would necessitate the completion of field training just as their traditional local law-enforcement counterparts are required to do, but the group questioned the effectiveness of this potential solution as well. Fire marshals, much of the time, do not conduct regular police patrol functions like their local counterparts. They do, where authorized, enforce the code and support other law enforcement, necessitating that field training requirements be met. The group agreed that legislation would need to clarify what constitutes the response to law-enforcement calls for service in the field training of these individuals.

Furthermore, legislation would also need to establish the type of agency that must employ all fire marshals with police powers in Virginia. Currently, fire marshals are employed at the state level as well as by localities throughout the Commonwealth. Some local level fire marshals are employed by their respective locality's fire department, while others fall under local law enforcement or other branches of government. The *Code of Virginia* is ambiguous as to whether fire marshals would need to be employed by criminal justice agencies (which are also defined by the *Code of Virginia*). A clarification in legislation would be a potential solution to this issue. If fire marshals become certified law-enforcement officers and may only be employed by a law-enforcement agency, this could potentially resolve any jurisdictional and policy issues, as well as foreseeable field training concerns. If these individuals are allowed to be employed by any type of local government entity, however, and local fire marshal offices would be treated like smaller

agencies or privatized police departments within their localities, additional issues would arise. These challenges would likely include policies and procedures, uniforms and equipment, accountability and oversight, and management. These challenges will need to be addressed by each locality wishing to create a fire marshal's office with law enforcement officers, whether through a memorandum with another law enforcement agency or by developing their own that meet criminal justice agency standards.

An additional concern identified by the working group pertains to criminal justice training academies. Most local fire marshals currently attend an eleven-week fire marshal training program through DFP. Current law requires certified law enforcement officers to complete their basic law-enforcement training at one of the 38 certified (by DCJS) criminal justice training academies in Virginia. This criminal justice training is no shorter than twenty weeks, and in some academies approaches thirty weeks. The DFP academy is not a certified criminal justice academy. DFP could seek to become a certified criminal justice academy; however, this would not occur without significant issues of its own. The designation as a certified criminal justice academy would then mean additional employees, resources for training, DCJS oversight, and most importantly, legislation to create and establish the agency as a criminal justice academy. Fire marshals who are then certified as law-enforcement officers would in turn need to independently establish academies of record, which would create increased financial burden on individual fire marshal offices across the Commonwealth. Another solution would be for fire marshals to fall under their local law-enforcement agency and attend academies as their current local law-enforcement recruits do. Neither option is simple, and both will involve administrative burdens and costs.

Although many issues and concerns were identified and addressed during the working group meeting, DCJS has many concerns of its own if legislation is passed as currently written. The establishment of fire marshals with police powers and duties as certified law-enforcement officers in the Commonwealth would necessitate additional DCJS staff. Adding 250 fire marshals under the definition of law-enforcement officer creates a unique logistical challenge for the regulation of

training due to their wide distribution across the Commonwealth, their unique job role, and distinctions between state and local fire marshals. If fire marshals are entered into the definition of law-enforcement officer, having sufficient DCJS personnel to monitor and inspect the additional officers would be crucial. Likewise, and depending on how fire marshals are employed (as law-enforcement agencies versus fire departments and other government entities), TRACER (the system in which all criminal justice professions under DCJS' regulatory purview are housed) would likely need to be enhanced, at cost. Furthermore, current regulatory language within Administrative Code does not include fire marshal training. Depending on how the inclusion of fire marshals into the definition of law-enforcement officer is made, the promulgation of additional regulations may be required. These additional regulations would be in direct conflict with regulatory reduction efforts by Governor Youngkin, but also ensure a safer Commonwealth and the creation of more certified law enforcement officers.

Summary

As discussed at length, in the Commonwealth of Virginia, all those defined as law enforcement officers under the *Code of Virginia* § 9.1-101 must meet (and maintain) certification requirements and standards. These requirements include, but are not limited to:

1. All law-enforcement officers must be employed by a criminal justice agency;
2. They must attend basic law-enforcement training at a DCJS-certified criminal justice academy (generally 20-30 weeks in length), per 6 VAC 20-20-30(A), 6 VAC 20-20-21(B), and 6 VAC 20-20-120(A);
3. They must take and successfully pass a Virginia Law Enforcement Certification exam (6 VAC 20-20-21(C) and 6 VAC 20-20-70(C));
4. They must complete a field training program with a law-enforcement agency (6 VAC 20-20-21(B) and 6 VAC 20-20-90(A));
5. They must complete their criminal justice training, state certification exam, and field training within 12 months from the date of hire (6 VAC 20-20-40(A));
6. They must complete forty hours of qualified in-service training every two years (6 VAC 20-30-30); and
7. They must annually satisfactorily qualify with their firearms (6 VAC 20-30-80); and
8. Their basic and in-service training and annual qualification must be reported to the DCJS TRACER system for training accountability.

In addition to these requirements, the working group identified and discussed many other pertinent issues and concerns regarding the inclusion of fire marshals in the definition of law-enforcement officer.

It was the unanimous desire of the working group for fire marshals with police powers and duties to be more regulated and better trained to the same extent as their certified law-enforcement officer-counterparts throughout the Commonwealth. Yet, there are still significant administrative hurdles that would need to be overcome. While many fire marshals are currently operating as law-enforcement officers throughout the state, unlike any other law-enforcement professional in the Commonwealth, fire marshals are granted police powers through an unregulated and untracked process. Most fire marshals attend training at a DFP 11-week academy, while others at the local level attend certified regional criminal justice training academies with other law-enforcement officer recruits, and do not participate in the certification exam because they are not permitted to test. DCJS has no definitive means of tracking which fire marshals have attended which basic training, and as previously stated, currently has no way of inspecting, auditing, or certifying any DFP academy or its training regimens.

Many of the Fire Marshal Work Group members pointed out that the overwhelming majority of current, local fire marshals with police powers are routinely participating in law enforcement trainings and meet or exceed DCJS mandates for both in-service hours and subjects. Many attend such training at certified criminal justice academies. Unfortunately, neither DCJS nor DFP have ever tracked the training of fire marshals: DCJS because fire marshals have never sought certification and DFP because they no longer have the regulatory authority.

Current DCJS practice is to only collect and store the personal and professional information of those persons DCJS is explicitly authorized to regulate and monitor. For this reason, if a person attended any type of criminal justice training but were not a member of one of the six regulated criminal justice professions (like certified law enforcement), DCJS would not collect that person's data in its system of record.

DCJS has been legislatively tasked with the tracking and regulation of very specific criminal justice professions' functions. These professions are certified law-enforcement officer, certified jailor, courtroom security officer/deputy, civil process server, law-enforcement dispatcher, and

Virginia Department of Corrections employee, but there has never before been direction, legislatively or otherwise, to include the function of a fire marshal.

The Fire Marshal Work Group, in accordance with the mandate of SB 1046, has uncovered a number of administrative and procedural issues with the legislative proposal of including fire marshals in the definition of law-enforcement officer in Virginia as currently written. These issues create hardships which fall to DCJS and the individual localities and jurisdictions that employ these individuals. The need for increased DCJS staff, additional IT processes and resources, and clarity in procedures, especially pertaining to criminal justice training academies and field training requirements, are crucial, and are not fully resolved at this point. Despite the efforts of the Fire Marshal Working Group on the topic, it is likely that when implemented additional unforeseen issues will arise.

There are resolutions to every challenge that was examined by the fire marshal work group. Some of the resolutions require additional resources be provided to DCJS to implement. Many of the resolutions require legislative direction that would clarify ambiguous or contradictory language in the *Code of Virginia*. Some issues, if resolved legislatively, would decrease the need for additional resources for DCJS. For example, if it were legislated that fire marshals were employed by a criminal justice agency that already exists, there would be less need for modification of DCJS systems.

Advanced basic and ongoing law-enforcement training enhances personal safety to a law-enforcement officer and professionalism to the community being served. DCJS agrees that adding fire marshals to the definition of law enforcement would help ensure the safety of our citizens and communities.

However, DCJS does not have the legal standing to pick and choose how law-enforcement training is delivered and accounted for to which subset of criminal justice professionals that are included in the definition of law-enforcement officer. Whether a law-enforcement officer is a

deputy working as a K-9 handler, an investigator with the Medicaid Fraud Unit, a detective investigating a murder, a deputy running radar, or a fire marshal, all certified law-enforcement professionals must and should complete a standardized process for certification as a professional. This process is codified in law and administrative regulation to ensure compliance in the best interest of the citizens of Virginia.

The 250 fire marshals with law-enforcement authority in the Commonwealth are, in most cases, already performing the duties of a certified law-enforcement officer in their localities. These individuals deserve the opportunity to provide law-enforcement services to their community with the best law-enforcement training that can be provided.

Specific Recommendations

The following are the recommendations for actions to be taken:

- 1) All local fire marshals with police powers should be certified through DCJS in the function of law enforcement.
- 2) All local fire marshals should complete the task of certification in the same manner as prescribed for current certified law enforcement professionals.
- 3) All training of fire marshals related to their law enforcement function should be tracked through DCJS.
- 4) All training of fire marshals related to their law enforcement function should be conducted at a DCJS certified criminal justice academy, either at an existing criminal justice academy or the DFP academy should be legislatively empowered and funded separately from other regional criminal justice academies to achieve criminal justice academy certification.
- 5) DCJS should be appropriately funded for TRACER changes and updates and any staffing needs that the addition of fire marshals would necessitate.
- 6) Legislative language in the *Code of Virginia* § 27-34.2 should clarify and de-link the connection between state fire marshal training and local fire marshal with police powers training. State fire marshals should be trained, in general, to the same standard regarding inspection and investigation. However, law enforcement certification should not be required at this time.
- 7) Legislative language should clarify a process by which a local fire marshal's authority could be significantly limited by their jurisdiction, thus rendering the achieving of law

enforcement certification unnecessary. Only fire marshals trained through a criminal justice academy should act with police powers.

- 8) The VDFP should begin gathering detailed information on the specific law enforcement training history of every fire marshal with police powers. This should include basic law enforcement training, field training (if conducted), and both individual and agency compliance with minimum qualifications for law enforcement as outlined in the *Code of Virginia* § 15.2-1705.
- 9) DCJS and DFP should work collaboratively to determine the best course for addressing the training and certification requirements for current local fire marshals, including possible training waivers, bridge training, and reasonable timelines for the accomplishment of any remedial training DCJS and DFP agrees is necessary.
- 10) DCJS and DFP should work collaboratively on determining the requirements for supervision and management of local fire marshals who are certified law enforcement but employed by non-criminal justice agencies within their locality.

