COURTS OF RECORD: GENERAL PROVISIONS.

Colonial Heights police department is responsible for transporting arrestee to regional jail. Once at regional jail, jail superintendent is responsible for conveying prisoners to and from court. City council may adopt ordinance requiring sheriff to perform extra transport duties and may compensate sheriff accordingly. Prisoners awaiting further criminal proceedings at courthouse are within control of sheriff, who is responsible for returning them to jail superintendent for transport to regional jail at conclusion of day's hearings. If it is necessary for prisoner to remain for further court proceedings within same day, prisoner should be kept in courthouse holding cell until proceedings are concluded and then released to jail superintendent for transport to regional jail.

The Honorable M. Kirkland Cox
Member, House of Delegates
April 5, 2002

Issue Presented

You ask several questions regarding the responsibility of transporting to a regional jail persons arrested by the police or ordered to jail by the court on a capias. You first ask whether the sheriff for the City of Colonial Heights, or the city police department, has the duty to transport to the regional jail persons arrested by the police or taken into custody on a criminal capias. You also ask what steps may be taken by the city council to require the sheriff to transport the prisoner. You next ask whether the sheriff may be required to keep temporarily in the courthouse holding cell an arrestee who will be returned to court for further proceedings within the same day.

Response

It is my opinion that the police department is responsible for transporting an arrestee to the regional jail. Once at the regional jail, the jail superintendent is responsible for conveying prisoners to and from court. The city council may adopt an ordinance requiring the sheriff to perform extra transport duties and may compensate the sheriff accordingly. Prisoners awaiting further criminal proceedings at the courthouse are within the control of the sheriff, who is responsible for returning them to the jail superintendent for transport to the regional jail at the conclusion of the day's hearings. If it is necessary that a prisoner remain for further court proceedings within the same day, the prisoner should be kept in a courthouse holding cell until the proceedings
are concluded and then released to the jail superintendent for transport to the regional jail.

Facts

You advise that the City of Colonial Heights participates in a regional jail. You relate that the sheriff for the City of Colonial Heights has advised the city police chief that, due to a lack of funding, the sheriff’s office no longer will transport persons arrested by the police to the regional jail. You note that the sheriff has declined to transport persons to jail who have been ordered by the court to be taken into custody on a criminal capias.

Applicable Law and Discussion

"The sheriff is a constitutional officer who serves independent of county and city governments" and whose duties are "prescribed by general law or special act." Section 15.2-1609 of the Code of Virginia sets forth the duties of sheriffs:

The sheriff shall exercise all the powers conferred and perform all the duties imposed upon sheriffs by general law. He shall enforce the law or see that it is enforced in the locality from which he is elected; assist in the judicial process as provided by general law; and be charged with the custody, feeding and care of all prisoners confined in the county or city jail. He may perform such other duties, not inconsistent with his office, as may be requested of him by the governing body.

In addition, the Supreme Court of Virginia has specified that

the sheriff is an officer of the court subject to its orders and directions. He is also a conservator of the peace and charged with the enforcement of all criminal laws within his jurisdiction. It is his duty, as well as the duty of the other police officers of the county and city, to investigate all violations of law and to serve criminal warrants.

The creation of a separate police force does not relieve the sheriff of his duty to enforce the criminal laws. "[T]he law imposes upon [sheriffs] the mandatory duty of service of process." Section 17.1-112 requires that "the sheriff of the county or city in which any court is held shall attend it and act as its officer."

Section 15.2-1701 provides that, "[w]hen a locality provides for a police department, the chief of police shall be the chief law enforcement officer for that locality." Section 15.2-1704(A) further provides:
The police force of a locality is hereby invested with all the power and authority which formerly belonged to the office of constable at common law, and is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.

Section 15.2-1704(B) provides that, with the exception of certain service issues, a local police force “has no authority in civil matters.” The service of criminal process, however, is one of the mandatory duties of the police department.¹

The Code of the City of Colonial Heights requires that the city sheriff “shall perform such other duties as may be prescribed and ordained by the city council.” ² The city council has adopted no ordinance requiring the sheriff to transport to the regional jail persons arrested by the police or ordered held by the court.

You enclose with your request a copy of a commitment order form instructing the sheriff, jail officer or correctional officer to take into custody and convey to the court an accused who is not otherwise released. While the language in the commitment order confirms the authority of several different officers to take control of an accused, it does not mandate that the sheriff transport the accused to the local jail. This form is used when the police bring an arrestee before a magistrate and the arrestee is denied bail. In Colonial Heights, the magistrate is located in the police department building. In such a case, the commitment order clearly is issued to the arresting police officer, and it is the responsibility of such officer to take the arrestee to the regional jail. Thus, the response to another question you ask is that the form in and of itself does not require the sheriff to transport the arrestee to the regional jail. Further, since the creation of the local police department shifted from the sheriff to the police department the bulk of the responsibility for enforcing criminal laws and conducting criminal proceedings, the duty of transporting arrestees to a regional jail lies with the police department, as set forth more fully below.

Prior opinions of the Attorney General address variations on this issue. A 1974 opinion addresses the question whether it is the duty of the sheriff or the police department to take custody of and return prisoners from other jurisdictions to the local jail.³ The prior opinion notes that it is the duty of the police department to investigate crimes; thus, where an accused is in another jurisdiction, it is the duty of the police department, as part of its investigatory function, to pick up and return the accused from another jurisdiction.⁴ Once the accused is brought to the jurisdiction, he becomes the responsibility of the sheriff at the local jail.⁵ The opinion further concludes that, where it becomes necessary to secure the presence of a criminal witness from another jurisdiction or a state prison, the sheriff is the appropriate
officer to transport the witness to and from court. The circumstances addressed in the 1974 opinion involve a local jail. The City of Colonial Heights participates in a regional jail and has no local jail.

A 1982 opinion of the Attorney General concludes that, when a prisoner is confined to a regional jail, it is the duty of the superintendent of the regional jail, rather than the sheriff, to transport the prisoner to and from courts, hospitals, etc. Further, § 53.1-79.1 authorizes sheriffs and jail superintendents to enter into cooperative agreements "to transfer and transport prisoners between the respective facilities" without a court order. The prisoner in this situation, however, has not been brought to the regional jail, and there is no cooperative agreement in effect.

In the situation at issue, there is no local jail, the city council has not adopted an ordinance requiring the sheriff to transport prisoners to and from the regional jail, and no cooperative agreement exists. The police bring an arrestee to the city police department where a capias is served on him, and the magistrate, who is located in the police department building, issues the commitment order. In these circumstances, the commitment order clearly is issued to the arresting police officer. Therefore, it is the duty of the police department to take the arrestee to the regional jail. Once at the regional jail, the jail superintendent has the duty of transporting prisoners to and from court. Each political subdivision participating in the regional jail bears the cost of transporting prisoners from its jurisdiction to and from the regional jail.

Prisoners awaiting further criminal proceedings at the courthouse are within the control of the sheriff, who returns them to the jail superintendent for transport to the regional jail at the conclusion of the day's hearings. If it is necessary to keep a prisoner for further court proceedings within the same day, however, the prisoner should be taken to one of the courthouse holding cells until the proceedings are concluded and then released to the jail superintendent for transport to the regional jail. You note, however, that there are only four courthouse holding cells. In cases where the prisoners are too numerous to be kept safely in the courthouse holding cells, the jail superintendent must transport them to the regional jail and return them the same day for the remaining proceedings. The regional jail superintendent would receive payment for such transport costs from the participating jurisdictions.

You also inquire what steps may be taken by the city council to require the sheriff to transport arrestees to the regional jail, and whether the council must provide compensation to the sheriff for such transport. A sheriff "may perform such other duties, not inconsistent with his office, as may be requested of him by the governing body." The city council may adopt an ordinance to this effect, pursuant to the powers granted to them under the City Code. The effect of such an ordinance would be to shift a
portion of the duties now laid upon the police department to the sheriff. The City Code provides that the sheriff shall receive only such compensation as is "allowed by general law." Section 15.2-1613 provides that "[a]ny county or city may appropriate funds for the operation of the sheriff’s office." Assuming that the city council adopts an ordinance requiring the sheriff to perform extra transport duties that formerly resided with the police department, the city may compensate the sheriff accordingly.  

Finally, you ask whether Virginia law authorizes a judge or magistrate to order the sheriff to transport arrestees to the regional jail, and what steps are required to cause a sheriff to transport the arrestee. As noted above, the sheriff is an officer of the court and subject to its orders and directions. A court may directly order the sheriff to perform a transport duty as part of his function as an officer of the court. A separate police department exists in this situation, however. Therefore, the duty of transporting arrestees is the duty of the police department.  

Conclusion  

It is my opinion that the police department is responsible for transporting the arrestee to the regional jail. Once at the regional jail, the jail superintendent has the duty of conveying prisoners to and from court. Prisoners awaiting further criminal proceedings at the courthouse are within the control of the sheriff, who would return them to the jail superintendent for transport to the regional jail at the conclusion of the day’s hearings. If it is necessary to keep a prisoner for further court proceedings within the same day, however, the prisoner should be taken to one of the courthouse holding cells until the proceedings are concluded and then released to the jail superintendent for transport to the regional jail.

Furthermore, if the city council adopts an ordinance requiring the sheriff to perform extra transport duties that formerly were required of the police department, the city may compensate the sheriff accordingly.

1 A "capias" is a written order of a court requiring "an officer to take a named defendant into custody." Black’s Law Dictionary 199, 1602 (7th ed. 1999) (defining "capias," "writ").

2 Section 53.1-105 allows any combination of two or more cities to "establish, maintain and operate a regional jail."


See Malbon, 195 Va. at 372, 78 S.E.2d at 686.


Id. at 325.

Id.

Id.

Section 53.1-109 provides that "[t]he jail superintendent shall have and exercise the same control and authority over the prisoners committed or transferred to a regional jail … as the sheriffs of this Commonwealth have by law over the prisoners committed or transferred to local jails."


See id.


See Colonial Heights, VA., Code § 20.30, supra note 9 (stating that sheriff "shall perform such other duties as may be prescribed and ordained by the city council"); see also 1968 Va. Acts ch. 474, at 637, 641.

Id.

Id. 15.2-1613 (Michie Repl. Vol. 1997).